

# Memorandum



**Date:** January 22, 2014

Agenda Item No. 8(A)(2)

**To:** Honorable Chairwoman Rebeca Sosa  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez  
Mayor

**Subject:** Approval of Development Lease Agreement with Lan Cargo, S.A. for Construction of a Hangar Facility at Miami International Airport

## RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the attached forty (40) year Development Lease Agreement with Lan Cargo, S.A. (Lan) for Lan's construction of a jet hangar facility on the west side of Miami International Airport (MIA) and the Aviation Department's construction of (i) a paved aircraft apron and taxiway connector south of the hangar to connect the hangar with the taxiway, and (ii) a paved aircraft apron to the east of the hangar for common-use aircraft parking. It is further recommended that the Board waive the requirements of Ordinance 12-43 with respect to responsible wages on the Lan portion of the construction project due to the importance of this project and as further explained below.

## SCOPE

Miami International Airport is located within Chairwoman Rebeca Sosa's District 6; however, the impact of this item is countywide as MIA is a regional asset.

## DELEGATED AUTHORITY

In accordance with Miami-Dade County Code Section 2-8.3 related to identifying delegation of Board authority contained within the Agreement, the Aviation Director or his designee has the authority to (i) terminate the Agreement for a breach by Lan, (ii) not proceed with the project if federal and state funding are determined to be inadequate, (iii) take back parking spaces constructed by Lan on the east side of the hangar, and (iv) approve any assignment of the Agreement by Lan.

## FISCAL IMPACT

The agreement requires the Miami-Dade Aviation Department (MDAD) to pay \$450,000 to demolish an existing vacant building with already budgeted funds. Lan will fund the construction of its hangar facility. Following construction of the hangar, MDAD will receive ground-lease rental payments over the term of the agreement, initially \$134,164.90 annually. Following the 30<sup>th</sup> year of the Agreement, Lan will pay to MDAD fair-market-value improvement rents on the hangar facility.

The Florida Department of Transportation (FDOT) will fund 100% of the preferential-use apron through equal grants from FDOT and its Economic Development Transportation Project Fund (EDTPF), totaling \$1,168,263.00 toward its 50% share of the estimated cost of \$2,336,526.00. A second FDOT Joint Participation Agreement (JPA) in the amount of \$1,168,263.00 provides funding for the remaining 50%.

The JPA also includes \$1,271,684.00, which represents 50% of the non-federal share of the common-use apron located east of the hangar. This common-use apron is estimated to cost \$6,145,677.00 and the Federal Aviation Administration (FAA) has agreed to fund \$4,609,258.00 or 75% of these costs. The remaining \$264,735 required for the common-use apron will be funded by MDAD.

All of these funding agreements have been approved via Resolutions R-409-13, R-410-13, and R-793-13. Any costs not covered by federal, state, or EDTFP grants will be paid by previously budgeted MDAD Capital Improvement Program funds.

**TRACK RECORD/PROJECT MONITOR**

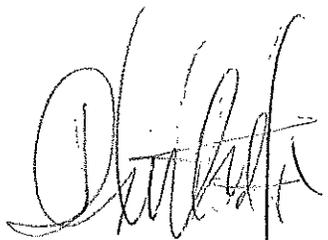
Lan has an excellent track record of meeting its obligations to MDAD. The agreement will be managed by MDAD's Division Director of Real Estate Gregory C. Owens.

**BACKGROUND**

Lan is a major cargo tenant in what is called the "Eastern U" cargo handling facility on the west side of MIA. Lan has long desired to construct a maintenance hangar facility for its cargo and passenger aircraft at one of its major airport sites in the western hemisphere, and has agreed to construct the hangar at MIA on the condition that certain offers of funding from the State are made available to defray portions of the cost of the project. MDAD has identified the site of the formerly vacant Building 715 for the project. This facility, located to the east of the "Eastern U," was last used by the U.S. Postal Service and was abandoned after significant hurricane-related degradation raised structural and safety concerns. MDAD has already demolished the building.

The State of Florida and the Beacon Council have been active supporters of the project. To accomplish Lan's goals, the attached Agreement provides for (i) MDAD's demolition of Building 715 at MDAD's cost, (ii) Lan's construction of its hangar facility on the Building 715 site at Lan's cost, (iii) MDAD's construction of a paved taxiway ramp and aircraft apron area to the south of the hangar to enable Lan's aircraft to access the hangar from the adjacent taxiway and to allow parking of Lan aircraft on the apron on a preferential-use basis, with MDAD providing the initial funding for this portion of the project but receiving reimbursement from the FDOT and EDTFP, and (iv) MDAD's construction, with FAA, FDOT and MDAD funding, of a paved aircraft parking apron to the east of the proposed hangar that will allow Lan and other airlines to park aircraft.

Lan Cargo had originally planned to construct the hangar facility in Bogotá, Colombia. However, development groups in Miami-Dade County, in conjunction with the Governor's and Mayor's offices, convinced Lan Cargo to construct the facility at MIA based on extensive federal, state, and MDAD funding that would be made available to construct the non-hangar portions of the project. Lan Cargo is exclusively responsible for the costs of construction of the hangar facility itself. Lan Cargo was informed that the County's Responsible Wages Ordinance in Section 2-11.16 would apply to the project, but that the Mayor, based on the project's importance to the County and the aviation community, would recommend waiver of the requirement. In fact, Article 2(A)(5) of the lease provides that Lan Cargo has the right not to proceed with the project if the Responsible Wages Ordinance is applied. This Development Lease is projected to bring 327 indirect and direct jobs to Miami-Dade County. In light of the importance of the project to the County and the State of Florida, this office recommends the waiver of the application of the Responsible Wages Ordinance to Lan Cargo's construction of its hangar facility. Lan will, however, meet a CSBE goal of 20%.



Jack Osterholt, Deputy Mayor



**MEMORANDUM**  
(Revised)

**TO:** Honorable Chairwoman Rebeca Sosa  
and Members, Board of County Commissioners

**DATE:** January 22, 2014

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

**SUBJECT:** Agenda Item No.8(A)(2)

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 Mayor'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. 8(A)(2)  
1-22-14

RESOLUTION NO. \_\_\_\_\_

RESOLUTION RELATING TO MIAMI INTERNATIONAL AIRPORT; APPROVING FORTY-YEAR DEVELOPMENT LEASE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND LAN CARGO, S.A. (LAN) FOR LAN'S CONSTRUCTION OF A HANGAR FACILITY ON THE WEST SIDE OF THE AIRPORT AT AN INITIAL ANNUAL GROUND RENTAL OF \$134,164.90; AUTHORIZING THE MAYOR OR DESIGNEE TO TAKE REASONABLE AND APPROPRIATE STEPS FOR THE AVIATION DEPARTMENT AND LAN TO OBTAIN FEDERAL AND STATE FUNDING FOR THE HANGAR FACILITY PROJECT; APPROVING THE USE OF AVIATION DEPARTMENT FUNDS TO DEMOLISH EXISTING BUILDING 715 AND TO CONSTRUCT THE COMMON-USE APRON; WAIVING THE RESPONSIBLE WAGES PROVISION OF SECTION 2-11.16 OF THE CODE OF MIAMI-DADE COUNTY IN REGARD TO THE HANGAR PORTION OF THE PROJECT; AUTHORIZING THE MAYOR OR DESIGNEE TO TAKE ALL STEPS NECESSARY OR REASONABLE TO ASSIST LAN WITH THE COMPLETION OF THE PROJECT

**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum and document, 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 hereby approves the Hangar Facility Project and the attached forty (40) year Development Lease Agreement between Miami-Dade County and Lan Cargo, S.A. (Lan) for Lan to construct and thereafter occupy a hangar facility on the west side of Miami International Airport, at an initial annual ground rental payable to the County of \$134,164.90; waives the Responsible Wages provision of Section 2-11.16 of the Code of Miami-Dade County in regard to Lan's construction of the hangar facility; authorizes the Mayor or Designee to take reasonable and appropriate steps

to enable the Aviation Department and Lan to obtain funding for the Hangar Facility Project, including the Aviation Department's construction of a taxiway connector and aircraft parking aprons associated with the project from the Federal Aviation Administration, the Florida Department of Transportation, and the State of Florida's development organization known as Enterprise Florida, Inc.; approves the use of Aviation Department funds to demolish existing Building 715 and to construct the common-use apron; and authorizes the Mayor or Designee to take all steps necessary or reasonable to assist Lan with the completion of the Project.

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:

Rebeca Sosa, Chairwoman

Lynda Bell, Vice Chair

Bruno A. Barreiro

Jose "Pepe" Diaz

Sally A. Heyman

Jean Monestime

Sen. Javier D. Souto

Juan C. Zapata

Esteban L. Bovo, Jr.

Audrey M. Edmonson

Barbara J. Jordan

Dennis C. Moss

Xavier L. Suarez

The Chairperson thereupon declared the resolution duly passed and adopted this 22<sup>nd</sup> day of January, 2014. 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

**DEVELOPMENT LEASE AGREEMENT  
BETWEEN MIAMI-DADE COUNTY, FLORIDA, AS LESSOR,  
AND LAN CARGO,S.A , AS LESSEE,  
MIAMI INTERNATIONAL AIRPORT**

THIS DEVELOPMENT LEASE AGREEMENT (the "Lease") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2013 by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida ("County"), and Lan Cargo, S.A. incorporated under the laws of Chile and authorized to do business in the State of Florida ("Lessee").

**WITNESSETH:**

WHEREAS, Lessee is an international cargo air carrier operating at Miami International Airport ("MIA") and currently occupies a cargo handling facility at MIA known as Buildings 709 and 710 under a potential thirty-five year lease agreement approved by the County in Resolution No. R-861-99; and

WHEREAS, Lessee desires to make use of an area in the vicinity of Buildings 709 and 710 upon which a facility known as Building 715 is located, so as to construct a hangar facility on such site for the repair and maintenance of Lessee's aircraft, aircraft of Affiliates and third party aircraft as defined herein , following the demolition of Building 715; and

WHEREAS, County owns and operates MIA through its Aviation Department ("MDAD") and is willing to (i) demolish Building 715 at MDAD's cost, (ii) permit Lessee to construct the hangar facility on the Building 715 site at Lessee's cost, (iii) construct certain ramp areas to the south and east of the newly constructed hangar facility and a taxiway connector conditioned upon MDAD's receipt of 100% funding by the Federal Aviation Administration ("FAA") and/or the Florida Department of Transportation ("FDOT"), and/or the entity known as Enterprise Florida, Inc. ("Enterprise Florida") and (iv) thereafter permit Lessee to have preferential use of the ramp area to the south of Lessee's hangar facility and common use of the ramp area to the east of the hangar facility; and

WHEREAS, Lessee acknowledges and agrees that this Lease is contingent upon Lessee's construction of the hangar facility within the time period stated herein and upon Lessee's compliance with the other terms of this Lease.

NOW THEREFORE, for and in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

**ARTICLE 1**  
**DEFINITIONS**

1.1 Affiliate shall mean any Person or entity that controls or is controlled by Lessee or controlled by the corporate parent of Lessee, specifically including, but not limited to, (i) the airlines affiliated with Lessee through their ownership and control by Lessee or Lessee's corporate parent, and (ii) Lan Cargo Repair Station, LLC or such other entity created by Lessee or Lessee's corporate parent to serve as the primary maintenance and repair operator within the Premises. The term "control" shall mean the power through ownership of voting securities or by the laws of the country in which the Affiliate is established to direct or cause the direction of the management and policies of the entity, either directly or indirectly. The term "Person" shall include any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, or unincorporated organization.

1.2 Agreement or Lease: This written Development Lease Agreement between the County and the Lessee, including the Exhibits attached hereto and all amendments entered into by the County and Lessee hereunder.

1.3 Alterations: Any external alterations to the Premises and Improvements after completion of the Improvements.

1.4 Airport: Miami International Airport.

1.5 Certificate of Occupancy or C.O.: Any certificate of occupancy issued under the South Florida Building Code.

1.6 Commencement Date: The date of this Lease as reflected on the first page hereof.

1.7 County or Lessor: Miami-Dade County a political subdivision of the State of Florida acting in its proprietary capacity, but it excludes the various departments of the County that retain their own regulatory powers over the Lessee and all users of MIA.

1.8 Date of Beneficial Occupancy (DBO): The earliest of (i) the date on which Substantial Completion of the Work associated with the Improvements has occurred and the appropriate code enforcement agency has issued a C.O. or Temporary C.O. so that the Lessee can occupy or utilize the Improvements or any portion thereof for their intended use, (ii) the date on which Substantial Completion of the Work associated with the Improvements would have occurred and on which the appropriate code enforcement agency would have issued a C.O. or Temporary C.O. for work associated with the Improvements, but for the occurrence of Lessee Delays, or (iii) the date on which Lessee commences use of the Improvements as defined in 4.1.

1.9 Department: Miami-Dade County Aviation Department, a department of Miami-Dade County, sometimes referred to as MDAD, represented by and acting through the Director or designees.

1.10 Developer: Such third party developer selected by Lessee which Lessee may assign this Lease is in accordance with the provisions of Article 2.6 of this Lease.

1.11 Director: The Director of the Miami-Dade County Aviation Department or his designee.

1.12 Final Acceptance: The Lessee's acceptance—of the Improvements from its contractor upon certification by the Lessee's architect/engineer that the Improvements have been completed in accordance with the Plans and Specifications and the issuance of a Certificate of Occupancy for the Improvements. Final Acceptance is confirmed by Lessee's making of the final payment of the fee of its contractor for the completion of the Improvements unless otherwise stipulated at the time of making such payment.

1.13 [Reserved]

1.14 Impact Fees: Those impact fees payable to the County's Department of Planning, Development and Regulation (Building and Zoning) or to another jurisdiction by the Lessee when making permit application for the construction of the Improvements.

1.15 Improvements: Those improvements that are generally depicted on the attached Exhibit "A" that are further described in Article 5.1 and that shall be constructed on the Premises in accordance with the Plans and Specifications as approved by the FAA and the County in accordance with Article 5.

1.16 County Delay: Any delay in completion of the Improvements resulting from (i) the failure to complete demolition of Building 715 within four (4) months from the Commencement Date, (ii) failure to complete construction of the South Apron and Taxiway Improvements connecting the Premises to the AOA within eighteen (18) months from the Commencement Date, or (iii) Remedial Action undertaken by the County pursuant to Article 8.2.

1.17 Lessee Delay: Any delay in the design or construction of the Improvements that occurs by reason of acts or omissions on the part of Lessee or those acting for or under the direction of Lessee to the extent same results in a delay in Substantial Completion provided, however, Lessee Delay shall not include any Force Majeure delay. If a delay occurs by reason of an act or omission on the part of Lessee or those acting for or under Lessee's direction and if concurrently a delay occurs for a reason other than an act or omission on the part of Lessee or those acting for or under Lessee's direction, the period in which an overlap in the delays occurs will not constitute a Lessee Delay.

1.18 MDAD: Miami-Dade County's Aviation Department, as operator of Miami International Airport.

1.19 Premises shall mean the Premises defined in Article 2.2.

1.20 Plans and Specifications: The drawings and specifications prepared by the Lessee's architect/engineer that show the locations, characters, dimensions and details of the Work to be done.

1.21 Record Drawings (As-built Drawings): Reproducible drawings showing the final completed Improvements as built, including any changes to the Improvements performed by

Lessee's contractor that Lessee's architect/engineer considers significant, based on marked-up as-built prints, drawings and other data furnished by Lessee's contractor.

1.22 Rent Commencement Date: the date on which Lessee's payment of full rent for the land commences, as such date is determined under Article 4.1(A).

1.23 Risk Management Division: A division of MDAD, with offices located at MIA.

1.24 Substantial Completion: The stage in the progress of the Work when the Work is completed in accordance with the approved Plans and Specifications so that Lessee can occupy or utilize the Improvements for their intended use and a Temporary C.O. has been issued. At the Substantial Completion stage, all punch list work is able to be completed by Lessee's contractor in 60 days or less.

1.25 Temporary C.O.: Any temporary or partial C.O. issued under the building code then applicable to construction in Miami-Dade County.

1.26 Work: All labor, materials, tools, equipment, services methods, procedures, etc., necessary or convenient to performance by Lessee or by the Lessee's contractor for the fulfillment of Lessee's obligation to construct the Improvements in accordance with the terms of this Agreement.

## ARTICLE 2

### TERMS, PREMISES, AND DEVELOPMENT ACTIVITIES

2.1 (A) Term; Lessee's Right Not to Proceed:

(1) The County hereby leases to the Lessee, and the Lessee hereby leases from the County, effective on the Commencement Date, and extending for an initial term of thirty (30) years, the Premises as more fully described in Article 2.2 with the right to construct, or cause to be constructed, and occupy on an exclusive basis the Improvements described in Article 5 (Improvements) hereof for a term (the "Term") that commences on the earlier of (i) the Date of Beneficial Occupancy of the Improvements; or (ii) two years from the Commencement Date; as such two year period may be extended as a result of County Delays, Force Majeure delays and delays arising under Article 2.1(A)(3), and that expires at 11:59 p.m. (E.S.T. time) on the day of the thirtieth (30<sup>th</sup>) anniversary of the earlier of such dates.

(2) In addition to the grounds for termination set forth in Article 14 hereof, this Agreement may be terminated by the County if Lessee fails to obtain a C.O. or a Temporary C.O. for the Improvements on or before the second anniversary of the Commencement Date as same two years may be extended by County Delays, Force Majeure delays and delays arising under Article 2.1(A)(3), and has not been diligently pursuing completion of the Improvements at all times during this twenty-four month period ("Completion Deadline"); provided, however, that for any delay beyond the second anniversary or beyond the extension of the second anniversary as provided herein, County must provide Lessee with a written notice of County's intent to terminate the lease if the Improvements are not completed within one hundred and twenty (120) days from the date of such written notice.

(3) In the event the Improvements are subject to development of regional impact requirements under Florida Statutes ("DRI") or require material traffic mitigation measures under applicable Florida "concurrency" statutes ("Traffic Concurrency"), then the Completion Deadline to obtain a CO or Temporary CO on the Improvements shall be extended by the number of months measured by the actual delay in development caused by the DRI or Traffic Concurrency requirements. To the best of the Department's knowledge there are no DRI requirements or Traffic Concurrency issues which will affect the ability of Lessee to construct the Improvements. If there are any DRI issues or Traffic Concurrency issues which affect the ability of Lessee to construct the Improvements, MDAD shall utilize its good faith efforts to assist the Lessee in resolving any such DRI issues or Traffic Concurrency issues.

(4) Lessee's and Lessor's Right Not to Proceed: If Lessee or Lessor reasonably determines that the funding incentive package from FDOT, Enterprise Florida, or the FAA (the "Funding Incentive Package") is or will not be available for construction of the South Apron and the Taxiway Improvements, as said terms are hereinafter defined, either party shall have the right to terminate this Agreement. The party's right to terminate the Agreement for this reason, however, shall apply only during the period of time from the Commencement Date to the date on which Lessor completes the demolition of Building 715. If funding from MDAD, FDOT, Enterprise Florida, or the FAA is determined after the completion of demolition of Building 715 to be in doubt, Lessor and Lessee may confer on a funding program from alternative sources for the South Apron and Taxiway Improvements. MDAD shall have the obligation to fund the construction of the South Apron and Taxiway Improvements in advance of receiving reimbursement of such funding from the Funding Incentive Package.

(5) Lessee's Right Not to Proceed: If Lessor reasonably determines that Lessor's Responsible Wage Ordinance will apply to the Lessee's construction of a hangar facility on the Premises, Lessee shall have the right to terminate this Agreement.

(6) Renewal Option: This Agreement may be renewed ("Renewal Option") by Lessee for two successive terms ("Renewal Terms") of 60 months each as long as Lessee is not in default under the terms of this Agreement both at the time that Lessee exercises the Renewal Option and at the time the ensuing Renewal Term would commence. Lessee will exercise each Renewal Option, if at all, by delivering written notice (the "Option Notice") to the County not less than six months prior to the date on which the then-current Term expires. In connection with the exercise of the foregoing option and in connection with Lessee's use of the Premises during any Renewal Term, the provisions of this Agreement, as administratively amended to the extent permitted herein, shall govern.

(B) Adjustment of Terms of Lease or Termination for Non-performance: If Lessee fails to diligently pursue construction of the Improvements within the two-year construction period, the County shall have the right to impose reasonable conditions upon Lessee that will cause the Improvements to be completed within the required time period, including the payment to the County of any rental payments not paid to the County because of such failure. In no event shall rent as provided for in Article 4.1 for the entire Premises be delayed beyond two years from the Commencement Date as such two year period may be

extended as a result of delays in accordance to Article 2.1(A)(3), County Delays, and Force Majeure delays. If the Improvements are not completed and a TCO or CO obtained for such Improvements within two years of the Commencement Date as such two year period may be extended by delays in accordance with Article 2.1(A)(3), County Delays, and Force Majeure delays, subject to the notice provision and remedy opportunities provided to Lessee herein, Lessor shall, have the right to terminate this Agreement and assume control over the Premises and the Improvements thereon with no obligation to compensate Lessee for the value of any of such Improvements ; provided, however, that for any delay beyond the second anniversary or beyond the extension of the second anniversary as provided herein, County must provide Lessee with a written notice of County's intent to terminate the lease if the Improvements are not completed within one hundred and twenty (120) days from the date of such written notice and provided further, that Lessee shall pay County as liquidated damages and not as a penalty the amounts set forth as follows:

Liquidated damages based on monthly rent due by Lessee	Lessee remedy monthly period
20%	1 <sup>ST</sup> Month
25%	2 <sup>ND</sup> Month
30%	3 <sup>RD</sup> Month
35%	4 <sup>TH</sup> Month
40%	5 <sup>TH</sup> Month
50%	6 <sup>TH</sup> Month

The foregoing remedies are in addition to, and not in lieu of, any other remedy provided herein or by law for Lessee's failure to construct the facilities in a timely manner.

2.2 (A) Premises; Preferential Use of Ramp: Temporary Construction Lay Down Area.

(1) The premises leased herein are located in the western portion of the Airport, consisting of approximately 1.81 acres of land (86,558 square feet)(the "Premises") upon which Lessee will construct the Improvements at its cost. Such acreage and its square footage shall be modified and reflected on Exhibit A to the extent an acceptable survey prepared under Article 2.2(D) determines that a different acreage and square footage shall apply.

(2) Adjacent to and the south of the Premises, Lessor will construct a paved aircraft parking apron in accordance with MDAD and FAA design guidelines and standards of approximately 1.68 acres in size (the "South Apron") utilizing funding provided by the Florida Department of Transportation and Enterprise Florida. Lessee and its Affiliates shall be entitled to make preferential use of the South Apron in accordance with Article 2.11 and with Lessor's preferential use policies established from time to time, with MDAD having the right to allow other air carriers to use the South Apron site when Lessee and its Affiliates are not making use of it for Lessee's aircraft or Lessee's Affiliates' aircraft.

(3) To the east of the Premises, Lessor will construct an additional aircraft parking apron in accordance with MDAD and FAA design guidelines and standards of 4.04 acres in size (the "East Apron," which, together with the South Apron, are collectively the "Apron"), utilizing funding provided by MDAD, FDOT, and the Federal Aviation Administration ("FAA"), with MDAD having the right to allow all air carriers at MIA to make common use of such East Apron in accordance with Lessor's then-current aircraft parking assignment policies.

(4) To the south of and adjacent to the South Apron, Lessor will construct a taxiway connector or stub area in accordance with MDAD and FAA design guidelines and standards (the "Taxiway Improvements") to connect the South Apron to the existing taxiway, utilizing funding provided by MDAD, FDOT, Enterprise Florida, and/or the FAA.

(B) [Reserved]

(C) Survey: Lessee shall order a survey of the Premises to be completed at its cost, with the surveyor to be reasonably acceptable to MDAD, and within 60 days following the Commencement Date, the metes and bounds legal description of the Premises contained in the survey shall be added to Exhibit "P" without the need to otherwise amend this Lease, as such metes and bounds description is reasonably acceptable to MDAD.

(D) Vehicular Parking:

(1) Lessee acknowledges that vehicle parking on the Premises and in the immediate area of the Premises is extremely limited. Attached hereto as Exhibit P2 (dated October 31, 2012) is a depiction of the probable vehicle parking positions that are either currently available or planned for future construction. Lessee has requested the use of 150 vehicle parking spaces, but such parking spaces are not currently available and Lessee acknowledges that they will likely be unavailable in the future. Lessor will use reasonable efforts to obtain additional spaces for Lessee in the future, but Lessee acknowledges that Lessor may not be able to do so given the demand for vehicle parking spaces by other tenants in the area, in addition to Lessor's obligation to provide a specific number of parking spaces and handicapped parking spaces to tenants in order for them to be in compliance with zoning and building code requirements.

(2) Lessee shall construct at its cost (i) the 13-space parking facility north of and immediately adjacent to Lessee's hangar facility (the "North Parking Site") and (ii) the 14-space parking facility immediately to the east of the hangar facility (the "East Parking Site"), which are both part of the Premises. The North Parking Site and the East Parking Site shall both be completed by no later than the DBO date for the hangar facility. The design of both the North and the East Parking Sites shall be reviewed by MDCD at the same time that MDAD reviews the design for the Hangar facility. The location of the East Parking Site is set forth in Exhibit P1 hereto. The location of the North Parking Site will be set forth on a document that the parties shall mutually agree upon and attach to Exhibit P1.

(3) Lessee shall have exclusive use of the North Parking Site for the duration of this Lease Agreement. Lessee shall initially have exclusive use of the East Parking Site. For so long as Lessee has exclusive use of any parking site or portion thereof, the following shall apply:

- (a) The exclusive use area shall be part of the Premises and Lessee shall have full maintenance and repair responsibilities for such area, in accordance with standards reasonably determined by Lessor. Lessor shall not be obligated to reimburse or compensate Lessee for any costs associated with such maintenance and repair obligations.
- (b) For any parking site or parking spaces outside of the North and East Parking Sites that may be made available to Lessee in the future on an exclusive basis, Lessor shall have the option of adding such site or spaces to the Premises or else providing Lessee with a License Agreement covering the terms of such use, which terms shall be consistent with the provisions of this Lease Agreement.

(4) Lessor shall be entitled to take back any seven (7) of the 14-spaces at the East Parking Site (hereinafter the "Take-Back Option") at any time following a (1) one-year amortization period of the East Parking Site from the DBO date of the East Parking Site, during the term of this Lease Agreement, subject to Lessor providing ninety (90) days prior

written notice to Lessee of Lessor's intent to exercise its Take-Back Option. Upon the effective date of the Take-Back Option,

- (i) The seven (7) parking spaces of the East Parking Site that were the subject of the Take-Back Option (hereinafter, the "Take-Back Parking Spaces") shall no longer be part of the Premises and the exhibits hereto shall be amended to reflect such fact;
- (ii) Lessee shall have no further responsibility for the Take-Back Parking Spaces, except as may have arisen prior to the effective date of the Take-Back Option;
- (iii) Lessor shall have no obligation to compensate Lessee for any costs associated with the design, construction and interim maintenance costs of the Take-Back Parking Spaces;
- (iv) Lessor shall assume all responsibility for the maintenance and repair of the Take-Back Parking Spaces, in the same manner as Lessor provides such service to Lessor's other parking areas;
- (v) Lessee shall have the exclusive right to use the (7) seven remaining parking spaces of the 14 parking spaces within the East Parking Site (hereinafter the "Exclusive Parking Spaces"), such spaces to be designated by Lessor;
  - A. For the Exclusive Parking Spaces, the same shall remain part of the Premises and shall be included in the Annual Rental for the Premises under Article 4.
- (vi) Lessee shall have the right to use the Take-Back Parking Spaces on a common use basis with other tenants and users of the airport. Such spaces may include handicapped parking spaces as determined by Lessor and their use shall be subject to the terms and conditions established by Lessor from time to time;
  - A. To the extent Lessee makes common use of any of the Take-Back Parking Spaces, Lessee shall pay Lessor a rental rate that is not less than the fair market rental rate applicable to such spaces as determined periodically by Lessor or Lessor's appraiser.

(5) Notwithstanding the foregoing, Lessor shall be entitled, but not obligated, to permit Lessee to offset the fair market value or cost-based rents for parking spaces against Lessee's assumption of all maintenance obligations for parking spaces that are not part of or added to the Premises. The value of such maintenance obligations shall be determined periodically by Lessor's appraisers, and an adjustment shall be made in favor of Lessee or Lessor in order to achieve equivalence in the values of both offset items.

(6) Approved Improvements Costs shall include Lessee's actual expenditures as appropriately certified and allocated for architectural and engineering design, construction, site development, required bonds, construction and liability insurance, construction financing fees and interest, building permit, impact and concurrency fees, and the construction audit, but shall exclude the costs of any other consultant (unless otherwise approved in advance by the County), accountant fees, permanent financing fees or charges, legal fees whether arising out of construction claims or lawsuits or any other matter, construction photographs, and other personal property of the Lessee not specifically approved by Lessor for inclusion in the parking site projects. In the event of any questions as to whether certain costs are to be included in the Approved Improvements Costs, the County through its Consulting Engineers shall make a determination and its decision shall be final.

(E) Construction Laydown Area: Lessee and Lessor shall determine a reasonable and appropriate construction laydown site or sites for Lessee and its contractors to use during the hangar construction period. Lessor shall prepare a License Agreement that reflects such site or sites, the conditions of their use by Lessee and its contractors, and the License Fee to be paid for the sites.

### 2.3 Development Activities:

#### (A) Demolition of Building 715:

(1) Lessor shall be responsible for demolishing, at Lessor's cost, Building 715 that is currently located on both the site of the Premises and the site of the Apron, which demolition shall include removal of the footings and foundations for Building 715, but excluding pilings and pile caps, and the disposal of all materials including Hazardous Materials, located within Building 715 in accordance with all applicable laws.

(2) Lessor anticipates that it will commence demolition of Building 715 within four (4) months of the the Commencement Date. The parties anticipate that it will take four (4) months from the Commencement Date to complete such demolition, and Lessee acknowledges that Lessee will be able to complete construction of the Improvements within two years from the Commencement Date, as such date may be extended as provided herein, including the four-month period from the Commencement Date required by Lessor to demolish Building 715.

(3) If the demolition is not complete within four (4) months from the Commencement Date for any reason whatsoever, Lessor's two year construction period shall be extended for the additional period of time beyond the four (4) months that is required by Lessor to demolish Building 715.

(4) (a) If demolition of Building 715 is not completed within eight (8) months of the Commencement Date, Lessee's land rent for the first twelve months following the rent commencement date under Article 4.1 shall be reduced by 1% in each of the twelve months, following which the rent shall revert to the applicable then-current rent. If the demolition is not completed within twelve (12) months from the Commencement Date, Lessee's land rent for the first twelve months following the rent commencement date shall be reduced by

2% in each of the twelve months, following which the rent shall revert to the applicable then-current rent.

(b) If the construction and development by Lessor of the South Apron and the Taxiway Improvements are not completed within twelve (12) months from the Commencement Date, Lessee's land rent for the first twelve (12) months following the rent commencement date under Article 4.1 shall be reduced by an additional 1% in each of the twelve months, following which the rent shall revert to the applicable then-current rent. If the construction and development by Lessor of the South Apron and the Taxiway Improvements are not completed within twenty-four (24) months from the Commencement Date, Lessee's land rent for the first twelve months following the rent commencement date shall be reduced by an additional 2% in each of the twelve months (for a total reduction of 3%), following which the rent shall revert to the applicable then-current rent.

(5) If demolition takes or is anticipated to take longer than 12 months from the Commencement Date to complete, Lessee shall have the option of terminating this Agreement and constructing the Improvements in some other country or location, with neither party being responsible to the other for any costs or damages resulting from such termination.

(B) **Utilities:** Lessee shall be responsible at its cost for providing all utility connections and services, and thereafter paying all service fees associated therewith. Lessee may make connections to the utility lines installed adjacent to the Premises and will have the right to install, inspect, maintain, repair, and replace underground utility lines extending from those connections to the Improvements, all in the manner approved by Lessor or by the utility company which approval not to be unreasonably withheld. In exercising the foregoing right, Lessee must coordinate with MDAD and must satisfy all requirements that MDAD with the utility service provider having control over those utility lines for the connections Lessee wishes to make. To Lessor's present knowledge, Lessor represents to Lessee that there are no restrictions as to water, sewer, storm water drainage facilities, electric, telephone and gas utilities services at the property line of the Premises and the same have with sufficient capacity to service the proposed Improvements; provided, however, Lessee is aware that Lessor's chiller plant located in the area of the Premises will not be able to accommodate the chilled water requirements of Lessee's facility on the Premises.

2.4 **Suitability of Premises:** The Lessee acknowledges that (a) the Lessor has made no representations as to (i) the Premises or the suitability of the Premises for the proposed Improvements except as specifically provided in this Lease, or (ii) the suitability of the Premises following Lessor's demolition of Building 715, and (b) the Lessor has no obligation to perform or cause to be performed any maintenance, repairs, renovations, cleanups, painting, or the like on the Premises except for the demolition of Building 715 and except to the extent of Lessor's responsibilities for environmental conditions under Article 8. The Lessee's obligation under this Agreement, such as in Article 8.1 (Rules and Regulations-General), to obtain all land use, construction, and operating permits and approvals required of the Lessee at the Lessee's sole cost and expense, shall not require the Lessor to take any action or perform any tasks within the Premises to enable the Lessee to obtain such permits and approvals, including, but not limited to, certificates of occupancy, which shall remain the Lessee's exclusive obligation to take or

perform in order to obtain such permits and approvals. The Lessee acknowledges that, if Lessee elects not to terminate this Lease in accordance with Article 21.24, that the Lessee at its own cost, risk, and expense must make the necessary investments and all Improvements to the Premises, including all infrastructure improvements and utilities services necessary for Lessee's construction and use of the Premises, to make the Premises suitable for the Lessee's use and to satisfy the County's building, life, safety, fire and occupancy requirements, and that the Lessor shall have no obligation to Lessee to compensate or reimburse Lessee for such cost, risk, expense, investment, and improvements.

2.5 Use of Improvements Prior to Certificate of Occupancy (C.O.) Prohibited: Lessee may lawfully occupy or use any portion of the Improvements only upon the issuance of a temporary or permanent Certificate of Occupancy. Lessee may not occupy or use that portion of the Improvements prior to that issuance, but if Lessee does so, the Date of Beneficial Occupancy will start on any such occupancy or use. The foregoing provision shall not apply to the construction of the Improvements by Lessee, only the use and occupancy of the Improvements.

2.6 Lessee Option to Use Developer: The Lessee shall have the option of assigning the entirety of this Lease to a Developer for the construction of the Improvements with the Developer having the right to sublease the Improvements or assign this Lease back to Lessee. The terms of any such assignment are subject to the reasonable review and approval of the Lessor. Lessee may only assign this Lease to one Developer. Lessor and Lessee agree to execute reasonably and appropriate documents to reflect such assignment of this Lease to the Developer and the subsequent sublease or assignment of this Lease to the Lessee. Any such assignment shall not affect Lessee's obligations and duties under this Lease or release Lessee from any liability under this Lease.

2.7 Investment: (A) Lessee agrees that it will or the Developer will construct the Improvements in accordance within the Plans and Specifications approved by Lessor which Lessee anticipates will result in an estimated investment of fifteen million dollars (\$15,000,000) ("Estimated Investment") for the design, construction, equipment and related expenses of the Improvements, including without limitation, the site development required in connection with that construction.

(B) In determining the amount of Lessee's investment in design and construction of the Improvements, Lessee may include all reasonable hard and soft costs including architectural and engineering fees, and labor and material costs, and acquisition fees, subject to the requirement that all such costs are properly subject to capitalization under generally accepted accounting principles (the "Approved Improvement Costs"). Accounting fees, legal fees, financing charges, consultant's fees (unless approved by MDFAD) shall not be eligible for inclusion in Approved Improvement Costs. For purposes of verifying Lessee's expenditure of the estimated \$15,000,000 in eligible design and construction costs of the Improvements on the Premises; within ninety days of completion of construction of the Improvement, the Lessee shall submit to the Finance Division of the Department a certified audit of the monies actually expended in the design and construction of the Improvement in accordance with the Contract Documents described below in Article 5, prepared by an independent certified public accounting firm. The Department's failure to disapprove the accounting submitted by Lessee as required in this Article 2.5(B) within ninety (90) days from

the date of submission shall constitute an unconditional approval of the accounting . In the event of any disputes between the Department and the Lessee as to whether certain costs are to be included in Approved Improvements Costs, the disputes shall be submitted to the Consulting Engineers under the County's Trust Agreement, as defined in Article 20.01 (Incorporation of Trust Agreement by Reference) hereof. The decision of said Consulting Engineers shall be final and binding upon the parties hereto. The Lessee shall be deemed to have complied with the Estimated Investment if Lessee or the Developer complete construction of the Improvements in accordance with the approved Plans and Specifications.

2.8 Eminent Domain: County shall have the right to exercise its power of condemnation in accordance with Florida law in whatever manner and to whatever extent is provided by Florida law. All compensation due to Lessee and its sublessees with respect to such condemnation shall be governed by Florida law. If County exercises its right to condemn any portion of the Improvements and then permits Lessee to occupy any portion of the condemned Improvements, Lessee shall be obligated to pay rentals on such Improvements all in the manner and at the times then applicable to the facilities occupied by Lessee. The County agrees that in the event the County exercises its condemning authority, the amount of compensation payable to Lessee on account of the County's taking shall in no event be less than the amount required to discharge the original amount of any tax exempt bonds or other financing then outstanding which were issued to fund the cost of the Improvements.

2.9 Maintenance and Repair by Lessee after Condemnation of Improvements: In the event County condemns the Improvements or any portion of them and, in either case, permits Lessee to occupy such Improvements or any portion thereof, Lessee shall be responsible at its own cost to maintain and repair the Premises and Improvements or any portion thereof for the period of such occupancy. Lessee's obligations to otherwise maintain and repair the Improvements or any portion thereof, occupied by Lessee shall be as specified in Article 6. The parties do not intend that the foregoing provisions of Article 2.8 or this Article 2.9 will in any way affect the amount of compensation payable to Lessee in connection with the condemnation, which condemnation shall be subject to Florida condemnation law at the time of taking.

2.10 Department's Right to Develop Airport: Nothing in this Lease or otherwise shall prevent or preclude MDAD from leasing to or permitting the use by another party or parties of any other portion of the Airport outside the Premises for development purposes, whether such use is for aviation, aviation support or commercial purposes. Such purposes may be consistent with the development purposes intended by or contemplated by this Lease or in direct competition therewith. Nothing shall preclude or prevent MDAD from operating and developing the entire Airport (outside the Premises) in a manner not inconsistent with law.

2.11 Preferential Use of South Apron: Lessee, its Affiliates and other authorized users of the Improvements shall have a preferential right to make use of the South Apron and shall pay MDAD monthly the amount determined by MDAD to be due for such preferential use which charges shall be consistent with the policies and charges by MDAD for similar preferential rights at the Airport. The extent of the preferential right and Lessee's obligations in regard to its use of the South Apron on a preferential basis shall be determined by MDAD from time to time, but MDAD will take into account the Lessee's and its Affiliates' flight schedules and their unforeseen aircraft maintenance requirements. MDAD will use its reasonable best efforts to

accommodate such flight schedules and unforeseen aircraft maintenance requirements during the time or times that MDAD makes use of the South Apron.

2.12 MDAD's Right to Assign Common Use of the East Apron: MDAD shall have the right to assign common use of the East Apron to air carriers at the Airport, including Lessee. Such use, and payment by Lessee, its Affiliates, and other MDAD-authorized users for such use, shall at all times be in accordance with MDAD's policies regarding common use of aircraft parking areas at the Airport.

2.13 Application of CBE and CSBE Programs: This agreement shall be subject to the requirements of the Community Business Enterprise ("CBE") Program in connection with the design and the Community Small Business Enterprise ("CSBE") Program in connection with the construction of the Improvements.

### **ARTICLE 3** **USE OF PREMISES AND IMPROVEMENTS**

3.1 Authorized Uses of Premises and Improvements. In addition to Lessee's right to construct the Improvements thereon, pursuant to the provisions of Article 5 hereof, the Premises and Improvements shall be used for any of the following purposes only:

(A) Service, repair, and maintenance, by Lessee or through Lessee's affiliate Lan Cargo Repair Station, LLC, or other affiliated maintenance repair operator by a different name, of Lessee's and Lessee's Affiliates' owned, leased, or operated aircraft and aviation related equipment, including support shops and overhaul facilities, the loading and unloading of such aircraft, the fueling of such aircraft, the parking of such aircraft and support equipment, reasonable executive, administrative, and operational offices and for any other lawful use normally and properly incidental to the foregoing. Lessee shall not be required to pay Lessor any percentage of gross revenues resulting from such activities. For purposes of this Article 3.1(A), Lessee shall have the right to provide service, repair, and maintain the aircraft of any carrier not listed above in this section for which Lessee shall pay Lessor three percent (3%) of Lessee's gross revenues resulting from such service, repair, and maintenance activities of such parties; provided, however, the work for any non-Affiliate shall not exceed ten percent (10%) of the gross revenues of all of Lessee's service, repair, and maintenance activities in the Premises. The Lessee shall not permit these activities to interfere with the use by others of taxiways, taxilanes, service roads or lanes, all of which are located outside of the Premises and the Aprons.

(B) Interference: The Lessee expressly agrees to prevent any use of the Premises or any use of the Improvements which would materially interfere with or materially adversely affect the operation or maintenance of the Airport or otherwise constitute an airport hazard including, but not limited to, the effectiveness or accessibility of the Airport's navigational aids or the drainage, sewerage, water, electrical, communications, fire protection or other systems installed or located at the Airport.

(C) Inoperable Aircraft: The Lessee agrees that the aircraft left in its possession in non-flyable condition shall not be parked or stored on the Premises for a period in

excess of sixty (60) days without the prior written approval of the Department. The Lessee shall not move any nonflyable aircraft from its leasehold to nonleased areas of the Airport without the express written approval of the Department.

(D) Lessee may not provide the services in Article 3.1(A) to any party other than the parties identified in Article 3.1 without the express written approval of MDAD, which MDAD shall have the discretion to deny.

3.2 [Intentionally Omitted]

3.3 [Intentionally Omitted]

3.4 [Intentionally Omitted]

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

3.6 No Right to Use of Airport Facilities. Other than the Premises and the Aprons, nothing herein contained shall be construed to grant to the Lessee, the Lessee's sublessees, permitted users of the Premises, or their respective agents and employees, contractors and subcontractors, patrons and licensees, invitees, suppliers of services and furnishers of materials the right to use any other space or area which is leased by the Lessor to a third party, other Airport facilities, improved or unimproved, or any area which the Lessor has not specifically leased or granted specific rights to the Lessee, other than the use of airport facilities, in common, available to users of the Airport similarly situated to the Lessee (e.g., taxiways and runways for planes).

#### **ARTICLE 4** **RENTALS AND PAYMENTS**

4.1 Annual Rental.

(A) Rental: The annual Rental for the Premises leased to Lessee hereunder shall commence on the earlier of (i) the Date of Beneficial Occupancy of the facility to be constructed on the Premises or (ii) two years from the Commencement Date (unless such two year date is extended in accordance with Article 2.3(A) above or as a result of County Delay or Force Majeure delay, in which case land rent shall commence on the Premises on such extended date); provided, however, and notwithstanding the foregoing, no land rent identified below shall be due until the South Apron and Taxiway Improvements are completed to the point that aircraft can access the hangar facility, but land rent shall be due prior to such completion of the South Apron and Taxiway Improvements if Lessee makes any use of the hangar facility for activities other than the moving of equipment, business furniture, and company materials into the hangar facility in preparation for Lessee' authorized activities under Article 3.1.

Description Monthly	Sq. Ft.	Rate	Annual
Land	86,558	\$1.55/sq.ft.	\$134,164.90

Provided, however, the annual land rental rate indicated above of \$1.55 per square foot shall be adjusted as of the Rent Commencement Date for the Premises and as periodically adjusted as provided herein. The annual land rental shall be payable in twelve equal monthly installments in U.S. funds, on the first day of each and every month in advance at the offices of the Department. Such rates shall be subject to review as set forth in Article 4.4. The rentals payable for the first month shall be prorated if less than a full month.

Plus state sales taxes, if applicable .

(B) Improvement Rental: In recognition that the Lessee is constructing the Improvements at its sole cost and expense and is obligated to pay the property taxes, insurance, and other costs that become payable in respect of such Improvement, no rental shall be paid by the Lessee for the Improvements during the initial thirty (30) year term of this Agreement, except as may otherwise be provided in this Agreement.

(C) Renewal Option Rent. If Lessee exercises its Renewal Option under Article 2.1, Lessee shall be obligated to pay fair market value rents for the Improvements as determined by MDAD under its rent determination and adjustment policies, taking into consideration (i) Lessee's maintenance obligations under this Lease, (ii) the extent to which Lessee must pay property taxes, insurance and other costs that become payable with respect to the Improvements, and (iii) other considerations that are recognized by the Appraisal Institute or other nationally-recognized appraisal institute then being used by Lessor for appraisals of all properties at MIA as being appropriate reductions to the fair market value rent for the Improvements that would otherwise apply.

(D) In addition to the rents to be paid in accordance with the above, Lessee shall pay MDAD all fees that are payable under MDAD's permit requirements or other policies, as adjusted by MDAD from time to time.

4.2 Security Deposit: Prior to occupancy of the Premises, the Lessee shall pay to the County an amount equal to two times the required total monthly rental as determined pursuant to Article 4.1 above, plus applicable state sales tax thereon, as security for the payment of the Lessee's obligations hereunder. Said deposit shall be in addition to any rental payments required hereunder, and the Department shall be entitled to apply such payment to any debt of the Lessee to the Department that may then exist, as permitted by law, including but not limited to the rentals required hereunder. In lieu of the security deposit being made in cash, the Lessee may provide an irrevocable Letter of Credit, in a form provided by the Department, in like amount. The amount of the security deposit is subject to adjustment by the Department at any time there is a change in the annual or monthly rentals pursuant to the terms of this Agreement; provided further, that the Department shall have the right to demand an increase in the security deposit requirement of up to a total of three months rental to provide the Department with adequate

assurance of the Lessee's payment of its obligations, which assurance is required because of the Lessee's defaults in the timely payment of rents, fees and charges due hereunder.

4.3 Common Use Fees and Charges: In the event that the County establishes common use charges for any service or product on the Airport, Lessee shall pay such charges for any such service or product that are paid by similarly situated Lessees and that are actually used by or provided to Lessee in the manner and at the rate established by the County from time to time.

4.4 Rental Rate Review: The rental rates under this Agreement applicable under Article 4.1(B) are subject to periodic review and adjustments as approved by the Board of County Commissioners. The rental rates stated in Article 4.1(A) (Annual Rental) above shall be subject to review and adjustment as set forth hereafter. When such rental rate adjustments are approved by the Board of County Commissioners, and new or revised rental rates applicable in whole or in part to the Premises and Improvements are established by said Board, the Department shall notify the Lessee in writing of such rates and this Agreement shall be considered and deemed to have been administratively amended to incorporate the revised rental rates effective at the time of approval by the Board of County Commissioners. Payments for any retroactive rental adjustments shall be due upon receipt by the Lessee and payable within ten business days of same.

4.5 [Reserved]

4.6 Double Rental: In the event that the Lessee remains in possession of the Premises and Improvements beyond the expiration of the Term or the earlier 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 and Improvements as a holdover tenant after the County has demanded in writing the return of the Premises and Improvements, 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 as computed under Article 4.4 in whole or in part to the Premises and Improvements.

4.7 Address for Payments: The Lessee shall pay, by mail, all rentals, fees and charges required by this Agreement to the following, unless otherwise advised by MDAD:

Miami-Dade County Aviation Department  
Accounting Division  
PO Box 526624  
Miami, Florida 33152-6624

Payments may be made by hand delivery to the offices of the Department during normal working hours to the following:

Miami-Dade County Aviation Department  
4200 N.W. 36 Street  
Miami, Florida 33122

Payments may be made by electronic funds transfer for immediate credit via wire transfer to:

Bank: Bank of America  
Miami, Florida  
ABA Number: 026009593  
Swift Code Number: BofAUS3N (effective 11/18/06)  
Account Name: Miami-Dade Aviation Department  
Bank Account Number: 001180000120

Note: Transaction must include the Aviation Department invoice number(s) of charges to be paid.

Payments may be made by electronic funds transfer for next day credit via the ACH (Automatic Clearing House) to:

Bank: Bank of America  
Miami, FL  
ABA Number: 063100277  
Account Number: Miami-Dade Aviation Department  
Bank Account Number: 001180000120

Note: Transaction must include the Aviation Department invoice number(s) of charges to be paid

4.8 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 business days after same shall become due, interest at the rate established from time to time by the Board of County Commissioners of Miami-Dade County, Florida 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 rights of the County to enforce other provisions herein, including termination of this Agreement, and to pursue other remedies provided by law.

4.9 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 the terms of 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; and 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. 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.

4.10 Utilities: This Agreement is a net lease in all respects and therefore the rentals paid by the Lessee for the lease of the Premises and Improvements hereunder do not in any manner cover the cost for any electrical, water and sewer, storm drainage and other utilities

consumption. The Lessee shall be solely responsible for the payment, to the appropriate billing entities, whether it be the Department or others, for all utilities usage and shall not permit any liens to be filed against the Premises and Improvements for failure to pay such utility charges.

4.11 Other Fees and Charges: The Lessee acknowledges that the Board of County Commissioners has or will establish or direct the establishment, from time to time, of various fees and charges for the use of various facilities, equipment and services provided by the County and not leased to or specifically provided to the Lessee hereunder, and procedures relating to the payment of same. The Lessee shall pay upon billing, for its use of such facilities, equipment and services those fees and charges which are billed monthly. For other fees and charges which are based on usage, the Lessee shall, unless otherwise directed by the Department in writing, report its uses of applicable facilities, equipment and services and pay the applicable fees and charges at such frequency and in such manner as may be prescribed by the Department. For other fees and charges based on the nature of work performed by Lessee for other parties not affiliated with Lessee, Lessee shall pay such fees and charges in accordance with any Operational Directive or policy statement of MDAD, as may be amended from time to time.

4.12 Art in Public Places. To the extent Lessor's Art in Public Places Ordinance 94-12, codified as Section 2-11.15 of the Code of Miami-Dade County is applicable, Lessee shall comply with the provisions thereof.

## **ARTICLE 5 IMPROVEMENTS**

5.1 Improvements: (A) The Lessee hereby agrees to design and construct on the Premises, within two (2) years from the Commencement Date as such two year period may be extended for delays in accordance with Article 2.1(A)(3) County Delays, and Force Majeure delays, the improvement consisting of a hangar building facility of not less than 65,867 square feet. The hangar building facility design and construction shall be in accordance with MDAD's Tenant Airport Construction/Non-reimbursable (TAC-N) procedures as may be amended from time to time.

(B) The Lessee shall bear and be solely responsible for the cost of the design and construction of the hangar building facility including the costs of required financing, construction bonding and insurance, building permit, impact and concurrency fees, construction audits (as may be required elsewhere herein), costs of any consultant(s), accountant fees, financing charges, legal fees, furnishings, equipment and other personal property of the Lessee, or any other indirect cost associated with the design, construction and financing of the Improvements (other than the cost to remediate Recognized Environmental Conditions not caused by Lessee as provided in Article 8.2).

(C) The Lessee shall be responsible for constructing the Improvements on the Premises only if the Funding Incentive Package proposed by the Beacon Council is provided and the funds for Lessor's construction of the South Apron and Taxiway Improvements are provided by FDOT, the FAA, and MDAD.

5.2 Improvements Free and Clear: The Improvements shall become part of the Premises and shall become the property of the County at the end of the Initial thirty-year Term or upon the earlier termination of this Agreement. The Aprons and the land under the Aprons shall at all times be the property of the County. At the County's request, Lessee shall execute in favor of the County appropriate documentation that conveys its interest in the Improvements to the County free and clear of any liens or encumbrances within thirty (30) days after the end of the Term or the earlier termination date of this Agreement.

5.3 Design of Improvements: Lessee shall provide Lessor with copies of the designs for the Improvements at the 70% and 100% stage of completion. Lessee shall proceed with the design of the Improvements that meets FAA's and MDAD's requirements and coordinate with MDAD regarding the design of the Apron, which is the responsibility of MDAD. The design of the Improvements and all Alterations, if any, shall be in accordance with all applicable laws, codes, regulations, or other requirements of authorities, including but not limited to County, State and/or Federal, having jurisdiction over the construction of the Improvements by law or by contract with the County. The design of the Improvements shall also comply with the Department's Design Guidelines Manual. Lessee may "fast-track" the construction of the Improvements; accordingly, Lessee may be causing certain segments of the Work to be commenced in advance of the preparation of 100 percent complete Plans and Specifications for later segments of the Work. For all work hereunder, and particularly if Lessee "fast-tracks" the construction, then:

(A) Before commencing any segment of the Improvements, Lessee must submit to the Department for its review Lessee's Plans and Specifications at the 70% and 100% levels of completion prepared by an architect or engineer registered in the state of Florida. The Lessee shall continue to be held responsible for substantially completing the construction of the Improvements within twenty-four (24) months after the Commencement Date as same two year period may be extended in accordance with Article 2.1(A)(3), County Delays and Force Majeure delays and shall be subject to the County's remedies specified herein for not meeting said deadlines. The County shall in no way be held responsible for delays resulting from the failure of the Lessee to meet all submittal requirements continued herein. The Department's review will be limited to determining whether the plans and resulting Improvements reflected in the Plans and Specifications under review (i) are in compliance with FAA and MDAD requirements, (ii) will materially interfere with any operations conducted elsewhere on the Airport, and (iii) whether the Improvements reflected in the Plans and Specifications under review will likely have a useful life in excess of the remainder of the Term.

(B) Upon review of each submission of any Plans and Specifications, the Department shall review and/or comment upon, in writing, that submission within the time period established in Article 5.3(E). Except to the extent that Lessee requests reconsideration of the Department's comments, Lessee must incorporate the Department's comments into the Plans and Specifications prior to the next review submittal. The Lessee may request reconsideration of any of the Department's comments. Such request shall include documentation supporting the Lessee's position. The Department shall review the request for reconsideration and shall either approve or disapprove the request or alter its initial comments in light of the reconsideration.

(C) The Lessee shall similarly submit Plans and Specifications at the 100% stages of completion. The same manner of review and/or comment as described in the paragraphs above shall be employed for the reviews at these design completion stages. Unless Lessee's later submissions reflect a material change in the scope of the Improvements depicted in its earlier submission, the Department's review will be limited to confirming that Lessee has addressed the concerns underlying the comments the Department made in respect of Lessee's prior submissions. The Lessee shall not proceed with the construction of the segment of the improvements depicted and described in Lessee's submission until and unless the Department has approved, in writing or has otherwise authorized pursuant to Article 5.3 (D), the 100 percent complete Plans and Specifications for the relevant segment of the Improvements.

Approval by the Department of the Plans and Specifications does not constitute certification or warranty by the Department as to the quality of the Plans and Specifications prepared by the Lessee's architect/ engineer(s), that the Plans and Specifications are free of design errors or omissions, or that they are in compliance with all applicable laws, codes, rules or regulations of the authorities having jurisdiction over the construction of the improvements.

(D) After the Department approves any Plans and Specifications that Lessee has submitted for review, Lessee may not make a material change in the scope of those Plans and Specifications without the Department's approval.

(E) The Department shall review, and comment upon, or approve within fourteen (14) days each submission Lessee makes in accordance with the conditions contained herein. The Department's failure to act on any of Lessee's submissions within that time period will constitute the Department's approval of the submission.

5.4 Construction of Improvements: Prior to the commencement of the construction of the Improvements, Lessee shall deliver to the County a copy of its construction schedule. During construction of the Improvements, the County reserves the right, but not the obligation, to inspect or to have inspected the construction to assure that construction is in conformance with the approved Plans and Specifications.

5.5 Construction Bonding and Insurance: The Lessee shall maintain or cause to be maintained the following construction bonding and insurance during the construction of the Improvements:

(A) Separate performance and payment bonds, satisfactory to the County and in accordance with Section 255.05, Florida Statutes, in the full amount of the Improvements, to assure completion of contract work and payment of the costs thereof, free and clear of all claims, liens and encumbrances of subcontractors, laborers, mechanics, suppliers and materialmen, with the County, and Lessee named as dual obligees thereunder. The required bonds shall be written by or through, and shall be countersigned by a licensed Florida agent of the surety insurer in accordance with Florida Statutes.

(B) Completed Value Builders Risk and/or Installation Floater, issued in the name of the Lessee's contractor, the Lessee, and the County as their interest may appear, in

amount(s) not less than 100 percent of the insurable value of the structural Improvements, covering perils on an "All Risks" basis including windstorm. Policy(s) must clearly indicate that underground structures (if applicable) and materials being installed are covered.

(C) Commercial General Liability Insurance as specified in Article 12 herein.

(D) Workers' Compensation as required by Florida Statutes.

(E) Automobile Liability Insurance as specified in Article 12 herein.

(F) All insurance policies shall be issued by companies authorized to do business under the laws of the state of Florida and rated no less than B as to management and no less than Class V as to strength, in accordance to the A.M. Best Company Insurance Guide, or its equivalent as approved by the County Risk Management Division.

(G) The Lessee shall furnish certificates of all required insurance to the County for approval as may be required by the County Risk Management Division. The Certificates shall clearly indicate that the Lessee or its contractors have obtained insurance of the types, amounts and classifications required by these provisions. No material change or cancellation of the insurance shall be effective without a 30-day prior written notice to and approval by the County Risk Management Division.

5.6 (A) Completion of Improvements: Lessee shall Substantially Complete the construction of the Improvements on or before the twenty-four month from the Commencement Date as same two year period may be extended pursuant to Article 2.1(A)(3), County Delays and Force Majeure delays.

(B) With Lessee's Final Acceptance of any Improvements, the Lessee shall provide to the County executed copies of the Waiver and Release of Lien upon final payment, pursuant to Florida Statutes, from its contractor.

(C) Within 30 days of Final Acceptance of the Work by the Lessee, the Lessee shall furnish the County, at the Lessee's expense, one complete set of computer produced drawing disc files (AUTOCAD) of the Record Drawings in the size and format required by the County. The complete set of Record Drawings shall include all pertinent shop drawings as well as the Plans and Specifications as adjusted to accurately depict the as-built work. The Lessee shall also provide the County one copy of all meter numbers, maintenance manuals, pamphlets, charts, parts lists and specified spare parts, operating instructions and other necessary documents required for all permanently installed materials, equipment, or machinery, as well as all applicable warranties and guarantees and the appropriate Certificate of Occupancy.

5.7 Assignment of Contract Documents. The Lessee shall provide the County with conditional assignments of its contracts with its architects and general contractors, which condition shall be removed upon (i) completion of the Work, or (ii) the failure of Lessee to complete construction hereunder in the time periods provided (including cure periods). These assignments shall be subordinate to the rights of Lessee's lender; provided, however, such assignments shall not be subordinate to the extent the Lessor takes actions thereunder to remedy

contract matters affecting life, safety or public health not being remedied by Lessee or Lessee's lender following written notice and reasonable opportunity to cure.

5.8 Failure to Develop: The County has entered into this Agreement for an initial Term of thirty (30) years on the basis of Lessee's assurance that Lessee will make the Estimated Investment on the Premises as provided in Article 2.5 and, as provided in Article 2.1, that a C.O. or Temporary C.O. for the Improvements will be obtained no later than the twenty four (24<sup>th</sup>) month anniversary of the Commencement Date as same two year period may be extended pursuant to Article 2.1(A)(3) or as a result of County Delays and Force Majeure delays If Lessee fails to make the Estimated Investment or complete the construction of the Improvements within the second anniversary as such second anniversary date may be extended as provided in this Agreement, County must provide Lessee with a written notice of County's intent to terminate the lease if the Estimated Investment is not made or the Improvements are not completed within one hundred and twenty days (120) from the date of such written notice. Nothing herein shall delay the imposition of full land rent commencing no later than the Rent Commencement Date, except as provided herein.

5.9 Tenant Airport Construction Reimbursement Contracts: From time to time, the Lessee and the County shall be entitled to enter into Tenant Airport Construction-Reimbursable (TAC-R) Contracts with the purpose of enabling Lessee at Lessor's expense or additional Tenant Airport Construction-Non-reimbursable (TAC-N) Contracts at Lessee's expense to construct facilities or improvements deemed necessary or appropriate for Lessee's construction and use of its Improvements hereunder. Such contracts shall comply with the MDAD's then-current TAC-R or TAC-N contract requirements as appropriate and shall provide for the County's reimbursement of Lessee's cost pursuant to any such contract, if applicable.

5.10 Compliance with County Development Requirements: Lessee, and any developer selected by Lessee, shall comply with all applicable ordinances and requirements of Lessor during the construction of the Improvements. The Parties acknowledge that the negotiations over the terms of this Agreement commenced and were completed prior to the recent amendment of the Responsible Wages Ordinance (Section 2-11.16 of the Code of Miami-Dade County). For this reason, and for the reason that the FAA is providing the funding for the South Apron as well as the Taxiway Improvements, the parties acknowledge that the Responsible Wage Ordinance is not applicable to the construction of the Improvements hereunder and the County waives any right to enforce the Responsible Wage Ordinance with respect to the construction of the Improvements.

## ARTICLE 6

### MAINTENANCE AND REPAIR BY LESSEE

6.1 Cleaning: The Lessee shall, at its sole cost and expense, perform or cause to be performed, services which will at all times keep the Premises and Improvements clean, neat, orderly, sanitary and presentable.

6.2 Removal of Trash: The Lessee shall, at its sole cost and expense, remove from the Premises and Improvements all trash and refuse which might accumulate and arise from its use

hereunder and the business operations of the Lessee under this Agreement. Such trash and refuse shall be stored temporarily and disposed of in a manner approved by the Department.

6.3 Maintenance and Repairs: The Lessee shall repair and maintain in good condition the Premises and all Improvements or alternations thereto, except for those items for which the County is responsible pursuant to Article 7 (Maintenance by County). Such repair and maintenance shall include, but not be limited to, all shrubbery, grass, and trees on the Premises, roof, exterior walls, exterior and interior painting, floor coverings, doors, air conditioning, windows, pavement, equipment, furnishings, fixtures, appurtenances, replacement of light bulbs, ballasts and tubes and the replacement of all broken glass, and shall at all times be based on a standard of care reflecting prudent property management. Maintenance and repairs shall be in quality and class equal to or better than the original work to preserve the Premises and Improvements in good order and condition. The Lessee shall repair all damage caused by the Lessee and its employees, agents, independent contractors, patrons, servants or invitees. Prior to or at termination of this Agreement, injury done by the installation or removal of furniture and personal property of the Lessee shall be repaired so as to restore the Premises and Improvements to their original state, reasonable wear and tear excepted, except as the Premises may have been altered by the Lessee with the approval of the Department pursuant to Article 9.1 (Alteration), and to quit and surrender up the Premises and Improvements in such good order and condition, except for reasonable wear and tear and damage that the County has the obligation to repair; provided however that such return of the Premises and Improvements under this Article 6.3 shall not relieve the Lessee of its obligations for damages to the Premises and Improvements that may be specifically provided elsewhere in this Agreement.

6.4 Annual Maintenance Inspection: In addition to other inspections agreed to herein the Lessee agrees that the Consulting Engineer of the Department shall perform an annual survey of the condition of the Improvements. The Lessee agrees to perform any maintenance of the Improvements identified as reasonably necessary to keep the Improvements in good order and condition.

6.5 Excavation of Land: No excavation of any of the land shall be made, no soil or earth shall be removed from the Premises, and no well of any nature shall be dug, constructed or drilled on the Premises, except as may be required in connection with the construction of the Improvements, as described in the approved Plans and Specifications, pursuant to Article 5.3 (Design of Improvements) and for environmental monitoring purposes pursuant to Article 8.2 (Environmental Protection).

6.6 Water and Sewerage System: The Lessee shall, at its sole cost and expense, operate and maintain all the components of the water, sanitary sewerage and storm drainage facilities within the boundaries of the Premises and constructed as part of the Improvements. The Lessee shall not make any alternations or modifications to such facilities without the advance written approval of the Department.

6.7 Industrial Waste Facilities: The Lessee shall be fully responsible for all industrial wastes that exit the Premises and Improvements and that Lessee's activities on the Premises generate and in response thereto shall provide, operate and maintain adequate facilities on the

Premises for separating, neutralizing and treating industrial waste and foreign materials and the proper disposal thereof, in accordance with applicable laws, rules and regulations.

6.8 Inspections: The Department and/or its designated representatives shall have the right, during normal working hours, to inspect the Premises and Improvements to identify those items of maintenance, repair, replacement, modification and refurbishment required of the Lessee or the County, pursuant to Article 7 (Maintenance by County), to keep the Premises and Improvements in good order and condition. All such inspections shall be conducted in a manner calculated to avoid or minimize any inconvenience to Lessee or any disruption of Lessee's operation. The Lessee shall perform all corrective work required of it, identified in such inspection(s) within 60 days of receipt of written notice from the Department or within such longer period of time following that notice as may be reasonably required to complete the corrective work approved in writing by the Department through the exercise of prompt, diligent and continuous effort. Trash and debris problems shall be corrected within 24 hours following receipt by Lessee's hub manager or representative at the Premises of either oral or written notice from the Department.

6.9 Failure to Maintain: If it is determined by the Department that the Lessee has failed to properly clean, remove trash and refuse, maintain, repair, replace and refurbish the Premises and Improvements as required by this Article 6 (Maintenance and Repair by Lessee), and if that failure continues for more than 30 days after the date of Lessee's receipt of written notice of the failure or for more than such longer period of time approved in writing by the Department following that notice, the Department may enter upon the Premises and Improvements and perform all work, which, in the judgment of the Department, may be necessary and Lessee shall pay the County for the cost of such work, plus 25 percent for administrative costs, and such cost shall be and constitute a part of the rent. Subsequent to receipt of the further notice of intent to perform repairs or cleanup from the Department, the Lessee shall not undertake performance of such repairs or cleanup without specific prior written authorization from the Department.

## **ARTICLE 7**

### **MAINTENANCE BY COUNTY**

7.1 County Maintenance: The County shall operate and maintain in good condition all components of the existing water, sanitary sewerage and storm water drainage facilities that lie outside the boundaries of the Premises, the South Apron and the Taxiway Improvements. The County shall have no maintenance responsibility within the Premises.

7.2 County Maintenance Subject to Certain Conditions: Such maintenance by the County may be subject to interruption caused by repairs, strikes, lockouts, labor controversies, inability to obtain, fuel, power or parts, accidents, breakdowns, catastrophes, national or local emergencies, acts of God, and other conditions beyond the control of the County. Upon any such happening, the Lessee shall have no claim for damages for the County's failure to furnish or to furnish in a timely manner any such maintenance; provided, however, that the Department shall provide a rent abatement for that portion of the Premises rendered unusable for the period of time that the County is unable to make the repairs required by Article 7.1 (County Maintenance). The

County shall exercise reasonable diligence to remedy and/or cure any such interruptions, to the extent such interruptions are within the County's control.

**ARTICLE 8**  
**REGULATIONS, LICENSES AND PERMITS**

8.1 Rules and Regulations - General:

(A) Subject to the limitations on Lessee's liability for Recognized Environmental Condition(s) set forth elsewhere in this Agreement, Lessee shall comply with all applicable Ordinances of the County, including the Rules and Regulations of the Department, Chapters 24 and 25, Code of Metropolitan 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 MDAD, 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, FAA requirements and the Department Design Guidelines Manual. The foregoing shall not require Lessee to comply with the Responsible Wage Ordinance which does not apply to the construction of the Improvements. If however after the execution of this Agreement and before the date on which Lessee commences the construction of the Improvements, the County enacts or adopts any ordinance, resolution, or regulation that will have the effect of materially increasing the cost of constructing the Improvements, Lessee may terminate this Agreement by the delivery of written notice to the County within 90 days after the date of newly enacted ordinance, resolution or regulation becomes effective. Lessee shall have no right to monetary compensation of any type resulting from Lessee's termination of the Agreement.

(B) The Lessee agrees to permit the entry, at all reasonable times (except for emergency conditions), of inspectors of the Department, the environmental inspectors within the County's Department of Regulatory and Economic Resources (DRER), and inspectors of any Federal, State, or County agency having jurisdiction over any law or requirement referenced in Article 8.1(A) (Rules and Regulations - General) above, to make inspections of the Premises and Improvements to determine the Lessee's compliance therewith. All such inspections shall be conducted in a manner to avoid or minimize any inconvenience to Lessee or disruption of Lessee's operation.

(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 and for any and all operations conducted by the Lessee, including ensuring that all applicable legal requirements, permits and licenses necessary for or resulting, directly or indirectly, from 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 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 Occupancy (or Temporary C.O.) 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) Violations of Rules and Regulations: Subject to the provisions of Article 8.2 (D)(1), 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 8.1 (Rules and Regulations - General) above or any plan or program developed in compliance therewith. The Lessee further agrees that the substance of the Article 8.1 (Rules and Regulations - General) above or any plan or program developed in compliance therewith shall be included in every sublease, contract and other agreement that 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.

8.2 Environmental Protection:

(A) [Intentionally Omitted]

(B) County's Disclosure of Soil and Ground Water Contamination: County has furnished or will furnish Lessee with Schedule 8 that is a part of the Baseline Audit, which lists the Contamination Assessment Reports (the "CARs") and Remedial Action Plans (the "RAPs") regarding soil and groundwater contamination at the Premises. County may have installed and may be operating remediation systems to clean up the contamination described in such CARs and RAPs. Lessee agrees that during the Term, County's authorized representatives shall have the right to enter the Premises in order to operate, maintain, relocate and replace such systems. The County must, however, coordinate with Lessee any entry made on the Premises on the authority of this Article 8.2(B) in order to minimize interference with either the construction of the Improvements or Lessee's conduct of its business activities on the Premises. In particular, if the County has any discretion under Environmental Law as to the location of wells required in connection with the remediation of the Premises, or the method of remediation the County uses, the County shall consult with Lessee regarding the locations at which the County's representatives place remediation equipment or install monitoring or other types of wells and the method of remediation the County uses. Without limiting the generality of the foregoing, the County shall have the right, subject to the limitations set forth in this Article 8.2(B) 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 the CARs and RAPs, the Baseline Audit, and the Tenant Audit described below, and those conditions that are otherwise the responsibility of the County to remediate hereunder (collectively the "Remedial Action"). County shall utilize reasonable efforts to minimize any disturbance or interference with the Lessee's use of the Premises caused by the Remedial Action, and Lessee shall use reasonable efforts not to 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 cause such relocation to occur. If Lessee can accomplish the relocation without materially increasing the cost of conducting its activities on the Premises by using other portions of the Premises not directly affected by the Remedial Action, Lessee may not seek reimbursement from the County for costs Lessee incurs in connection with the relocation. If however Lessee must relocate aircraft, vehicles, equipment or materials off the Premises or reconfigure the improvements or the equipment Lessee installs within the improvements as a result of Remedial Action that differs significantly from that described in Schedule 8 or that County conducts at locations other than those depicted on the sketch attached as part of Schedule 8, the County shall be responsible for the costs reasonably associated with the relocation and the design and implementation of the reconfiguration. Attached to Schedule 8 is a site sketch of the Premises describing the Remedial Action Equipment, and depicting the current and proposed future location of such equipment that the County's representative currently anticipate. If Remedial Action equipment or materials need to be temporarily stored in a secure location on the Premises, the Lessee will, if practicable, provide reasonable storage inside the building on the Premises for such equipment and materials at no expense to the County, provided however, that such storage shall not, in any way, materially interfere with Lessee's operations, use or occupancy nor shall such storage decrease Lessee's usable square footage by more than 200 square feet of the Premises. In the event the storage does materially interfere with Lessee's operations, use or occupancy or decreases Lessee's usable square footage by more than 200 square feet, Lessee may invoice County for said use. The Lessee will provide the County with water and electrical service in connection with the Remedial Action, provided however, that such water and electrical service shall not increase Lessee's use by a factor of more than 1% of Lessee's typical usage, and in the event the usage does increase, as a direct result of County's use under this Section 8.2, Lessee may invoice County for the increase use. Within 30 days after the County's receipt of Lessee's invoices, the County shall reimburse Lessee for the cost of the water and electrical power consumed during the Remedial Action as calculated on the basis of the rates the local utility service providers charge Lessee. Lessee may install submeters at the County's expense for the purpose of measuring the County's water and electrical power consumption. The Lessee acknowledges that, subject to the limitations set forth in this Article 8.2(B), the Remedial Action may be conducted at the locations depicted on the site sketch attached to Schedule 8 at any time during the Term and may continue until such time as a no-further-action letter is obtained from the appropriate regulatory authorities. Lessee expressly waives any right to recover from the County any damages, including direct, indirect, economic or consequential damages, which it

may sustain or incur as a result of the County's performance of the Remedial Action. The foregoing waiver does not apply to actual damages that Lessee sustains as a direct result of the County's breach of this Article 8.2(B), if County fails to rectify the breach within a reasonable time following Lessee's delivery of written notice of the breach to the County.

(C) Baseline and Tenant Audits: Lessor has engaged or will engage, at its sole cost and expense, a consultant to conduct an environmental audit of the Premises, which audit conforms to the standards set forth in ASTM E 1527-05 (or the most currently approved version thereof) and may include analyses of representative soil and groundwater samples that are not the subject of the CARs and RAPs (the initial "Baseline Audit"). The County will furnish to Lessee within 30 days following the Commencement Date a copy of the initial Baseline Audit. The County shall remove any underground storage tanks disclosed by the Baseline Audits and remediate to the extent required by law Hazardous Materials associated with any such underground storage tanks. The County shall be responsible for any other Recognized Environmental Conditions disclosed by the Baseline Audit; to the extent that Environmental law permits, the County will have the discretion to determine the time within the Term at which it responds to a Recognized Environmental Condition that a Baseline Audit discloses, subject to the limitations set forth in this Article 8.2(C). If a failure or delay in remediating any Recognized Environmental Condition will preclude Lessee from obtaining a Certificate of Occupancy or any other permit or license that Lessee must obtain in order to be able to undertake the construction of the improvements or to lawfully occupy the improvements, the County shall conduct and complete Remedial Action with respect to that Recognized Environmental Condition to the greatest extent practicable within a time that is sufficient to enable Lessee to proceed with its construction of the Improvements in accordance with the Lessee's construction schedule. Any delay in construction of the Improvements resulting from any Remedial Action undertaken by the County shall constitute a County Delay and shall extend the time period for Lessee to complete the Improvements.

(1) Within sixty (60) days from the date of completion of the demolition of Building 715, Lessee shall have the right, at its sole cost and expense, to conduct an environmental inspection of the Premises (the "Tenant Audit") through an independent environmental consultant approved in writing by County, such approval not to be unreasonably withheld or delayed. Lessee shall furnish County a copy of the initial Tenant Audit immediately following its completion. The purpose of the Tenant Audit is to determine whether there are present on the Premises any Recognized Environmental Conditions within the meaning of ASTM E 1527-05 (or most current version thereof), and to delineate the vertical and horizontal extent of any soil or ground water contamination not identified in the CARs, RAPs, or the Baseline Audits. If the Lessee Audit reveals any Recognized Environmental Conditions or delineates any subsurface contamination not disclosed in any contamination assessment reports, remedial action plans, or the Baseline Audit, and which are not otherwise considered Baseline Environmental Conditions under the term of this Agreement, then, the County, through written notice to Lessee within thirty (30) days of receipt of the Lessee Audit shall declare its option under either subsection (1) or (2) below:

(i) allow Lessee to terminate this Agreement in its entirety; or

(ii) commit to Lessee that the Lessor shall 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 contamination assessment reports, remedial action plans and the Baseline Audit.

If the County allows Lessee to terminate the Agreement and Lessee elects not to terminate or fails to make an election within the sixty (60)-day period following notice, Lessee's failure to terminate or failure to make such election shall constitute a waiver of (1) Lessee's rights to terminate its obligations under this Agreement as to any findings in such Tenant Audit, subject to Article 1.14, and (2) any claim Lessee may have against the County with respect either to Recognized Environmental Conditions and subsurface contamination disclosed in such Tenant Audit, other than with respect to Recognized Environmental Conditions and subsurface contamination disclosed by the County's Baseline Audit, the CARs and the RAPs.

(2) If, during the Discovery Period (defined below) with respect to the construction or rehabilitation of the Improvements on the Premises, Lessee encounters contaminated media containing Hazardous Materials, Lessee shall segregate such contaminated media so that construction may proceed without delay. Lessee shall immediately provide the County with (i) a statement of the facts that have caused Lessee to suspect that the material is contaminated, (ii) information regarding its location and the manner in which is being stored, and (iii) the volume of material thought to be contaminated. Within 30 days of the receipt of such notice, the County shall arrange for characterization of the contaminated media so identified. If, within sixty (60) days of the receipt of such notice the County determines that such materials may not be lawfully re-used on site, the County shall arrange for the disposal of such contaminated media as its sole cost and expense within 30 days of receipt of its characterization analysis. The County shall not be responsible for the characterization, storage, transportation or disposal costs of any materials the County determines may lawfully be left on the Premises. If, within 30 days of notice from the Lessee of the discovery of suspected contaminated media, County fails to notify Lessee that it has arranged for the characterization of the contaminated soils and any subsequent storage, transportation and disposal that may be required, County shall reimburse Lessee for its costs in segregating, characterizing, storing, transporting and disposing of those suspected contaminated media determined not to be appropriate for re-use on site. Lessee must obtain two bids from qualified contractors approved by the County for such work. The County shall reimburse Lessee within 45 days of receipt of paid invoices from such approved contractors. County's liability to Lessee hereunder is subject to the cap on liability to Lessee as set forth in Article 8.2(L). Any delays in the construction of the Improvements as a result of any encounters with contaminated media containing Hazardous Materials shall constitute a County Delay and shall extend the time period for Lessee to complete the Improvements.

(D) Acceptance of Property and Covenant to Surrender: Except as provided in Article 2 and in this Article 8.2 the County makes no covenant, representation, or warranty as to the suitability of the Premises for any purpose whatsoever or as to the physical condition thereof. Except as otherwise provided in this Agreement, Lessee accepts the Premises

as being in satisfactory condition and repair and accepts all buildings and other improvements in their present condition, if Lessee does not elect to terminate this Agreement in accordance with Article 21.24. Lessee agrees to surrender the Premises to County on the last day of the Term in good and sanitary order, condition and repair, except for: (a) such wear and tear as would be normal for the period of the Lessee's occupancy; (b) the Environmental Conditions that are the subject of the Remedial Action described in Article 8.2; (c) the Recognized Environmental Conditions that are disclosed either by the Baseline Audit or the Tenant Audit conducted under this Article 8.2 or by the construction of the Improvements, (d) any Environmental Condition Lessee proves originated from an off-site discharge, disposal, or release by a party other than Lessee or any of its employees, agents, or contractors, and (e) any Environmental Condition Lessee proves resulted from a discharge, disposal, or release by the County or any of its employees, agents or contractors, or that existed on the Premises on the Commencement Date. Lessee shall be responsible for all Tenant Contamination, as defined in Article 14.5.

(E) Maintenance of the Premises: Except for the Remedial Action which is required to be performed by Lessor hereunder, Lessee shall, at its sole cost and expense, keep, maintain, use and operate the Premises at all times in compliance with all applicable Environmental Laws. The Lessee warrants that it will secure by the commencement of the Term all permits or approvals that are required, and shall maintain the Premises in good and sanitary order, condition and repair. As part of this maintenance obligation, Lessee shall promptly respond to and clean up any release or threatened release of any Hazardous Material into the drainage systems, soil, surface water, groundwater, or atmosphere, in a safe manner, in strict accordance with Environmental Law, and as authorized or approved by all federal, state and/or local agencies having authority to regulate the permitting, handling, and clean up of Hazardous Materials. In making the foregoing covenants, Lessee specifically acknowledges its agreement to be liable for, and its responsibility to take such actions as may be required by Environmental Laws (including assessment and remediation) for, any Recognized Environmental Condition(s) and Hazardous Materials on the Premises (i) not revealed by the Remedial Action Plans, as defined in Article 8.2(B), any Baseline Audit, or any Tenant Audit; (ii) not discovered in the construction of Improvements during the Discovery Period; (iii) not resulting from an off-site discharge, disposal, or release by a party other than Lessee, its employees, agents, or contractors; (iv) not resulting from a discharge, disposal, or release by the County or any of its employees, agents, or contractors, or (v) not existing on the Premises as of the date of completion of the demolition of Building 715. Except as expressly provided below, Lessee, however, will not be liable for, and will have no responsibility to take any action with respect to, any Environmental Condition or Hazardous Materials that Lessee proves originated from an off-site discharge, disposal or release by a party other than Lessee or any of its employees, agents or contractors, notwithstanding the fact that the presence of that Environmental Condition or those Hazardous Materials on, about, or beneath the surface of the Premises was accelerated by virtue of, or resulted from, the construction of the Improvements. The limitation set forth in the preceding sentence will not apply to the extent that the presence of the Environmental Condition or the Hazardous Materials on, about, or beneath the surface of the Premises is attributable to Lessee's failure to comply with all requirements of any de-watering permit that an appropriate regulatory authority issues in connection with the construction of the Improvements. In making the foregoing covenant and the covenants set forth in Article 14.5, Lessee agrees to take all actions at its sole cost and expense as are necessary to return the Premises and any other affected soil or

groundwater to their condition existing immediately prior to the commencement of this Agreement which directly results from Lessee's occupancy of the Improvements or Premises.

(F) Use of Hazardous Materials Shall be in Compliance With All Applicable Law: Except for those Hazardous Materials that Lessee may lawfully transport for third parties during the regular course of its business and except for those Hazardous Materials that Lessee may utilize in connection with the regular course of its intended business that are reported to Lessor under Article 8.2(H), 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 previously unapproved Hazardous Material onto the Premises. 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, property or resources on or near the Premises. Upon withdrawal of such approval, Lessee shall immediately remove the proscribed Hazardous Material from the Premises. County's written approval of, or failure to approve the use of a Hazardous Material under this Agreement shall not limit or affect Lessee's obligations under this Environmental Lease, including Lessee's duty: (i) to remedy or remove releases or threatened releases; (ii) to comply with this Agreement relating to the use, storage, generation, treatment, transportation, and/or disposal of any such Hazardous Materials; and (iii) to indemnify County against any harm or damage caused thereby.

(G) Environmental Audits: If County shall have reason to believe that Hazardous Materials have been discharged on the Premises, by reason of the occurrence of a release of Hazardous Materials or receipt by Lessee or County of any Environmental Claim (as defined in Article 8.2(N)(1)), then County shall have the right, in its sole discretion, to require Lessee to perform to County's satisfaction, an environmental audit and, if deemed necessary by County, a contamination assessment of any areas of suspected disposal or release of Hazardous Material. Such audit and/or risk assessment must be by an environmental consultant satisfactory to County. Should Lessee fail to perform any such environmental audit or assessment within thirty (30) days after County's request, County shall have the right to retain an environmental consultant to perform such environmental audit or assessment. Subject to the limitation set forth below, all costs and expenses incurred by County in the exercise of such rights shall be payable by Lessee within 30 days after the County's written demand.

(I) (H) 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 and subject to the limitations of this Article 8, Lessee shall provide County with a written report listing (i) the Hazardous Materials that were present on the Premises other than (a) Hazardous Materials that Lessee has lawfully transported for third parties during the regular course of its business, (ii) all releases of and incidents related to Hazardous Materials that occurred or were discovered on the Premises, regardless of the source of such materials; (iii) all compliance activities related to such Hazardous Materials, including all contacts with government agencies or private parties of any kind concerning Hazardous Materials; and (iv) 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 between Lessee and any governmental authority or any party making an Environmental claim that relate to such

activities and a written summary of the terms of oral contracts relating thereto not otherwise privileged. As to Hazardous Materials to be utilized by Lessee in the regular course of its intended business, Lessee shall provide Lessor with a report that identifies such materials and shall submit it to Lessor periodically, the first of which shall be submitted within thirty (30) days of the Commencement Date, and shall supplement the Report periodically to identify any new or changed materials utilized by Lessee in the regular course of its business. Entry by County: Lessee shall permit County and its agents to enter into and upon the Premises, with reasonable notice (except for emergency conditions), at all reasonable times for the purpose of inspecting the Premises and all activities thereon, including activities involving Hazardous Materials, to determine the extent of Lessee's compliance with the requirements set forth in this Article 8. Such right of entry and inspection shall not constitute managerial or operation control by County over activities or operations conducted on the Premises by Lessee. All such inspections shall be conducted in a manner avoid or minimize any inconvenience to Lessee or disruption of Lessee's operation.

(J) Notice of Discharge to County: In the event that Lessee shall become aware of or receive any notice 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, then Lessee shall immediately notify County orally within twenty-four (24) hours and in writing within three (3) business days of said notice. 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; provided, however, that Lessee shall first be given a reasonable opportunity (i) to take such actions as Lessee 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 to the satisfaction of the applicable environmental agency or complainant; and (ii) to protest such notice or proposed action required thereunder in accordance with such procedures established by applicable Environmental Laws, provided such procedures allow for suspension of such proposed action pending determination of such protest. If Lessee is unable to resolve such action in a manner that results in no liability on the part of County, all reasonable costs and expenses incurred by County in the exercise of any such rights shall be secured by this Lease and shall be payable by Lessee within 30 days after County's demand.

(K) Agency or Third Party Action: Without limiting its rights or 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 contamination of the Premises alleged to arise out of Lessee's operations. The responsibility conferred under this Article 8.2(K) 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 relating to contamination on the Premises alleged to arise out of Lessee's operations. In accordance with, and subject to the limitations set forth in, the Indemnity

provisions set forth in Article 8.2(L). Lessee shall assume, any liabilities or responsibilities that are assessed against County in any action described under this Article 8.2(K).

(L) Indemnity:

(1) Lessee hereby indemnifies, defends and holds harmless County from and against any suits, actions, legal or administrative proceedings, demands, claims, liabilities, fines, penalties, losses, injuries, damages, expenses or costs, including, without limitation, interest and reasonable attorneys' and paralegals' fees for attorneys of County's choice, costs of defense (direct and on appeal), settlement or judgment (i) that may be paid, incurred or suffered by, or claimed or asserted under any Environmental Law by any person or entity or governmental department or agency against, County for, with respect to, or as a direct or indirect result of, the presence on or under the Premises, or the transportation, handling, management, storage, spill, escape, seepage, leakage, spillage, discharge, emission, or release to or from the Premises of, any Hazardous Material, that is in any way connected with any death or injury to any person, any destruction or damage to any property, or any potential or actual impacts on, contamination of, or adverse effects in, the environment, and (ii) that is occasioned in any way by (a) Lessee's breach of any term or provisions of this Agreement, or (b) Lessee's negligent or intentional activities before, during or after Lessee's occupancy of the Premises or (c) Lessee's violation of any Environmental Law. Notwithstanding any provision of this Lease to the contrary, in no event shall Lessee have any liability whatsoever under this Lease for any contamination that existed on the Premises as of the Commencement Date, or any contamination that migrates onto the Premises from an off-site source, in either case not caused by Lessee.

(2) The foregoing indemnity specifically include the direct obligation of the indemnifying party to perform, at its sole cost and expense, any remedial or other activities required, ordered, recommended or requested by any agency, government official or third party, or otherwise necessary to avoid or minimize injury or liability to any person, or to prevent the spread or pollution, however it came to be located thereon (hereinafter, the "Remedial Work"). The indemnifying party shall perform all such work in its own name and its own cost, in accordance with Environmental Law.

(3) Without waiving its rights hereunder, the indemnified party may, at its option, perform Remedial Work as described in Article 8.2(L)(2) above if the indemnifying party fails (i) to perform the Remedial Work and that failure continues for more than 30 days after the receipt of written notice of the default or for such longer period of time as may be reasonably required to rectify the default through the exercise of prompt, diligent and continuous effort, and (ii) to contest such Remedial Work. After performing Remedial Work, the indemnified party is entitled to reimbursement for the costs thereof from the indemnifying party. Lessee shall permit County access to the Premises to perform such Remedial Work.

(4) Whenever the indemnified party has incurred costs described in this Article 8.2(L), the indemnifying party shall, within thirty (30) days of receipt of notice thereof, reimburse the indemnified party for all such reasonable expenses together

with interest from the date of expenditure at the "applicable federal rate" established by the Internal Revenue Service.

(5) If a failure or delay in remediating (i) any Recognized Environmental Condition disclosed in the CARs, the RAPs, or the Baseline Audit, or (ii) any Recognized Environmental Condition or subsurface contamination disclosed in the Tenant Audit following the resolution in accordance with the procedure set forth in Article 8.2(C)(1) of any dispute regarding the Recognized Environmental Conditions and subsurface contamination delineated in the Tenant Audit, (iii) any Recognized Environmental Condition that existed on the Premises on the Commencement Date and not caused by the Lessee, or in characterizing any suspected contaminated media that Lessee encounters during the Discovery Period or in storing, transporting or disposing of that media, once characterized as contaminated, will preclude Lessee from obtaining a Certificate of Occupancy or any other permit or license that Lessee must obtain in order to be able to undertake the construction of the Improvements, or to lawfully occupy the Improvements, the County shall promptly conduct and complete Remedial Action with respect to those Recognized Environmental Conditions, subsurface contamination or contaminated media to the greatest extent practicable within a time that is sufficient to enable Lessee to proceed with its construction of the Improvements in accordance with the construction schedule Lessee furnishes to the County in accordance with Article 5.5. Any delays in the construction of the Improvements resulting therefrom shall constitute a County Delay and shall extend the time period for Lessee to complete the Improvements.

(M) Survivability of Terms: The terms and conditions of the Environmental Indemnification described in Article 8.2(L) shall survive the expiration of the Term or the earlier termination of this Agreement.

(N) Definitions:

(1) "Environmental Claim" means (i) any investigative, enforcement, cleanup, removal, containment, remedial or other private or governmental or regulatory action at any time threatened, instituted or completed pursuant to any applicable Environmental Law against Lessee or against or with respect to the Premises or any condition, use or activity on the Premises (including any such action against the County); and (ii) any claim that any person threatens or makes at any time against Lessee or against the Premises (including any such claim against the County), and that relates to damage, contribution, cost recovery, compensation, loss or injury resulting from or in any way arising in connection with any Hazardous Material on the Premises or the application of any Environmental Law to activities on the Premises.

(2) "Hazardous Material" means any substance, whether solid, liquid or gaseous, that is listed, defined or regulated as a "hazardous substance," "hazardous waste," "solid waste," or pesticide, or is otherwise classified as hazardous or toxic, in or pursuant to any Environmental Law; or that is or contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or motor fuel or any petroleum hydrocarbons; or that causes or poses a threat to cause a contamination or nuisance on the Premises or any adjacent property or a hazard to the environment or to the health or safety of persons on the Premises.

(3) "Environmental Condition" means (a) any violations of any Environmental Law with respect to any Hazardous Material present, or any environmental activity conducted or permitted, at the Premises; (b) any liability that may attach to an owner or operator of the Premises in connection with any Hazardous Material or environmental activity; or (c) any imminent and substantial endangerment to the health or safety of occupants of the Premises arising from any Hazardous Material present or environmental condition described in (a) or (b) above.

(4) "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, that pertains to any Hazardous Material, or the environment (including, but not limited to, ground or air or water or noise pollution or contamination, and underground or above ground 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 Substances Control Act, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act, 41 U.S.C. § 300f et seq.; the Florida Resource Recovery and Management Act, the Water Control Assurance Act of 1983, the Florida Resource Conservation and Recovery Act, the Florida Air and Water Pollution Control Act, the Florida Safe Drinking Water Act, the Pollution Spill Prevention and Control Act as any of the foregoing now exist or may be changed or amended to come into effect in the future.

(5) "On" or "in", when used with respect to the Premises or any property adjacent to the Premises, means "on, in, under, above or about."

(6) "Recognized Environmental Conditions" shall have the same meaning as set forth in ASTM E 1527-05, as may be updated from time-to-time.

(7) "Discovery Period" means the period that begins on the date on which Tenant commences construction of the Improvements and ends on the date of issuance of the C.O.

(O) Lessee's Obligations: At all times during the Term, the Lessee shall comply with the following:

(1) Disposal of Wastes: The Lessee shall dispose all industrial, domestic, hazardous, and solid wastes that are generated in connection with Lessee's activities on the Premises in accordance with applicable Federal, State and County laws, rules and regulations, it being the responsibility of the Lessee to determine the approved method of disposal of its wastes and take action accordingly.

(2) Aircraft Washing and Stripping: If permitted under Article 3 (Use of Premises and Improvements), the Lessee shall perform aircraft washing and stripping only in those facilities holding valid permits for such activity issued by the County's Department of

Regulatory and Economic Resources (RER), as such department may be renamed and reconfigured from time to time.

(3) Records: The Lessee shall maintain such records as are reasonably necessary to adequately assess environmental compliance in accordance with Federal, State and County laws, rules and Regulations.

(P) Lessee Performance of Remedial Action: Upon request of the County, Lessee shall perform any remedial actions that are required to be performed by the County hereunder ("Lessee Remedial Actions"). The County is willing to permit Lessee to recover the costs Lessee reasonably incurs in connection with the Lessee Remedial Actions by means of a rental credit against the land rent payable by virtue of Article 4 hereof. Lessee shall proceed to perform the Lessee Remedial Actions, in accordance with the procedures set forth by the Department from time to time and a remedial action plan agreed upon between the Lessee and the County. The Lessee's agreement to perform the Lessee Remedial Actions shall in no way abridge any of Lessee's rights or the County's responsibilities under this Lease with respect to environmental matters unless Lessee's is negligent in the performance of the Lessee Remedial Actions. Within ninety (90) days after the completion of the Lessee Remedial Actions, Lessee shall submit to the Department a certified accounting of the monies actually expended in the performance of the Lessee Remedial Actions in accordance with the requirements of this Article, which accounting will be prepared by an independent certified public accounting firm that the Department approves in advance (the "Auditor"). The Department may not unreasonably withhold, delay or condition that approval. In order for a project cost that Lessee incurs to be eligible for reimbursement by means of land rent credits, Lessee must document for the Auditor that it expended the monies and that the project cost is true, correct and eligible for reimbursement in accordance with the terms of this Article. Eligible project costs include (i) costs for project management, including, without limitation, a reasonable project management fee, (ii) consultant and engineering costs, (iii) costs of materials, labor, supervision and other goods and services used in the performance of the Lessee Remedial Actions in accordance with the approved plan and any changes to the plan that Lessee requests and the Department approves, (iv) the cost of the certification the Auditor performs, (v) the amount of any increase in any financing fee or other associated expenses (including, without limitation, attorneys' fees) that Developer or Lessee pays in connection with its construction or permanent financing for the Improvements that becomes necessary by reason of the enlargement of the scope of that project to include the Lessee Remedial Actions, and (vii) interest accruing with respect to each of the foregoing eligible project costs from the date expended through the date on which performance of the Lessee Remedial Actions is completed at the rate of seven percent (7%).

Beginning on the next date on which land rent is payable under the terms of Article 4 of the Agreement and that is at least 30 days after the date of the delivery to the County of the Auditor's cost certification report and on each of the ensuing monthly rent payment dates, Lessee will be entitled to a credit against the land rent payable on each such date in an amount equal to the amount that would be required to fully amortize in equal monthly installments the aggregate amount of the eligible project costs reflected in the Auditor's audit report, together with interest accruing on a declining balance basis at the rate of seven percent (7%) per annum.

8.3 Aircraft Noise Abatement Regulations Compliance: The Lessee hereby specifically acknowledges its awareness that the noise generated by aircraft, while on the ground and in flight, may cause annoyance to residential areas in proximity to the Airport and/or under or near flight corridors serving the Airport and that the County, as proprietor of the Airport, may, therefore, from time to time adopt certain lawful policies, procedures and/or regulations, not inconsistent with the Airport Noise and Capacity Act of 1990, unless otherwise approved by the Federal Aviation Administration, and not inconsistent with aircraft safety, intended to abate the effects of aircraft noise. Said policies, procedures and/or regulations may deal with, but are not necessarily limited to, nighttime engine run-ups, preferential runway usage, aircraft arrival and departure patterns, use of displaced runway thresholds, and the like. The Lessee specifically understands and agrees that a violation of such noise abatement policies, procedures and/or regulations may result in the arrest or citation of the offending party, with the imposition of fines, and that repeat violations of the same shall constitute a material breach hereunder and may result in termination of this Agreement pursuant to the provisions of Article 14.3 (Other Defaults) hereof.

## **ARTICLE 9**

### **ALTERATION OF PREMISES AND ERECTION OF SIGNS**

9.1 Alteration: After construction of the Improvements pursuant to Article 5 hereof, the Lessee shall not materially alter the exterior or interior of the Premises in any manner without the prior written approval of the Department which approval shall not be unreasonably withheld or delayed. In the event the Lessee is given approval to make alterations to the Premises, the Lessee shall comply with the terms and conditions of such approval, as contained in the Department's approval letter, and a failure to do so shall constitute a default pursuant to Article 14.3 (Other Defaults) hereof. .

9.2 Signage and Advertising: The design and installing of all identifying signs or any advertising matter, of any type or kind which is visible to the public on the exterior of the Premises and Improvements shall be the responsibility of the Lessee, subject to the advance written approval of the Department, based on the Department's overall signage and advertising program for the area in which the Premises and Improvements are located, which if such approval or denial is not received by the Lessee within 14 days following request thereof given by Lessee to the Department (provided that sufficient details are provided to the Department on which the Department can make such a decision) shall be deemed approved. In the event of a replacement, Lessee shall not be required to obtain approval of signage previously approved by the County.

9.3 Removal: Any alterations pursuant to Article 9.1 above constructed or installed by the Lessee at its sole expense, including signage, sortation, and telecommunications equipment, that can be removed from the Premises and Improvements without materially damaging, altering, or altering the use of the Premises and Improvements shall be considered the personal property of the Lessee and may be removed by the Lessee at any time during the Term. All other such improvements shall become a part of the Premises and Improvements and shall become the property of the County upon expiration of the Term or the earlier termination of this Agreement. In the case of any Improvements which were constructed, installed, added or altered with the proceeds of tax exempt financing, such Improvements shall immediately vest in the

County or the entity providing financing, if the financing documents so provide, and shall be deemed property of the County or such entity upon their construction, installation or other implementation, subject however, to all of Lessee's rights under this Agreement. Lessee hereby reserves the right to remove any item of a non-leased nature, including but not limited to personal property, at any time during the term and upon termination of this Agreement.

**ARTICLE 10**  
**ASSIGNMENT AND SUBLETTING**

10.1 Right to Assign and Sublet:

(A) The County consents to Lessee's assignment of its interests hereunder to a Developer, subject to the provisions of Article 2.6 above. The County also consents to the Developer's subsequent assignment of this Lease or sublease of the Premises to the Lessee upon completion of the Improvements. The County and Lessee agree to execute reasonable and appropriate documents to reflect the assignment of this Lease to the Developer and the sublease of the Premises to Lessee. Any such assignment or sublease shall not affect Lessee's obligations and duties hereunder, and all assignments shall not release the assignor for its obligations hereunder. In addition, the County agrees that it will not unreasonably withhold its consent to Lessee's assignment of the Premises and/or the Improvements to County approved successors of Lessee.

(B) Except for the foregoing, and except as provided in Article 10.2, Lessee may not assign the whole or sublet any portion of the Premises and Improvements, or permit their use by others, without the County's prior written consent, which consent shall not be unreasonably withheld or delayed provided that the proposed assignment or subletting is in accordance with MDAD's then current policy, and provided further, however, no consent or approval shall be required in connection with the sublet of portions of the Improvements to Affiliates of Lessee, including Lan Cargo Repair Station, LLC or any other Affiliate providing maintenance repairs operations within the Premises. Notwithstanding the above, the Department consents to Lessee subleasing the Premises in part to any carrier with whom it may have a code share, wet lease or other type of commercial or operational alliance agreement duly described in a separate agreement executed by the parties. Any assignment or sublease (excluding any sublease to Affiliates of Lessee) may not singly or collectively comprise more than 50% of the square footage of the Improvement and must be made only to third party airlines, cargo handlers, freight forwarders, and maintenance operators. No transfer fee shall be due on an approved sublease but a transfer fee will be due on an assignment to the extent set forth below.

(C) For an assignment to any third party other than a party designated in Article 10.1(A), the Department shall have the right to accept such assignment, but if the Department accepts the assignment, the Department shall impose a transfer fee of not less than five percent (5%) of the profits earned by the transferor. The term "profit" shall mean the gross monetary and imputed value of the proceeds ("Gross Proceeds") earned by the transferor, less only the transferor's basis (as determined in accordance with generally accepted accounting principles).

(D) For purposes of this Article, no assignment fee or additional rent shall be due on any assignment by Lessee to a Developer or Lessee's affiliates. "Gross Proceeds" shall be defined as cash or other consideration received by Lessee for the assignment of its interest in the Lease, including without limitation, the assumption of any indebtedness secured by the Lease, and Lessee's Basis shall be defined as all hard and soft costs incurred by Lessee in the acquisition, permitting, design, construction, and financing of the improvements on the Premises and Lessee's interest in this Lease capitalized in accordance with generally accepted accounting principles.

#### 10.2 Conditions of Mortgage for Approved Improvements Costs:

(A) Lessee or the Developer may secure financing or re-financing and, in conjunction with that financing or re-financing, may mortgage or encumber Lessee's interest in the Premises and the Improvements in favor of a lender entitled to conduct business and to make secured loans affecting real property in Miami-Dade County, Florida, as long as, at the time of the closing of the financing or re-financing, the aggregate amount of the principal indebtedness secured by mortgages encumbering Lessee's interest in the Premises does not exceed the sum of (i) the then appraised value of Lessee's interest in the Premises and any improvements previously constructed on the Premises, (ii) the value of any improvements to be constructed on the Premises in the near term future with the proceeds of such financing or re-financing, and (iii) all costs incurred, and all reserves required, in connection with such financing or re-financing. No mortgage or other encumbrance the Lessee executes in connection with that financing (a "Leasehold Mortgage") will extend to or be a lien upon or encumbrance upon County's interest in any part of the Premises or in any right appurtenant to that interest. Moreover, the County has no obligation to subordinate the County's interest in the Premises to the lien or security interest of any mortgage or other encumbrance that Lessee may execute on the authority of this Article 10.2(A).

(B) The Department reserves the right to approve the documents memorializing any financing that Lessee or the Developer secures on the authority of Article 10.2(A). The Department may not unreasonably withhold, condition or delay the approval. Lessee must submit drafts of the financing documents to the Department for review and approval in advance of Lessee's or the Developer's execution of those documents. The Department's failure either to approve the draft financing documents or to furnish Lessee or the Developer its written objections regarding those documents within five (5) business days after the date on which Lessee or the Developer personally delivers copies of the draft financing documents to the Department's Chief of Properties and to the County Attorney's Office will constitute the Department's approval of the documents.

(C) Following Lessee's or the Developer's execution of a Leasehold Mortgage, Lessee or the Developer shall furnish to the Department (i) a duplicate original of the Leasehold Mortgage or a photocopy of the Leasehold Mortgage that the Clerk of the Circuit Court for Miami-Dade County, Florida has certified as being a true copy of the Leasehold Mortgage recorded among its real property records and (ii) a written notice setting forth the name and address of the mortgagee or secured party (the "Leasehold Mortgagee") in whose favor Lessee executed the Leasehold Mortgage. Following the delivery of those items and continuing

in the Leasehold Mortgagee releases the Leasehold Mortgage or record, the following provisions will apply:

(1) At the time that the County gives Lessee written notice of the occurrence of any default in respect of the performance of the Lessee's obligations under this Agreement, the County shall simultaneously give the Leasehold Mortgagee a copy of that notice in a manner established for the delivery of notices in Article 21.9 at the address for the Leasehold Mortgagee provided to the County. No notice of any default to the Lessee will be effective until the County delivers the notice required by this Article 10.2(C)(1) to the Leasehold Mortgagee.

(2) The Leasehold Mortgagee may rectify a default on Lessee's part, but has no obligation to do so. The County will accept the Leasehold Mortgagee's performance of any of the Lessee's obligations of the same extent as though the Lessee has performed. The County may exercise a remedy available to it by the reason of a default on Lessee's part only if the Leasehold Mortgagee fails to rectify the default within (a) 30 days following expiration of the time period specifically set forth in Article 14 of the Lease for a cure of a particular default, or (b) if no such time period is set forth, then within 30 days after the date of the delivery of the notice required by virtue of Article 10.2(C)(1) above, or if a cure is not reasonably possible within such 30 day period, then within a period of time reasonably required to cure the default through the exercise of prompt, diligent and continuous effort.

(3) If a termination of this Agreement occurs prior to the stated date of the expiration of the term of this Agreement by virtue of a default in the performance of any Lessee's obligations that cannot be rectified by the mere payment of money to the County and that the Leasehold Mortgagee was diligently seeking to rectify at the time of the termination, or by virtue of Lessee's rejection or disaffirmance of this Agreement in bankruptcy, the County will execute and deliver a new Lease for the Premises at the Leasehold Mortgagee's request in favor of a successor lessee that satisfies the criteria set forth in Article 10.2(C)(4) (a "Successor Lessee"). For purposes of the preceding sentence, and the preceding sentence only, prompt, diligent and continuous efforts to gain possession of the Premises and to succeed to Lessee's interest in the Premises by means of a foreclosure or the exercise of any other remedy available to the Leasehold Mortgagee by virtue of the Lessee's default in respect of any of its obligations under the terms of the Leasehold Mortgage, together with the payment to the County of all rent and charges due hereunder with respect to which Lessee becomes delinquent and good faith efforts made to rectify other defaults contemporaneously with the efforts to gain possession of the Premises, will constitute diligent efforts on the Leasehold Mortgagee's part to rectify the default that has occurred in respect of the performance of the Lessee's obligations under the terms of this Agreement. That new lease will have a term that coincides with what would have been the remainder of the Term had termination of this Agreement not occurred and will otherwise be on the same terms and conditions as those set forth in this Agreement. The new lease will also have the same priority as this Agreement with respect to any lien or other encumbrance affecting the Premises, including any fee mortgage. In order for the County to be obligated to execute and deliver the new lease, the Leasehold Mortgagee must request the execution and delivery of written notice to the

County within one year after the termination of this Agreement occurs, acknowledge and return the new lease to the County for execution on the County's party within 20 days after the date on which the County tenders the new lease to it for signature. Simultaneously with the delivery of the new lease, the Successor Lessee must also execute and deliver to the County a written plan to rectify within a reasonable period of time any default that exists at that time in respect of any of Lessee's obligations under the terms of this Agreement, including, without limitation, any default that may exist in respect of Lessee's obligations arising under the terms of Article 8; that plan must set forth in reasonable detail the manner in which the Successor Lessee plans to rectify each default. During the period between the time of termination of this Agreement occurs and the time at which the Leasehold Mortgagee's entitlement to the new lease expires, the County may not execute any lease (an "End Use Lease") affecting any part of the Premises without the Leasehold Mortgagee's prior written consent as long as the Leasehold Mortgagee has been paying to County all rents and charges that are/would have become due under the terms of this Agreement in the absence of the termination. If the Leasehold Mortgagee consents to the County's execution of an End Use Lease during that period, that End Use Lease must provide that, if the County executes a new lease in favor of a Successor Lessee in accordance with the terms of this Article 10.2(C)(3), the End Use Lease will be automatically subordinate to the operation and effect of the new lease and the holder of the lessee's interest under the End Use Lease will attorn to the Successor Lessee as its sublandlord. Contemporaneously with the County's execution and delivery of the new lease, the Successor Lessee must pay to the County the amount, by which (i) all rent, fees and other charges that would have become due under the terms of this Agreement through the date of the County's execution and delivery of the new lease absent a termination of this Agreement and that Lessee or others acting on its behalf have not previously paid to the County exceeds (ii) the aggregate amount of rent, if any, that the County has collected under the terms of End Use Leases.

(4) A transfer of Lessee's interest in the Premises to the Leasehold Mortgagee, or a corporate nominee affiliated with the Leasehold Mortgagee (herein a "Nominee"), or a purchaser at a foreclosure sale that occurs by virtue of the foreclosure of the Leasehold Mortgage or the Leasehold Mortgagee's acceptance of a deed in lieu of foreclosure or the exercise of any remedy available to it under the terms of the Leasehold Mortgage will not constitute an assignment requiring the County's consent under the terms of Article 10.1 above. The provisions of Article 3 will govern any use of the Premises that occurs prior to and after a transfer to the Leasehold Mortgagee or the purchaser at the foreclosure sale. The Leasehold Mortgagee, or its Nominee, the purchaser at the foreclosure sale or the holder of a deed in lieu of foreclosure may make a subsequent transfer of Lessee's interest in the Premises only with the County's prior written consent as provided in Article 10.1(C). The County will, however, consent to the subsequent transfer if the proposed successor to the Lessee's interest would have been an acceptable lessee for the Premises in the reasonable exercise of the County's judgment considering the successor's experience, financial strength, history of meeting contractual obligations and intent to implement a business plan consistent with the County's plan for operating the Airport. After succeeding to the Lessee's interest in the Premises, the Leasehold Mortgagee, its Nominee, a purchaser at the foreclosure sale or the holder of a deed in lieu of foreclosure that is not acceptable to the County as a Successor Lessee in

the reasonable exercise of the County's judgment must use reasonably diligent efforts either to become or to find a Successor Lessee satisfying the criteria set forth above in Article 10.2(C)(4) in the County's reasonable judgment.

(5) If the Leasehold Mortgagee, its Nominee, a purchaser at a foreclosure sale or the holder of a deed in lieu of foreclosure succeeds to Lessee's interest in the Premises by virtue of the Leasehold Mortgagee's acceptance of a deed in lieu of foreclosure or the exercise of any remedy available to the Leasehold Mortgagee under the terms of the Leasehold Mortgage, the Leasehold Mortgagee or the purchaser, as the case may be, and their successors and assigns will only have personal liability for the performance of those obligations incumbent upon Lessee under the terms of this Agreement that arise or accrue during the period between the time at which it succeeds to Lessee's interest in the Premises and the time at which it divests itself of that interest. The foregoing limitation will not preclude the County from terminating this Agreement if the Leasehold Mortgagee, its nominee, or the purchaser, as the case may be, or the subsequent transferee fails to rectify without cost to County any default existing respect of Lessee's obligations at the time the Leasehold Mortgagee, its Nominee, the purchaser or the subsequent transferee succeeds to Lessee's interest in the Premises, including, without limitation, any obligation arising under the terms of Article 8.

(6) Without the Leasehold Mortgagee's prior written consent, Lessee may not amend this Agreement, exercise any right available to it under the terms of this Agreement or at law to cancel this Agreement, or to voluntarily surrender possession of the Premises to the County. Without the Leasehold Mortgagee's prior written consent, the County may not amend this Agreement. The foregoing restrictions will not apply, however, to amendments for which express provision is made elsewhere in this Agreement, including, without limitation, those for which provision is made in Articles 2, 4, and 20. Without the Leasehold Mortgagee's prior written consent, the County may not cancel this Agreement and accept a surrender of the possession of the Premises except in the instances where the cancellation and acceptance of a surrender of possession of the Premises occurs in connection with the County's exercise of its remedies following an occurrence of a default in the performance or any of Lessee's obligations. The Leasehold Mortgagee will not be bound by any amendment, cancellation or surrender that occurs in contravention of the foregoing provisions of this Article 10.2(C)(6).

(7) The Leasehold Mortgagee will have the right to participate in the adjustment of any insured losses that becomes necessary by reason of damage or destruction occurring to the Improvements and the right to supervise and control the receipt and disbursement of insurance proceeds to the extent provided in agreements among Lessee, the Leasehold Mortgagee and any sublessee holding an interest with respect to the Premises; provided, however, that any distribution of insurance proceeds must comply with the requirements of Article 12 of this Agreement.

(8) If a taking of any part of the Premises occurs, the Leasehold Mortgagee will have the right to participate in any condemnation proceedings or settlement discussions pertaining to the Lessee's interests hereunder and the right to supervise and control the receipt and disbursement of all condemnation awards arising

from such interest hereunder and the right to supervise and control the receipt and disbursement of all condemnation awards arising from such interests to the extent provided in agreements among Lessee, the Leasehold Mortgagee, and any sublessee holding an interest with respect to the Premises. The Leasehold Mortgagee is entitled to receive and apply to the reduction of the indebtedness, the payment of which is secured by the lien of the Leasehold Mortgage, any portion of a condemnation award arising from a taking of Lessee's interests not applied to the restoration of that portion of the Premises that remains following the taking to a complete architectural unit. After payment to the County by the condemning authority of whatever compensation and damages are determined to be owing to the County for County's property interests in the Premises, and after the indebtedness the payment of which is secured by the lien of the Leasehold Mortgagee is discharged in full by an application of a condemnation award in accordance with the terms of the preceding sentence and after payment to the Lessee by the condemning authority of whatever compensation and damages are determined to be owing Lessee for Lessee's property interests in the Premises, the County is entitled to receive any remaining portion of the condemnation award. If a partial taking of the Premises occurs, this Agreement will continue in effect with respect to that portion of the Premises not taken and, effective as of the earlier of the dates on which the condemning authority takes title to or possession of the part taken, the rent payable under the terms of this Agreement will be reduced in proportion to the reduction in the area of the Premises. If, however, the remaining portion of the Premises not taken cannot be adequately restored, repaired or reconstructed so as to constitute a complete architectural unit of substantially the same usefulness, design, construction and commercial feasibility as immediately before the taking, then Lessee may terminate this Agreement by delivering written notice to the County by the date that is one hundred twenty (120) days after the day of the taking. Lessee's notice must specify the date the termination will become effective, which date will not be earlier than the date of such taking. If a termination occurs in accordance with the foregoing, Lessee shall pay and shall satisfy all rents and charges due and accrued hereunder up to such date of such termination and shall perform all of the obligations of the Lessee hereunder to such date, and thereupon this Lease and the Term shall cease and terminate. If a taking for a temporary period occurs, this Lease will continue in full force and effect and the entire award payable in respect of that taking will be payable to Lessee, except for any portion sought by and attributable solely to County's interest in the Premises, subject to the provisions of any agreements among Lessee, the Leasehold Mortgagee and any sublessee holding an interest with respect of the Premises.

(9) During the entire term hereof, County will have no right, and expressly waives any right arising under applicable law, in and to the rentals that will become due to Lessee under the terms of any lease of any part of the Improvements; Lessee may assign those rentals to the Leasehold Mortgagee without any consent or approval of the County. Nothing in this Article 10.2(C)(9) shall (a) alter County's ownership of the Improvements at the conclusion of the Term of this Agreement, (b) alter Lessee's obligations to commence paying County rentals on the Improvements as provided in Article 4.1, or (c) provide Lessee with any ownership claim to the Improvements or the rentals therefrom after the conclusion of the Term.

(10) Under no circumstances will the fee estate of the County and the leasehold estate created by this Agreement merge, even though owned by the same party, without the Leasehold Mortgagee's written consent.

(D) Upon written request from time to time made by Lessee, a Leasehold Mortgagee, a prospective Leasehold Mortgagee, or a prospective assignee of Lessee's interest in the Premises, the County shall execute and deliver to the requesting party an estoppel certificate in the form reasonably requested by the requesting party. In each such certificate, the County shall certify, to the extent that it then has knowledge, (i) the amounts of the monthly rent that Lessee is then obligated to pay under the terms of this Agreement and the date through which Lessee has paid that rent, (ii) that this Agreement is in full force and effect, (iii) the specific nature of any default that the County knows to exist in the respect of either party's performance of its respective obligations under the terms of this Agreement and (iv) the specific nature of any defense or offset that the County may assert in connection with any effort on Lessee's party to enforce any of the obligations the County undertakes under the terms of this Agreement.

(E) The provisions of this Article 10.2 will survive in the termination, rejection or disaffirmance of this Agreement and will continue in full force and effect thereafter to the same extent as if this Article 10.2 were a separate and independent contract made by the County, Lessee, and the Leasehold Mortgagee. The County's agreement set forth in this Article 10.2 to enter into a new lease with the Leasehold Mortgagee constitutes a separate agreement with the County and the Leasehold Mortgagee, a new lease with the Leasehold Mortgagee separate and apart from this Agreement, as well as a part of this Agreement. The County agrees that the Leasehold Mortgagee shall be a third party beneficiary to the terms of this Agreement, and that such third party beneficiary status shall be unaffected by the rejection or disaffirmance of this Agreement in any bankruptcy proceeding by any party.

## **ARTICLE 11**

### **INDEMNIFICATION AND HOLD HARMLESS**

11.1 Lessee shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, that the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of action or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement or use of the Premises by the Lessee or its employees, agents, servants, partners, principals, contractors, subcontractors, sublessees, trespassers, or invitees, except to the extent any injury, death or damage is caused (i) solely by an act of God, or (ii) by the negligent acts or omissions or willful misconduct of the County, its officers, employees, contractors, or agents. Lessee shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or action of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay costs, judgments and attorney's fees which may issue thereon. Lessee expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Lessee shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents, and instrumentalities as herein provided. The indemnity provided herein is in addition to and does not limit the

indemnities provided in Article 8.2. The obligation of the Lessee hereunder shall survive the termination of this Agreement.

## **ARTICLE 12** **INSURANCE**

12.1 Liability Insurance Required: In addition to such insurances as may be required by law, commencing upon the presence of the Lessee upon the Premises, the Lessee shall maintain, without lapse or material chance, for so long as it occupies the Premises and Improvements, the following insurance:

(A) Commercial General Liability Insurance, including Contractual Liability, to cover the Lessee's Premises, Improvements and operations, in an amount not less than \$5,000,000 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. Lessee may also name the Developer, any lenders, bond trustees and others having an insurable interest, as additional insureds. 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) \$5,000,000 combined single limit per occurrence for bodily injury and property damage covering all vehicles used by the Lessee in connection with its business operation.

(2) \$300,000 combined single limit per occurrence for bodily injury and property damage covering such vehicles when being used by the Lessee off of the AOA.

(B) The insurance coverages 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 financial strength, and no less than "VII" as to financial size 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's Risk Management Division.

12.2 Property Insurance Required:

(A) Builders Risk and Hazard Insurance: The Lessee, at its sole cost and expense, throughout the Term of this Agreement, shall keep the Improvements insured on an "All Risk" basis in an amount not less than 100% of the full replacement value of the Improvements against loss or damage (in excess of a reasonable per occurrence deductible amount, which shall be the responsibility of the Lessee) by fire, lightning, tornado, hurricane, windstorm, hail, flood, earthquake, explosion, riot, riot attending strike, civil commotion, vandalism and malicious mischief, sprinklers and sprinkler leakage, aircraft, vehicles and smoke,

or any other casualty in an amount not less than 100% of the full replacement value of the Improvements. To the extent such coverage is not commercially available at commercially reasonable rates, the parties will work together in good faith to arrive at coverages acceptable to both parties based on conditions in the marketplace. The full replacement value of the Improvements shall be established as of the commencement date of this Agreement and shall be established at intervals of not more frequently than every three (3) years thereafter, by the firm and professional property evaluators used by the County for establishing replacement values for County property. Any deficiency in the amount of the proceeds from such property insurance resulting from a failure by the Lessee to re-establish the full replacement value of the Improvements shall be the sole responsibility of the Lessee. In addition, Miami-Dade County shall be shown on the policies as a loss payee after naming any lender and/or bond trustee with a security interest in this Agreement or the Improvements.

(B) Damage or Destruction and Restoration of the Improvements: In case of damage to or loss of all or a portion of the Improvements, the Lessee shall give prompt notice thereof to the Department; and, the Lessee shall promptly commence and complete with due diligence (subject only to delays beyond its reasonable control), the restoration of the damaged or destroyed portion of the Improvements as nearly as reasonably practicable to the value and condition thereof immediately prior to such damage or destruction. In the event of such damage or destruction, the proceeds of all property insurance policies shall be used to restore the facility to make it function as a hangar facility for the uses permitted under Article 3. The Lessee shall make a claim for reimbursement from the proceeds of all property insurance policies for the Improvements and shall be obligated to provide any additional monies necessary for such restoration.

(C) Business Interruption Insurance: The Lessee at its sole cost and expense throughout the term of this Agreement, shall maintain business interruption insurance at a minimum, in an amount sufficient to continue making land rental, and payments of taxes and insurance; during the rebuilding period as a result of damage to the Improvements with a maximum coverage of one (1) year.

(D) Environmental Protection Insurance: The Lessee shall provide and maintain throughout the term of this Agreement an environmental protection policy in a face amount of two million dollars (\$2,000,000).

12.3 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;

(C) The County is named as an additional insured with respect to the Lessee's commercial general liability policies and environmental protection policy;

(D) The County and any lender or bond trustee having a security interest in the Premises is named as a loss payee with respect to the Lessee's builders risk and property insurance policies; and

(E) Liability coverage shall include contractual liability and notification of cancellation.

12.4 Additional Insurance: In addition to the types and levels of coverage provided in Article 12.1, the County reserves the right to require the Lessee to provide additional types of coverage and/or different or higher levels of coverage from time to time during this Agreement as the County requires of all other carriers or tenants similarly situated to Lessee using the Airport, upon issuance of notice in writing to the Lessee, which notice shall automatically amend this Agreement effective 90 days after such notice. If such coverage is not commercially available, the parties will have an additional ninety (90) days to work together in good faith to arrive at the types and amounts of coverages acceptable to both parties based on conditions in the marketplace.

12.5 Compliance: Compliance with the requirements of this Article 12 (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.

12.6 Right to Examine: The Department reserves the right, upon reasonable notice, to examine true copies of applicable portions 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.

12.7 Personal Property: Any personal property of the Lessee or of others placed in the Premises and Improvements 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 negligence or willful misconduct of the County, as limited by Article 768.28, Florida Statutes.

### **ARTICLE 13** **USE OF PUBLIC FACILITIES**

13.1 The County grants to the Lessee, in common with all others desiring to use the Airport, and only to the extent necessary or reasonably desirable, so long as such use does not conflict with the County's operation of the Airport, to carry out the rights granted the Lessee hereunder, the nonexclusive privilege to use the runways, taxiways, 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 Airport; 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 leaseable space or area improved or unimproved which is leased to a third party, or which the County has not leased herein. Nothing contained in this Article 13.1 shall affect Lessee's preferential rights with respect to the South Apron as provided in Article 2.11.

13.2 The County acknowledges that Lessee's connections to the utility conduits in the vicinity of the Premises, when performed in accordance with County's specifications and requirements, will not conflict with the County's operation of the Airport.

#### **ARTICLE 14** **TERMINATION**

14.1 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, as its option, terminate this Agreement after ten (10) business days notice in writing to the Lessee unless the default is cured within the notice period.

14.2 Insurance Defaults: The County shall have the right, upon ten (10) business 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 12 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.

14.3 Other Defaults: The County shall have the right, upon 30 calendar days written notice to the Lessee, to terminate 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, the Lessee has commenced substantial corrected 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.

14.4 [Intentionally Omitted]

14.5 Actions at Termination: The Lessee shall vacate, quit, surrender up and deliver the Premises and Improvements to the County on or before the termination date of this Agreement, whether by lapse of time or otherwise. The Lessee shall surrender the Premises and Improvements in the condition required under Article 6 (Maintenance and Repairs) herein. All repairs for which the Lessee is responsible shall be completed prior to surrender. The Lessee shall deliver to the Department all keys to the Premises and Improvements upon surrender. On or before the termination date of this Agreement, the Lessee shall remove all of its personal property from the Premises and Improvements. Any personal property of the Lessee's 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.

(A) Provided the following is an obligation of Lessee under Article 8, the Lessee shall, at its expense, take all actions required by Federal, State and local laws, regulations or codes to remove from the Premises and Improvements any Hazardous Material, whether stored in drums, or found in vats, containers, distribution pipe lines, or the like. All such Hazardous Material shall be removed by the Lessee in a manner approved and authorized by such Federal, State or local laws, regulations or codes.

(B) At its option, at the termination of this Agreement, the County at its sole cost and expense, may cause to be performed an environmental investigation of the Premises to determine whether any Hazardous Material has been released within the Premises and Improvements or into the ground under the Premises and Improvements during the Term or if a Recognized Environmental Condition exists which did not exist on the Premises on the Commencement Date and was not otherwise identified in (i) the Remedial Action, (ii) the Baseline Audit, (iii) any Tenant Audit, or (iv) the construction of Improvements (all other Recognized Environmental Conditions and Hazardous Materials on the Premises referred to throughout this Agreement as the "Tenant Contamination"). If the assessment reveals any Tenant Contamination, the Lessee shall have the opportunity to set forth evidence that such contamination was not caused by Lessee. In the event Lessee does not provide such evidence, Lessee shall comply with the recommendations and conclusions of the County or its consultant regarding environmental clean up efforts that may be required to return the affected portion of the Premises and any other affected soil or groundwater to their condition existing immediately prior to the commencement of this Agreement and shall comply with any other clean up requirements imposed on the Lessee by Federal, State or local law, regulations or codes. Lessee shall not be responsible for (i) any Hazardous Material that originated from an off-site discharge, disposal or release by a party other than Lessee, its employees, agents or contractors and that has migrated onto the Premises, or (ii) any Hazardous Material that originates from a discharge, disposal or release by the County or any of its employees, agents or contractors. Except as expressly provided below, any Environmental Condition or Hazardous Material that originated from an off-site discharge, disposal or release by a party other than Lessee or any of its employees, agents or contractors and the presence of which on, about, or beneath the surface of the Premises has been accelerated by virtue of, or resulted from, the construction of the Improvements will nevertheless be deemed to have migrated onto the Premises, rather than being brought on the Premises through intentional acts of Lessee or any of its employees, agents or contractors, and will not constitute Tenant Contamination. The limitation set forth in the preceding sentence will not apply to the extent that the presence of the Environmental Condition or the Hazardous Materials on, about, or beneath the surface of the Premises is attributable to Lessee's failure to comply with all requirements of any de-watering permit that an appropriate regulatory authority issues in connection with the construction of the Improvements.

(C) Nothing in this Article or Agreement shall affect the Lessee's liability for environmental violations as separately provided for in any Federal, State, or local law, except to the extent that the County has agreed to assume liability for contamination existing as of the commencement of this Agreement under Article 8.2. All notices to Lessee hereunder shall include the Developer, if any, and any Leasehold Mortgagee which has given notice to the County in accordance with Article 10.2(C) to be effective.

14.6 Right to Show Premises and Improvements: At any time after the Lessee has been given notice of termination or default, pursuant to Article 14 (Termination) hereof, and the curative period established in respect of the default in this Article 14 has expired, the County shall have the right to enter on the Premises and Improvements (exclusive of bonded areas within the Improvements) for the purpose of showing same to prospective tenants or users.

14.7 County Defaults: This Agreement shall be subject to termination (and/or an action to recover damages) by the Lessee in the event of a default by the County in the performance of any material covenant or agreement herein required to be performed by the County and the failure of the County to remedy same within a reasonable period of time following receipt of written notice from the Lessee of such default.

14.8 [Intentionally Omitted].

14.9 Other Terminations: This Agreement shall be subject to termination by the County or the Lessee in the event of any one or more of the following:

(A) The permanent abandonment of the Airport.

(B) The lawful assumption by the United States Government or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part or parts thereof, in such a manner as to substantially restrict the Lessee from operating therefrom for a period in excess of 90 consecutive days, provided that nothing contained herein shall be deemed to constitute a waiver by the Lessee of any right it may have against the United States to just compensation in the event of any such assumption.

(C) The issuance by any court of competent jurisdiction of any injunction in any way substantially preventing or restraining the use of the Airport, and the remaining in force of such injunction for a period in excess of 90 days.

## **ARTICLE 15**

### **SPECIAL CONDITIONS**

15.1 Quality of Services: The Lessee shall furnish the services required and authorized pursuant to Article 3 (Use of Premises and Improvements) hereof on a good, prompt and efficient basis and on a fair, equal and not unjustly discriminatory basis to all users thereof.

15.2 Nondiscriminatory Prices: The Lessee shall charge fair, reasonable, customary and not unjustly discriminatory prices for each unit of sale or service; provided, however, that the Lessee may make reasonable, customary and nondiscriminatory discounts, rebates or similar types of price reductions to volume purchasers of the Lessee's services and Lessee's affiliates.

15.3 County's Obligations: The Lessee, in recognition of the County's obligation, pursuant to the Federal Aviation Administration's standard grant assurances, to enforce the provisions of Articles 15.1 (Quality of Services) and 15.2 (Nondiscriminatory Prices) above, agrees that the Department may, from time to time, promulgate standards, methods and procedures for and monitor and test the provision of services hereunder and may require the Lessee to provide copies of schedules of service charges and the bases for discounts, rebates and

similar types of price reductions. If the Lessee fails to comply with the provisions of Article 15.1 (Quality of Services) and 15.2 (Nondiscriminatory Prices) above, the first such occurrence shall be considered a curable default, pursuant to Article 14.3 (Other Defaults) hereof, and subsequent occurrence(s) shall be considered a material breach of this Agreement, entitling the County to the remedies provided in this Agreement or by law.

**ARTICLE 16**  
**EQUAL EMPLOYMENT OPPORTUNITY, NONDISCRIMINATION AND AFFIRMATIVE ACTION**

16.1 Equal Employment Opportunity:

(A) In accordance with Title 14 Code of Federal Regulation (CFR) Part 152 (Affirmative Action Employment Program), the Lessee shall not discriminate against any employee or applicant for employment because of age, sex, race, color, religion, marital status, place of birth or national origin, ancestry, in accordance with the Americans with Disabilities Act, discriminate against any otherwise qualified employees or applicants for employment with disabilities who can perform the essential functions of the job with or without reasonable accommodation. The Lessee shall take affirmative actions' to ensure that applicants are employed and that employees are treated during their employment without regard to age, sex, race, color, religion, marital status, place of birth or national origin, ancestry, or disability. Such actions include, but not limited to, the following: Employment, upgrading, transfer or demotion, recruitment, recruitment advertising, layoff or termination, rates of pay or other forms of compensation, selection for training including apprenticeship.

(B) The Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the County setting forth the provisions of this Equal Employment Opportunity clause. The Lessee shall comply with all applicable provisions of the Civil Rights Act of 1964, Executive Order 11246 issued September 24, 1965, as amended by Executive Order 113155, revised order No. 4 issued December 1, 1951, as amended, and the Americans with Disabilities Act. The Age Discrimination in Employment Act effective June 12, 1968, Executive Order 13166 issued August 11, 2000, Improving Access to Services for persons with Limited English Proficient (LEP), the rules, regulations and relevant orders of the Secretary of Labor, Florida Statutes §112.041, §112.042, §112.043 and the Miami-Dade County Code Section 11A1 through 13A1, Articles 3 and 4.

(C) The Lessee shall assign responsibility to one of its officials to develop procedures that will assure that the policies of Equal Employment Opportunity and Affirmative Action are understood and implemented.

16.2 Nondiscriminatory Access to Premises: The Lessee, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant that: (1) no person on the grounds of race, color, sex, national origin 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 the Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to the enforceable regulations of the Department of Transportation, as amended from time to time.

16.3 Breach of Nondiscrimination Covenants: In the event it has been determined that the Lessee has breached any enforceable nondiscrimination covenants contained in Article 16.1 (Equal Employment Opportunity) and Article 16.2 (Nondiscriminatory Access to Premises) 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 the Termination of the Agreement section hereof.

16.4 Nondiscrimination: (A) During the performance of this Agreement, the Lessee agrees as follows: The Lessee shall, in all solicitations or advertisements for employees placed by or on behalf of the Lessee, state that all qualified applicants will receive consideration for employment without regard to age, sex, race, color, religion, marital status, place of birth or national origin, ancestry, physical handicap or disability.

(B) The Lessee shall furnish all information and reports required by Executive Order 11246 issued September 24, 1965, as amended by Executive Order 113155, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to The Lessee books, records, accounts by the County and Compliance Review Agencies for purposes of investigation to ascertain by the compliance with such rules, regulations, and orders. In the event of the Lessee's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, and orders, this Agreement may be canceled, terminated, or suspended in whole or in part in accordance with the Termination of Agreement section hereof and the Lessee may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive Order 113155 and such sanctions as may be imposed and remedies invoked as provided in Executive Order 113155 and such sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 as amended or by rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(C) The Lessee will include Article 16.1 (Equal Employment Opportunity) and Article 16.2 (Nondiscriminatory Access to Premises) in all Lessee sub-contracts in excess of \$10,000.00, unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 issued September 24, 1965, as amended by Executive Order 113155, so that such provisions will be binding upon each sub-consultant. The Lessee shall take such action with respect to any sub-contract as the County may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Lessee becomes involved in, or is threatened with, litigation with a sub-consultant as the result of such direction by the County or by the United States, the Lessee may request the United States to enter into such litigation to protect the interests of the United States.

16.5 Disability Nondiscrimination Affidavit: By entering into this Agreement with the County and signing the Disability Nondiscrimination Affidavit, the Lessee attests that to the best of Lessee's knowledge, is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95 (the "Resolution"). If the Lessee is found by the responsible enforcement officer of the Courts or the County to be in violation of

the Act or the Resolution, such violation shall render this Agreement terminable in accordance with the Termination of Agreement section hereof.

16.6 Affirmative Action/Nondiscrimination of Employment Promotion and Procurement Practices: (County Code Section 2-8.1.5): In accordance with the requirements of County Code Section 2-8.1.5, all firms with annual gross revenues in excess of \$5 million seeking to contract with Miami-Dade County shall, as a condition of award, have a written Affirmative Action Plan and Procurement Policy on file with the County's Department of Procurement Management. Said firms must also submit, as a part of their Lease to be filed with the Clerk of the Board, an appropriately completed and signed Affirmative Action Plan/Procurement Policy Affidavit.

Firms whose Boards of Directors are representative of the population make-up of the nation are exempt from this requirement and must submit, in writing, a detailed listing of their Boards of Directors, showing the race or ethnicity of each board member, to the County's Department of Procurement Management. Firms claiming exemption must submit, as part of their Lease to be filed with the Clerk of the Board, an appropriately completed and signed Exemption Affidavit in accordance with County Code Section 2-8.1.5. These submittals shall be subject to periodic reviews to assure that the entities do not discriminate in their employment and procurement practices against minorities and women/owned businesses.

It will be the responsibility of each firm to provide verification of their gross annual revenues to determine the requirement for compliance with the County Code Section. Those firms that do not exceed \$5 million annual gross revenues must clearly state so in their Lease.

## ARTICLE 17

### SECURITY AND SPECIAL PROVISIONS

17.1 Security: The Lessee acknowledges and accepts full responsibility for the security and protection of the Premises and Improvements, its equipment and property on the Airport, and control of access to the Air Operations Area (AOA) through the Premises and Improvements 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 and Improvements, equipment and property and access to the AOA through the Premises and Improvements shall be the sole responsibility of the Lessee and shall involve no cost to the County. All such security measures by the Lessee shall be in accordance with 49 Code of Federal Regulations Section 1542 and the Airport Security Plan. The Lessee shall be responsible for the fulfillment of corrective action orders and the payment of monetary fines resulting from non-compliance with 49 C.F.R. Section 1542 or the Airport Security Plan.

17.2 Security Identification Display Areas Access - Identification Badges: The Lessee shall be responsible for requesting the Department to issue identification (ID) badges to all employees who are authorized access to Security Identification Display Areas (SIDA) on the Airport, designated in the Airport's security program and shall be further responsible for the immediate reporting of all lost or stolen ID badges and the immediate return of the ID badges of all personnel transferred from Airport assignment or terminated from the employ of the Lessee or upon termination of this Agreement. Each employee must complete the SIDA and Behavior

Pattern Recognition (BPR) training programs conducted by the Department, before any ID badge is issued to such employee. The Lessee shall pay, or cause to be paid, to the Department such nondiscriminatory charges as may be established from time to time for lost or stolen ID badges and those not returned to the Department in accordance with this Article. The Department shall have the right to require the Lessee to conduct background investigations and to furnish certain data on such employees before the issuance of such ID badges, which data may include the fingerprinting of employee applicants for such badges.

17.3 AOA - Driver Training: Before the Lessee shall permit any employee to operate a motor vehicle of any kind of type on the AOA, the Lessee shall require each employee to attend and successfully complete the AOA Driver Training Course conducted from time to time by the Department. The privilege of a person to operate a motor vehicle on the AOA may be withdrawn by the Department for any violation of AOA driving rules. Notwithstanding the above, the Lessee shall be responsible for ensuring that all such vehicle operators possess current, valid, appropriate Florida driver's licenses.

17.4 Drug-Free Workplace Default: The Lessee acknowledges it has provided to the County a Drug-Free Workplace Affidavit certifying that it is providing a drug-free workplace for its employees, as required by County Ordinance No. 92-15, adopted on March 17, 1992, as may be amended from time to time ("Ordinance"). Based on the provisions of said Ordinance, the County shall have the right, upon 30 days written notice to the Lessee, to terminate this Agreement in accordance with the Termination of Agreement section hereof in the event the Lessee fails to provide, as of each anniversary of the effective date of this Agreement, the annual recertification affidavit as required by the Ordinance; provided however that such termination shall not be effective if the Lessee submits the required Affidavit within the notice period.

Further, this Agreement shall be terminated upon not less than fifteen (15) calendar days written notice to the Lessee and without liability to the County in accordance with the Termination of Agreement section hereof, if the Department or the County Manager determines any of the following:

(A) That the Lessee has made a materially false certification in its execution of the Affidavit submitted or in its annual recertification as required by the Ordinance; or

(B) That the Lessee has violated its original or renewal certification by failing to carry out any of the specific requirements of the Ordinance, other than the annual recertification; or

(C) That such a number of employees of the Lessee have been convicted of violations occurring in its workplace(s) as to indicate that the Lessee has failed to make a good faith effort to provide a drug-free workplace as required by the Ordinance.

17.5 Special Programs: The Lessee shall ensure that all employees so required participate in such safety, security and other training and instructional programs, as the Department or appropriate Federal agencies may from time to time require.

17.6 Vehicle Permit and Company Identification: The Lessee understands and agrees that all motor vehicles prior to operation on the AOA must provide the required vehicle insurance in the amounts required at that time by the department and must have submitted the vehicle for a safety inspection and will display the MDAD AOA Decal at all time. All persons entering and working in or around arriving international aircraft and facilities used by the various Federal Inspection Services agencies may be subject to the consent and approval of such agencies. Persons not approved or consented to by the Federal Inspection Services agencies shall not be employed by the Lessee in areas under the jurisdiction or control of such federal inspection agencies.

17.7 AOA - Right to Search: The Lessee agrees that its vehicles, cargo, goods and other personal property are subject to being searched when attempting to enter or leave and while on the AOA to the extent permissible under applicable Federal Agency Security regulations and Miami-Dade County rules and regulations. The Lessee further agrees that it shall not authorize any employee or agent to enter the AOA unless and until such employee or agent has executed a written consent-to-search form acceptable to the Department. Persons not executing such consent-to-search form shall not be employed by the Lessee at the Airport, in any job requiring access to the AOA.

(A) It is further agreed that the Department has the right to prohibit an individual, agent or employee of the Lessee from entering the AOA based upon facts which would lead a person of reasonable prudence to believe that such individual might be inclined to engage in theft, cargo tampering, aircraft sabotage or other unlawful activities. Any person denied access to the AOA or whose prior authorization has been revoked or suspended on such grounds shall be entitled to a hearing before the Director of the Department or his authorized designee within a reasonable time. Prior to such hearing, the person denied access to the AOA shall be advised, in writing, of the reasons for such denial.

(B) The Lessee acknowledges and understands that these provisions are for the protection of all users of the AOA and are intended to reduce the incidence of thefts, cargo tampering, aircraft sabotage and other unlawful activities at the Airport.

17.8 Right of Flight: There is hereby reserved to the County, its successors and assigns, for the use and benefit of the County and the public, a right of flight for the passage of aircraft in the air space above the surface of the Premises and Improvements herein leased, together with the right to cause in said air space such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation or flight in the air, using said air space or landing at, taking off from or operating on Miami International Airport.

17.9 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.

17.10 Nuisance. The Lessee shall use commercially reasonable efforts to control the actions of its employees, agents, invitees and those doing business with it, so as to not

unreasonably annoy, disturb or be offensive to others and to provide the services permitted hereunder in a manner that does not unreasonably create a nuisance or event which may unreasonably disturb the quiet enjoyment of any other users of the Airport.

**ARTICLE 18**  
**CONTROL OF EMPLOYEES**

18.1 The Lessee shall properly control the actions of its employees at all times that said employees are working on the Airport, ensuring that they present a neat appearance and discharge their duties in a courteous and efficient manner and that they maintain a high standard of service to the public.

**ARTICLE 19**  
**CIVIL ACTIONS**

19.1 Governing law; Venue: This Agreement shall be governed and construed in accordance with the laws of the State of Florida, Chapter 25, Airport rules and regulations and Chapter 8CC of Miami-Dade County. The venue of any action on this Agreement shall be laid in Miami-Dade County, Florida.

19.2 Registered Office/Agent; Jurisdiction: The Lessee, if a corporation, shall designate a registered office and a registered agent, as required by Article 48.091, Florida Statutes, such designations shall be filed with the Florida Department of State in accordance with Article 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 20**  
**TRUST AGREEMENT**

20.1 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 Chase Bank 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.

20.2 Adjustment of Terms and Conditions: If at any time during the term of this Agreement a court of competent jurisdiction shall determine that any of the terms and conditions fee 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 and/or bond resolution or in any deficiency in revenues necessary to comply with the covenants of the Trust Agreement and/or bond resolution. 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 of rentals, fees and charges upon the issuance of written notice from the Department to the Lessee.

20.3 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 20.2 (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 21** **OTHER PROVISIONS**

21.1 [Reserved]

21.2 No Representation: Except as may be provided for in Articles 2 and 8.2, the County makes no representation, warranty, guarantee, or averment of any nature whatsoever concerning the physical condition of the Premises and Improvements, and it is agreed that, except as may be provided for in Articles 2 and 8.2, County will not be responsible for any such physical condition.

21.3 Force Majeure: Except as provided below, any material prevention, delay or stoppage attributable to strikes, lockouts, labor disputes, acts of God, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (collectively, the "Force Majeure") will excuse the performance of that party for a period equal to the duration of the prevention, delay or stoppage. If, therefore, this Agreement specifies a time period for performance of an obligation of either party, a delay that a Force Majeure causes will extend the period within which the party must complete its performance. The foregoing provisions of this Article 21.3 will not apply to (1) the obligations imposed with regard to rent and other charges Lessee must pay in accordance with the terms of this Agreement, other than extending the date rent commences hereunder, and (ii) the obligations imposed upon the County to pay any amount becoming due to Lessee under the terms of this Agreement.

21.4 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.

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

21.6 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.

21.7 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.

21.8 Federal Subordination: This Agreement shall be subordinate to the provisions of any existing or future agreements between the County 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, or assumption of control by, the United State of American shall be suspended.

21.9 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, sent by courier with proof of delivery ("POD") or sent by registered or certified mail, return receipt requested, or by a nationally known overnight courier service to the parties as follows:

As to the County or the Department:

Director  
Miami-Dade County Aviation Department  
Post Office Box 025504  
Miami, Florida 33102-5504

-- Or --

Miami International Airport  
Concourse E, 6th Floor  
Miami, Florida 33122

With a copy to:

County Attorney's Office  
P.O. Box 025504  
Miami, FL 33102-5504

As to the Lessee:

LAN Cargo, S.A.  
6500 N.W. 22nd Street  
Miami, FL 33122  
Attn: COO

With a copy to:

General Counsel  
LAN Cargo, S.A.  
6500 N.W. 22nd Street  
Miami, FL 3312

or to such other address as may hereafter be provided by the parties in writing. Hand delivered and courier notices shall be deemed received on the delivery date delineated on the POD. 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. Overnight courier services shall be deemed delivered on the date indicated by the overnight courier service.

21.10 Rights Reserved: Rights not specifically granted the Lessee by this Agreement are reserved to the County, including, but specifically not limited to, all air rights above the Premises for aviation or non-aviation purposes.

21.11 Rights of County at Airport: Subject only to the limitations that may be set forth elsewhere in this Agreement, the County shall have the absolute right to make any repairs, alternations and additions to any structures and facilities at the Airport. Except as may be provided to the contrary elsewhere in this Agreement, the County shall, in the exercise of such right, be free from any and all liability to the Lessee for business damages occasioned during the making of such repairs, alterations and additions.

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

21.13 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 either 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 nonperformance hereof by the other party.

21.14 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.

21.15 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.

21.16 Inspections: Subject to satisfying any conditions to entry established elsewhere in this Agreement, 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 and Improvements 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.

21.17 Payment of Taxes: The Lessee shall pay all taxes and other costs lawfully assessed against its leasehold interests in the Premises and Improvements, and its operations under this Agreement, to the extent applicable; 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 and the continuation of that failure for more than the applicable grace period established in Article 14 shall constitute a default.

21.18 Quiet Enjoyment of Others: The Lessee shall control the actions of its employees, agents, invitees and those doing business with it, so as not to annoy, disturb or be offensive to others and to provide the service hereunder so as to not unreasonably create a nuisance or thing which may disturb the quiet enjoyment of any other users of the Airport.

21.19 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 that, when it has accumulated in a building in sufficient quantities, 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."

21.20 Quiet Enjoyment: Subject to the terms of this Agreement, specifically including but not limited to the environmental remediation steps to be taken under Article 8 (Regulations, License and Permits), the County's right and obligation to make certain repairs, alternations, and

additions under Articles 7 (Maintenance by County) and 21.11 (Rights of County at Airport), which, for purposes of this clause includes any and all demolition, in whole or in part, of buildings and runways, and roadway systems on or off the Airport, and the reservation of easement rights to the airspace under Article 17.9 (Right of Flight), all of which provisions and others in the Agreement the Lessee acknowledges may cause disruption and disturbance to the Lessee, and upon the observance by the Lessee of all the terms, provisions, covenants and conditions imposed upon the Lessee hereunder, the Lessee shall peaceably and quietly hold and enjoy the Premises and Improvements for the term of this Agreement; provided, however, that the County shall not be liable for any violation of this clause or for any disturbance or disruption in or to the Lessee's business, for acts or omissions of tenants, users of the Airport, third parties, or when any department or agency of the County is acting in its governmental capacity, or by Acts of God.

21.21 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.

21.22 No Agency: Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship between the parties hereto. It is understood and agreed that neither the method of computation of rentals, fees and charges, nor any other provisions contained herein, nor any acts of the parties hereto creates a relationship other than the relationship of landlord and tenant.

21.23 Rights Non-Exclusive: Notwithstanding anything herein contained that may be or appear to the contrary, the rights, privileges and licenses granted under this Agreement, except in the Premises, the Improvements, and the preferences with respect to the South Apron, are "nonexclusive" and the County reserves the right to grant similar privileges to other persons, firms or corporations.

21.24 Lessee's Inspection Period: From the Commencement Date until thirty (30) days following the completion of demolition of Building 715 (herein referred to as the "Inspection Period"), Lessee and its duly authorized representative shall have the right to investigate and inspect the Premises and shall have access to the Premises for determination of utility availability, environmental conditions, soil, engineering and feasibility testing, and other tests, surveys, audits, inspections and investigations deemed necessary or appropriate by Lessee. This Agreement is contingent upon Lessee obtaining the following within the Inspection Period (or waiving same in Lessee's sole discretion): (1) receipt of evidence, satisfactory to Lessee from geotechnical investigation, that the property within the Premises is suitable for construction of the Improvements contemplated by Lessee; and (2) proof satisfactory to Lessee to the extent provided under Article 8 that there are no Hazardous Substances on the Premises other than those that are satisfactory to the Lessee. During this Inspection Period, Lessee shall have the right to terminate this Agreement by written notice to County upon written evidence to Lessor that the Premises are not suitable for construction of the Improvements as contemplated herein.

21.25 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.

**[Remainder of this Page Intentionally Left Blank]**

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

FLORIDA

LAN Cargo, S.A.

MIAMI-DADE COUNTY, THROUGH ITS BOARD OF COUNTY COMMISSIONERS

By:   
ANDRES BIANCHI - VP Network

By: \_\_\_\_\_  
Mayor or Designee

By:   
FERNANDO POTHÉVIN - COO

ATTEST: Harvey Ruvin, Clerk

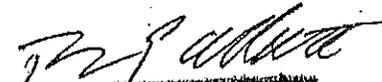
By: \_\_\_\_\_

ATTEST

  
Assistant Secretary

Approved as to form and legal sufficiency

Juan C. Meneid

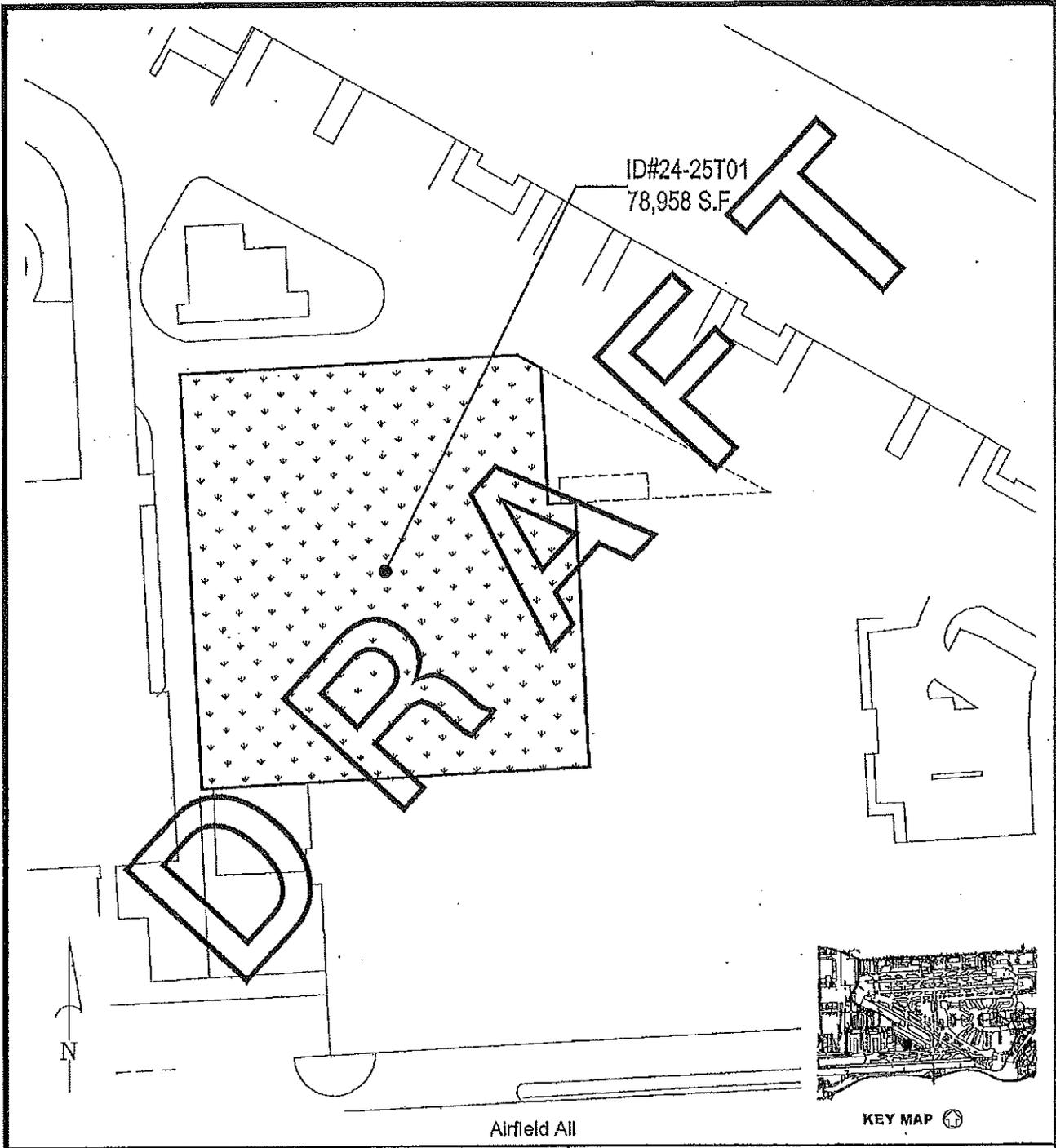
  
Assistant County Attorney

Print Name

(CORP. SEAL)

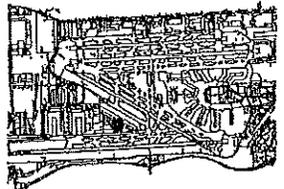
Approved  
Legal Department





ID#24-25T01  
78,958 S.F.

PRAY



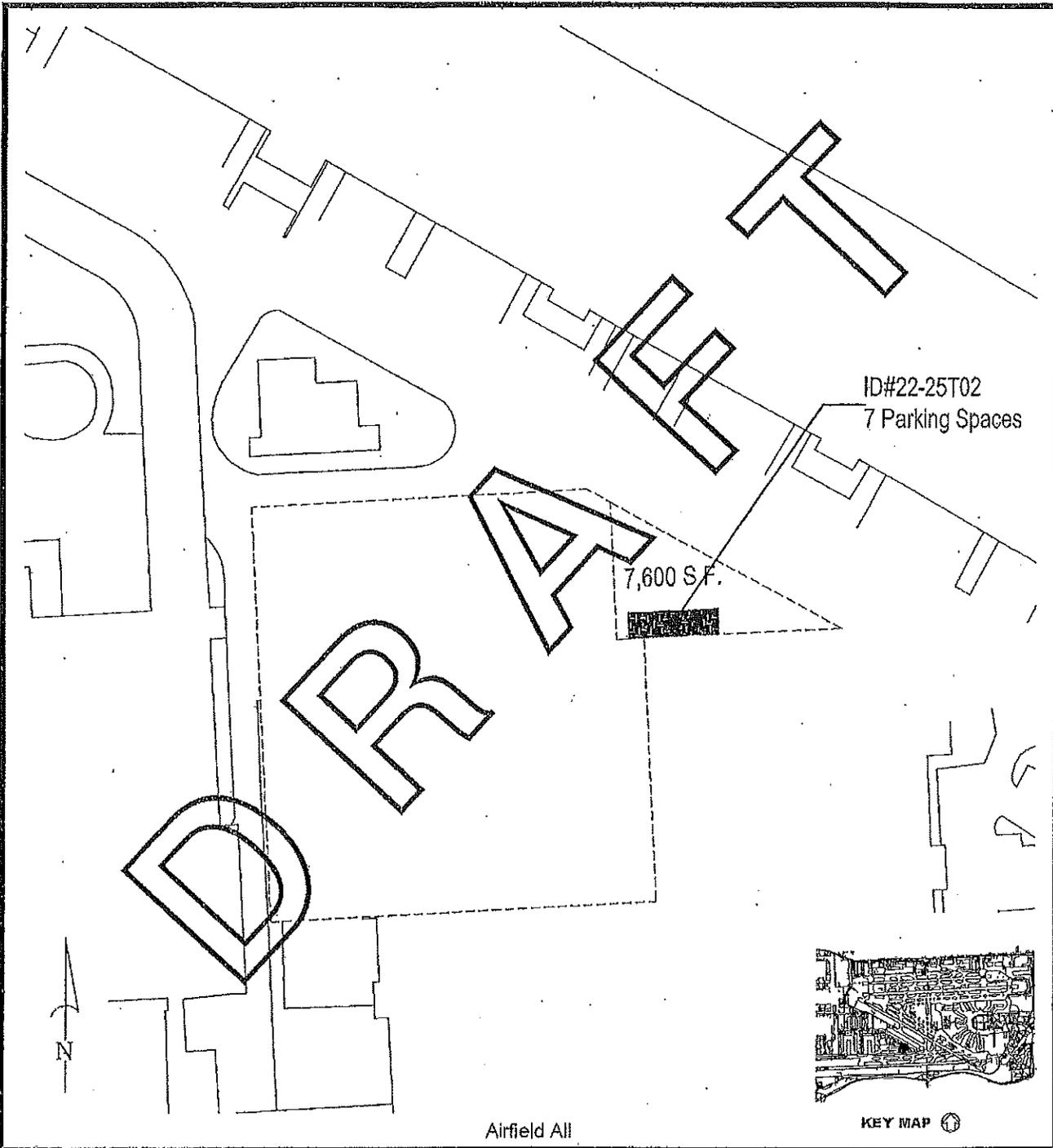
Airfield All

KEY MAP

CODE:	SPACE CLASS	SQ. FT.
	Airside Land	78,958
<div style="border: 1px dashed black; padding: 2px;">           THIS EXHIBIT IS BASED ON A PROPOSAL LAYOUT            THEREFORE IS SUBJECT TO REVISION         </div>		78,958
SCALE: 1" = 100'	FILE #: 3918	DATE: 5/16/2013

MIAMI DADE  
AVIATION DEPARTMENT  
MIAMI INTERNATIONAL AIRPORT

**EXHIBIT P**  
**MIAMI DADE AVIATION  
DEPARTMENT**



Airfield All

KEY MAP

CODE:	SPACE CLASS	SQ. FT.	MIAMI DADE AVIATION DEPARTMENT MIAMI INTERNATIONAL AIRPORT	
	Airside Vehicular Pavement 7 Parking Spaces	N/A	<p><b>EXHIBIT P-1</b>  <b>MIAMI DADE AVIATION DEPARTMENT</b></p>	
<p>THIS EXHIBIT IS BASED ON A PROPOSAL LAYOUT  THEREFORE IS SUBJECT TO REVISION</p>				
SCALE: 1" = 100'	FILE #: 3930	DATE: 6/10/2013		