

MEMORANDUM

Agenda Item No. 8(A)(1)

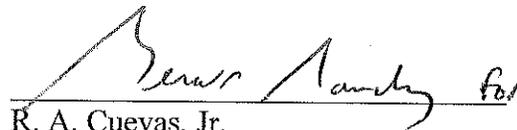
TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: May 6, 2014

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

SUBJECT: Resolution approving award of a
Non-Exclusive Lease and
Operating Agreement for
American Express Centurion
Lounge at Miami International
Airport, between Miami-Dade
County and American Express
Travel related services company,
for an annual rental rate of
\$1,000,000.00

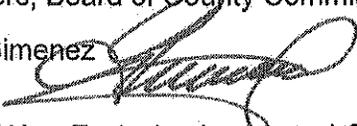
The accompanying resolution was prepared by the Aviation Department and placed on the agenda at the request of Prime Sponsor Chairwoman Rebeca Sosa.


R. A. Cuevas, Jr.
County Attorney

RAC/lmp

Date: May 6, 2014

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

From: Carlos A. Gimenez
Mayor 

Subject: Approval of Non-Exclusive Lease and Operating Agreement for American Express
Centurion Lounge with American Express Travel Related Services Company, Inc.

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) (i) waive Section 5.03(d) of the Miami-Dade County Charter regarding competitive bidding, (ii) approve the award of a non-exclusive Lease and Operating Agreement for an American Express Centurion Lounge at Miami International Airport (MIA) to American Express Travel Related Services Co. Inc., and (iii) authorize the Mayor or designee to execute the attached Agreement, with the exhibits on file with the Clerk of the Board.

SCOPE

Miami International Airport is located primarily within Chairwoman Rebeca Sosa's District Six; however, the impact of this agenda 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 Miami-Dade Aviation Department (MDAD) Director or designee has the authority to (i) enforce the terms of this lease, (ii) terminate the agreement, (iii) extend the agreement, and (iv) approve any assignment of the agreement by American Express.

FISCAL IMPACT/FUNDING SOURCE

It is estimated that this agreement will generate in excess of \$1.1 million in annual revenues to MDAD based on rents and payments for the first year and, over the term, exceed \$11 million.

TRACK RECORD/PROJECT MONITOR

American Express has no prior contracts with MDAD. Chief of Commercial Operations Ray Diaz will monitor the Agreement.

BACKGROUND

American Express approached MDAD during the fall of 2013 regarding opportunities to convert unused space into a premium lounge. After careful consideration, it was determined that the former British Airways lounge space in MIA's North Terminal, unoccupied since March 2007, was an ideal location. The space is located on the fourth level of the rotunda next to gate D-12. The proposed Centurion Lounge will occupy approximately 8,500 square feet of leased space. American Express will make a substantial capital investment between \$5 million and \$6 million to create a facility with high-end finishes.

The Centurion Lounge will offer an array of services and amenities to American Express cardholders comparable to those of premium international lounges. At a cost upwards of \$500 per square foot, the Centurion lounge will feature signature elements such as a "living wall" of plants, high end furniture, plush built-in nooks, noise-buffering private workstations, a communal library table and conversational areas for guests to relax, order beverages or be served complimentary signature "bites." American Express partners with renowned local chefs to develop upscale regional cuisine and has already identified a James Beard award winner in Miami who focuses on locally sourced ingredients and a Latin fusion menu. The companion Centurion "exhale" spa offers complimentary massages, facials and

manicures as well as spa-like showers with upscale toiletries. The Centurion lounge will also feature a family room stocked with books, games, DVDs and video games. High-speed wi-fi, high-definition televisions and electrical outlets and USB ports near every seat are standard.

American Express has been highly selective in building their lounge network. It has two decades of experience operating airport lounges and has grown its brand to 20 globally. It is now selectively opening its premium brand lounges at U.S. airports. The first Centurion Lounge opened at Las Vegas McCarran International Airport (LAS) in February 2013, followed by a second nine months later at Dallas/Fort Worth International Airport (DFW). American Express has signed leases with LaGuardia Airport (LGA) and San Francisco International Airport (SFO); both are anticipated to open during 2014. Because of the uniqueness and premium quality of this lounge program, LAS, DFW and LGA did not utilize competitive processes to select American Express, instead opting to contract with American Express on a non-competitive basis. SFO did issue an RFP, but American Express was the only entity to respond, as there are no firms competing with them for premium third-party lounge leases that offer comparable services or terms. In speaking with procurement officials at these airports, there is a general consensus that American Express is in a separate class with respect to operating third-party passenger lounges. American Express has assured MDAD that it will provide the same high standards if not better in this lounge.

It is anticipated that the Centurion Lounge will host 300,000 U.S. card members annually, with an additional potential 10-plus million Latin American card carriers. Winning the premium traveler's loyalty to MIA could provide significant benefits to the airport's reputation with high-end customers, benefiting the airport, concessionaires and the local community. American Express' research shows its customers spend about three times as much money as Visa customers and three-and-one-half times as much money as MasterCard members.

PROJECT: Non-Exclusive Lease and Operating Agreement for American Express Centurion Lounge at Miami International Airport

TERM OF AGREEMENT: The term of the Agreement is ten (10) years with two five (5) year extensions at the mutual consent of both parties.

REVIEW COMMITTEE DATE: N/A

CONTRACT MEASURES: Airport Concessions Disadvantaged Business Enterprise (ACDBE) Voluntary Goal. Although there are no goals associated with this agreement, American Express anticipates hiring 40 to 50 local employees for lounge operations and another 30 to 40 for construction.

USING AGENCY: Miami-Dade Aviation Department



Jack Osterholt, Deputy Mayor



MEMORANDUM
(Revised)

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

DATE: May 6, 2014

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

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

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

Agenda Item No. 8(A)(1)

Veto _____

5-6-14

Override _____

RESOLUTION NO. _____

RESOLUTION APPROVING AWARD OF A NON-EXCLUSIVE LEASE AND OPERATING AGREEMENT FOR AMERICAN EXPRESS CENTURION LOUNGE AT MIAMI INTERNATIONAL AIRPORT, BETWEEN MIAMI-DADE COUNTY AND AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, FOR AN ANNUAL RENTAL RATE OF \$1,000,000.00 AND FOR A TERM OF TEN (10) YEARS, WITH TWO (2) FIVE YEAR EXTENSIONS AT THE MUTUAL CONSENT OF BOTH PARTIES; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SUCH AGREEMENT AND TO EXERCISE DELEGATED AUTHORITY DESCRIBED THEREIN, AND WAIVING FORMAL BID PROCEDURES AND PROVISIONS PURSUANT TO SECTION 5.03(D) OF THE MIAMI-DADE HOME RULE CHARTER

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby, by two-thirds vote of members present, waives the competitive bid requirements of Section 5.03(D) of the charter, approves the award of a Non-Exclusive Lease and Operating Agreement for American Express Centurion Lounge at Miami International Airport, between Miami-Dade County and American Express Travel Related Services Company, in substantially the form attached hereto and made a part hereof, with an annual rent to the County of \$1,000,000.00 and for a term of ten (10) years, with two (2) five-year extensions at the mutual consent of both parties; authorizing the County Mayor or County Mayor's designee to execute such agreement and to exercise delegated authority described therein.

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

Rebeca Sosa, Chairwoman
Lynda Bell, Vice Chair

Bruno A. Barreiro	Esteban L. Bovo, Jr.
Jose "Pepe" Diaz	Audrey M. Edmonson
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Sen. Javier D. Souto	Xavier L. Suarez
Juan C. Zapata	

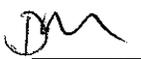
The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of May, 2014. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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.



David M. Murray

**LEASE AND OPERATING AGREEMENT FOR
AMERICAN EXPRESS CENTURION LOUNGE
BY AND BETWEEN**

MIAMI-DADE COUNTY, FLORIDA

AND

AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.

AT

MIAMI INTERNATIONAL AIRPORT

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DEFINITIONS

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

The term **"ACDBELO"** shall mean Airport Concession Disadvantaged Business Enterprise Liaison Office, Associate Aviation Director, Minority Affairs Division, Miami-Dade Aviation Department.

The term **"Agreement"** or **"Lease"** shall mean this Lease and Operating Agreement including all exhibits and attachments thereto and a part thereof entered into by the County and the Operator.

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

The term **"Airport Concession Disadvantaged Business Enterprises"** or **"ACDBE"** shall have the meaning ascribed in Article 14 entitled "Airport Concession Disadvantaged Business Enterprises-Voluntary".

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

The term **"Authority Having Jurisdiction"** refers to any federal, state, or local governmental agency (including the County and its Departments) having regulatory jurisdiction over any portion of the Facilities or the use of such Facilities by the Operator. The term includes, but is not necessarily limited to, the Miami-Dade County Regulatory and Economic Resources Department, the Miami-Dade County Fire Rescue Department, the Federal Aviation Administration, the Transportation Security Agency, the Florida Department of Health, the Florida Department of Agriculture and Consumer Services, the Florida Department of Business and Professional Regulation, the Florida Department of Environmental Protection, and other such entities.

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

The term **"Beneficial Occupancy"** shall mean the date when a Certificate of Occupancy or Temporary Certificate of Occupancy has been received.

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

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

The term **"Common Logistics Fee"** shall mean an amount to be invoiced as a separate line item and collected from the Operator for the purpose of reimbursing, without profit or administrative markup, a County imposed or approved logistics program which the Operator may be reimbursed for actual out-of-pocket expenses incurred excluding any administrative overhead in order to lease off-Airport properties for storage or operate on the Airport and operating a common logistical support service as may be necessary for the efficient operation of the Retail Program.

The term **"Common Logistics Program"** shall mean a program to offer logistics support either on or off Airport which may include leasing of Airport property for storage; delivery services or equipment necessary to the operation of a common logistics system.

The term **"Consumer Price Index"** or **"CPI"** shall mean that index published by the United States Department of Labor, Bureau of Labor Statistics known as the Consumer Price Index for all urban consumers ("CPI-U") in the South Region Average: All items.

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

The term **"Date of Execution"** shall mean the day upon which the Agreement is executed by the Mayor of Miami-Dade County or designee, after attestation by the Clerk of the Board.

The term **"Day(s)"** shall mean calendar days, unless specifically stated as other.

The term **"Department"** or **"MDAD"** shall mean the Miami-Dade Aviation Department. Wherein in this Solicitation document, rights are reserved to the County, MDAD may exercise such rights.

The term **"Facilities or Facility"** shall mean the concession spaces as depicted on Exhibit A, "Facilities"

The term **"Gross Revenues"** shall mean all monies paid or payable to or consideration of determinable value received by the Operator in operation under the Agreement, regardless of when or where the order therefore is received, or the goods delivered, or services rendered, whether paid or unpaid, whether on a cash, credit or rebate basis or in consideration of any other thing of value; provided, however, that the term "Gross Revenues" shall not include: (i) any refund given to the customer because of a customer satisfaction issue which must be documented and auditable, or (ii) promotional discount and coupon offers issued to customers as a result of a Departmental approved marketing plan, or (iii) any sums collected for any Federal, State, County and municipal taxes imposed by law upon the sale of merchandise or services). It is expressly understood and agreed by the County that the Centurion Lounge is intended as a service offering and benefit to the American Express Centurion Card Members and, as such, the food and beverage and services will be provided to travelers at no cost (and such services shall not generate any Gross Revenues), provided that, upon prior written notice to the Department, Amex may implement charges for premium drinks or, with the consent of the County, other premium services (in which event such charges shall be counted within Gross Revenues hereunder). Notwithstanding anything to the contrary contained or implied herein, it is expressly agreed that Tenant is using the Premises as an airport lounge and that only those goods, wares and merchandise sold and services to be performed by Tenant in the operation of an airport lounge shall be included within Gross Revenues. Gross Revenues shall not include (x) purchases made by mail, telephone or internet from the Premises from a retailer or service provider other than Tenant, (y) Purchases made in person, by mail, telephone or internet for any goods, wares, merchandise or services offered by Tenant, or any of its parents, subsidiaries, affiliates or business partners, that are not directly related to the immediate consumption, use and enjoyment by passengers while the passengers are within the Lounge or within the Terminal Building passengers of the airport lounge (including, without limitation, travel or related services or products, such as airline or hotel bookings, financial or banking services, or insurance services) or (z) any purchases made by mail, telephone or internet from the Premises using any Card issued by Tenant, or any of its parents, subsidiaries, affiliates or business partners, that are not directly related to immediate consumption, use and enjoyment by passengers of the airport lounge or

Terminal Building. As used herein, "Card" shall mean or include charge, credit, debit, smart and stored value payment devices, including, but not limited to, a smart chip or electronic payment device, service or system, stored value instruments, virtual cards and wireless payment instructions. Thus, by way of example only, if a passenger uses internet or telephone service made available in Tenant's lounge to book a hotel at such passenger's destination, whether through American Express or otherwise, any such transaction shall not be included in Gross Revenues. If the passenger uses his or her American Express Card to complete this same transaction, any transaction fees or interest or other charges assessed by American Express in connection with the transaction shall not be included in Gross Revenues.

The term "**Improvements**" shall mean all improvements, alterations, fixture, equipment, and signage installation, and furniture placement necessary or appropriate for the conduct of the Permitted Use, including, without limitation, such work as may be necessary or appropriate, in Tenant's discretion, to fully enclose and soundproof the Premises.

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

The term "**Lease Year**" shall mean shall mean a period of twelve (12) consecutive months commencing on the date of Beneficial Occupancy, and each successive twelve (12) month period thereafter. If, however, the date of Beneficial Occupancy is not the first day of a month, then the second Lease Year shall commence on the first day of the month following the first anniversary of the date of Beneficial Occupancy (and the first Lease Year shall be extended accordingly to include such partial month).

The term "**Minimum Annual Guarantee**" or "**MAG**" shall mean as ascribed in Sub-Article 3.01 entitled "**Payments to County**".

The term "**Minimum Monthly Guarantee**" or "**MMG**" shall mean as ascribed in Sub-Article 3.01 entitled "**Payments to County**".

The term "**Non-exclusivity**" shall mean as ascribed in Sub-Article 1.08 of this Agreement.

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

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

The term "**Percentage Fee(s)**" shall mean the fee as defined in Sub-Articles 3.04 and 3.05.

The term "**Permitted Use**" shall mean the operation of a high quality, private lounge as approved by the Department. Operator's responsibilities include, but are not limited to the following:

Operator shall have broad discretion to use the Lounge to promote products and services and to offer benefits and amenities to Amex customers, invited guests and prospective customers, in its discretion. Department acknowledges and consents that the operation of the Lounge by Amex will promote products, services and benefits of Amex and offer certain discretionary services and/or

amenities to certain customers and/or prospective customers and their guests, as shall be determined by Amex in its discretion. The benefits and amenities offered may include, but are not limited to: (i) a full range of traveler services, including refreshments, rest areas, entertainment facilities, charging facilities, temporary storage, washrooms and shower facilities; (ii) marketing and servicing initiatives; (iii) marketing and sale of Amex products and services, including acceptance of applications therefor; (iv) as a location for events for Amex customers, prospective customers, guests, invitees, partners, and/or prospective partners, which may include live or prerecorded music and serving food and beverages; and (v) any other use incidental to or reasonably necessary to facilitate the uses set forth above or consistent with the overall conduct of activities to promote Amex products and services and to provide customer benefits.

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

The term "**Third Party Contractor**" shall mean a party that provides hospitality services, including cleaning, hosting and computer/internet services, within the Facilities by pursuant to a contract with Operator. The Third Party Contractor shall, initially, be Flik International Corp (or another affiliate of Compass Group USA, Inc. that operates in Florida).

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

**LEASE AND OPERATING AGREEMENT FOR
AMERICAN EXPRESS CENTURION LOUNGE
AT
MIAMI INTERNATIONAL AIRPORT**

THIS LEASE AND OPERATING AGREEMENT is made and entered into as of this _____ day of _____, 2014, by and between MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida and AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC. ("Amex" or "Operator"), a New York Corporation authorized to do business in the State of Florida.

RECITALS:

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

WHEREAS, the Department desires to create an American Express Lounge program in support of airline passengers; and

WHEREAS, the American Express Club will enhance the accommodations and conveniences to the traveling public, and project a positive image of the Airport, Department, and the County to visitors, as further described herein; and

WHEREAS, this Lease and Operating Agreement provides unique services to the traveling public, and the Operator has worldwide brand recognition; and

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

ARTICLE 1 – TERM, EXTENSION AND FACILITIES

1.01 TERM: The Department hereby leases to the Operator the Facilities commencing upon the Lease Effective Date of this Agreement; and shall expire at 11:59 o'clock P.M. on the last day of the month in which the tenth (10th) anniversary of the date of Beneficial Occupancy occurs unless extended or sooner terminated. In no event shall this Agreement afford Operator or any other party any right to use or occupy the Facilities (or any part thereof) after the expiration, or termination of this Agreement.

1.02 EXTENSION: The initial Term will extend automatically for a maximum of two (2) five (5) year terms unless otherwise terminated by either party.

In the event the Department elects not to extend the Agreement, the Operator shall be notified, in writing, no less than one hundred eighty (180) Days prior to the expiration of the Term or any Extension. In the event that the Operator elects not to extend the Agreement, the Department shall be notified, in writing, no less than one hundred eighty (180) Days prior

to the expiration of the Term or any Extension. In the event neither party gives such notice, the Agreement shall extend for the next renewal term.

In the event the Operator is in default, pursuant to **Article 12 "Default and Termination by County"** of the Agreement beyond applicable grace and cure periods, the County shall not exercise its rights to extend the Agreement.

1.03 FACILITIES: The Department hereby provides to the Operator the Facilities as depicted in Exhibit A, which includes Space ID DA4654 and the adjacent rooms which comprise 8,541 square feet of the former BA Club Lounge spaces. The square footage may be adjusted based on a final architectural measurement following completion of any Improvements, which final measurement may be reflected by letter amendment or formal amendment of this Agreement.

1.04 SUPPORT SPACE-NOT USED

1.05 STORAGE SPACE: The Department may allow storage space outside of the Facilities only at the prevailing rate if storage space is available. Use and occupancy of storage space by Operator shall be in accordance with a separate permit or a formal amendment to this Lease.

1.06 COMMON WAREHOUSE SYSTEM: NOT USED

1.07 ADDITION, DELETION AND MODIFICATION OF FACILITIES: At any time during the Term, County may require that (i) Operator relocate and surrender all or part of the Facilities (such change to the Facilities referred to as a "Required Relocation"), and/or that (ii) the Facilities be contracted or expanded (such change to the Facilities referred to as a "Facilities Change") on the terms set forth in **Sub-Article 1.07 "Additions, Deletion and Modification of Facilities"**. County shall give notice (the "Change Notice") setting forth a description of the Required Relocation or the Facilities Change, as applicable, the approximate effective date thereof (the "Target Effective Date"). The Change Notice shall be given no less than six (6) months prior to the Target Effective Date.

A. With respect to a Required Relocation, the County may, but is not required, to provide a location for Operator to install/operate replacement facilities. If the replacement Facilities are deemed unsatisfactory to Operator, then Operator may terminate this Lease by giving notice thereof to County within thirty (30) days after the Change Notice is given. In the event Operator gives such notice of termination, or if the County does not provide replacement facilities, then this Lease shall terminate on the Target Effective Date, and on such date, Operator shall surrender the Facilities in the condition required by this Lease. If Operator's Facilities are vacated at the request of the County and the Lease is terminated, County shall reimburse Operator for their unamortized audited and approved initial improvement costs using a straight-line amortization basis over the base term of this Lease.

Provided that the County provides acceptable replacement Facilities to the Operator, Operator shall surrender the Facilities and relocate to the replacement Facilities on a date (the "Surrender Date") determined by County (which shall be no earlier than the Target Effective Date). On the Surrender Date, Operator shall surrender the Facilities in the condition required below. In the event of relocation pursuant to this **Sub-Article 1.07**

“Additions, Deletion and Modification of Facilities (A)”, Operator shall refurbish, redecorate, and modernize the interiors and exteriors of the replacement Facilities, such that the replacement Facilities are of at least the same quality as the original Facilities. Once the remodeling of the replacement Facilities is completed, and County has approved the work, Operator must submit to County (i) a certificate from Operator’s architect certifying that the remodeling was completed in strict compliance with the plans and specifications approved by County, (ii) copies of paid invoices showing the costs actually paid by Operator for the remodeling of the replacement Facilities and Operator’s out-of-pocket moving costs, and (iii) lien releases from all contractors, subcontractors, and materialmen entitled to payment in connection with the remodeling of the replacement Facilities. Following its review and approval of those submissions, County will reimburse Operator for all reasonable costs of remodeling the replacement Facilities and moving its merchandise and other personal property to the replacement Facilities from the original Facilities, which costs shall be documented in accordance with **Sub-Article 4.08 “Cost Documentation”**; provided that County may, in County’s sole discretion, make such reimbursement by issuing Operator a rent credit. In no event will County be obligated to pay or reimburse Operator for any other costs or expenses, including business interruption costs, lost profits, loss of goodwill, or any indirect or consequential damages of any kind.

With respect to a Required Relocation, the annual Rent and MAG shall be increased, or decreased, as the case may be, pro rata, to reflect the increase or decrease, as the case may be, in the size of the replacement Facilities compared to the original Facilities.

- B. With respect to a Facilities Change where the aggregate square footage of the original Facilities will be expanded or contracted by more than ten percent (10%), Operator may terminate this Lease by giving notice thereof to County within thirty (30) days after the Change Notice is given. In the event Operator gives such notice of termination, then this Lease shall terminate on the Target Effective Date and on such date, Operator shall surrender the Facilities in the condition required below.

Provided Operator does not terminate this Lease pursuant to the foregoing, Operator shall cause the Facilities to be expanded or contracted as described in the Change Notice on or before the date described therein. Once the expansion/contraction work is completed, and County has approved the work, Operator must submit to County (i) a certificate from Operator’s architect certifying that the expansion/contraction work was completed in strict compliance with the plans and specifications approved by County, (ii) copies of paid invoices showing the costs actually paid by Operator for the remodeling and Operator’s out-of-pocket moving costs, and (iii) lien releases from all contractors, subcontractors, and materialmen entitled to payment in connection with the expansion/contraction work. Following its review and approval of those submissions, County will reimburse Operator for all reasonable costs of the expansion/contraction work which costs shall be documented in accordance with Sub-Article 4.08; provided that County may, in County’s sole discretion, make such reimbursement by issuing Operator a rent credit. In no event will County be obligated to pay or reimburse Operator for any other costs or expenses, including business interruption costs, lost profits, loss of goodwill, or any indirect or consequential damages of any kind.

With respect to a Facilities Change where the aggregate square footage of the original Facilities will be expanded or contracted by more than ten percent (10%), the annual Rent and MAG shall be increased, or decreased, as the case may be, pro rata to reflect the increase or decrease, as the case may be, in the size of the expanded or contracted Facilities compared to the original Facilities.

Any Required Relocation or Facilities Change shall be memorialized by a formal amendment of this Lease.

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

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

Without limiting the preceding, the Operator is additionally advised the passenger traffic, terminal utilization, and airlines operating at Miami International Airport may change over the course of this Agreement. The County shall not be liable for any decrease in profitability or increase in costs to the Operator on account of same, nor shall such causes relieve the Operator of its obligations under this Agreement.

- 1.10 FACILITIES CONCEPT:** The Facilities as referenced in Exhibit A, "Facilities" shall be used solely for their assigned and approved concept as described in Article 2 "Use of Facilities". Failure to maintain the concept category may result in damages as indicated in Sub-Article 3.23 "Damages".

ARTICLE 2 – USE OF FACILITIES

- 2.01 USE OF FACILITIES:** The Operator shall manage, operate and maintain the Lounge Facilities in a first class manner for the Permitted Use 365 days a year, except during periods of alterations or renovations to the Premises approved by Landlord in accordance with the provisions of this Lease governing Tenant improvements, construction and alterations, or other temporary closures to accommodate Tenant's legitimate business needs (such as conducting inventory), of which Landlord shall receive at least ten days prior notice.

If Operator is in violation of any law, rule, or regulation, the County may require the Operator to comply with same, irrespective of the failure of an Authority Having Jurisdiction to issue a citation, notice to cure, or other advisory document.

All concession activities are reserved for the County. The County may approve the sale of certain amenities, within the Facilities upon written request by the Operator and payment of Percentage Fees as required in Article 3. Permitted amenities shall include (1) food & beverage sales, under the conditions specified in this Agreement, (2) Liquor sales, and Gift Specialty merchandise.

The Operator shall be entitled to display advertising within the Facilities pertaining to marketing programs arising out of written agreements between the Operator and affiliated marketing partners under system-wide agreements, upon the submission to the Department of a copy of the agreement or relevant portions thereof Advertising that will be visible from outside of the facility shall be subject to the prior approval if the Department, which shall not be unreasonably withheld, conditioned or delayed.

- 2.02 INSTALLATION OF EQUIPMENT:** The Operator, upon written request, approved in writing by the Department, shall have the right to install, maintain, repair, replace and operate, at its sole cost and expense, on and off the Facilities, and between the Facilities and other premises leased or used by the Operator, along such rights-of-way as may be approved by the Department, such computer equipment, communications and facilities, together with required conduits, tubes and power lines, as may be necessary and convenient in the opinion of the Operator to operate its facility.
- 2.03 COUNTY'S RESERVATION OF RIGHTS:** County specifically reserves the right to develop, install and generate revenues from telecommunications equipment, systems and capabilities within all Airport facilities. Notwithstanding the Operator's exclusive use of the Facilities leased to the Operator hereunder from time to time, County shall be entitled to make use of the Facilities for the installation and use of telecommunications equipment, provided such installation and use does not unreasonably interfere with the Operator's use of the Facilities for the purposes set forth in this Article 2. County reserves the general right to make use of the Airport and its facilities and to generate revenues therefrom, except to the extent specifically granted to the Operator hereunder.

If the Operator is in violation of any law, rule, or regulation, the County may require the Operator to comply with same, irrespective of the failure of an Authority Having Jurisdiction to issue a citation, notice to cure, or other advisory document.

The express reservation of rights in this Section shall not be construed as a limitation on County rights as may expressly or by implication exist elsewhere in this Lease, nor shall it be a limitation on the County's right to regulate or exercise of its police powers, and Operator's rights hereunder are expressly subordinate to such regulatory or police powers.

- 2.04 OPERATOR SERVICES AND SALES RIGHTS:** The Operator shall not allow any services or the sale of any item or product not contemplated in this Agreement and approved by the County. Any such sales by the Operator of services, products, or items not specifically approved herein, in writing by the Department, shall constitute a violation of this Agreement. In the event of such violation, the Operator shall discontinue the sale or service of the unapproved product immediately, upon written notice from the Department. Failure by the Operator to discontinue such sales within twenty-four (24) hours shall subject the Operator to Damages pursuant to **Sub-Article 3.23 "Damages"**.
- 2.05 NEW CONCEPTS:** The Operator and the Department may modify, by mutual agreement, the concept as agreed to by the Department and the Operator, which will be reflected in a revision to this Agreement with a revised Percentage Fee as applicable for the category as provided for in **Article 3 "Payments and Reports"**, and a revised **Article 2 "Use of Facilities"**.
- 2.06 SCOPE OF SERVICES:** The Operator hereby agrees that it will design, construct, operate and maintain the Facilities depicted in Exhibit A, for the Permitted Use and in accordance with the following:
- A. Construction
- Operator shall construct new Facilities in accordance with **Article 4 "Improvements to the Facilities"**.
- B. General
- The Operator shall: (i) operate and maintain the Facilities in a neat, clean, and first-class manner and condition; (ii) provide sufficient and trained personnel; (iii) provide safe and secure Facilities for guests; (iv) provide prompt, courteous and exceptional customer service; (v) operate in such a manner as to maximize sales.
- C. Manage
- The Operator shall comply with the requirements of the multiple Authorities Having Jurisdiction overseeing food safety in Florida. These include but are not limited to: the Department of Health, the Department of Agriculture and Consumer Services, and the Department of Business and Professional Regulation.
- D. Operate
1. Hours of Operations: The Operator shall operate the Lounge a minimum of sixteen (16) hours daily, between the hours of 5.00 a.m. and 11.00 p.m., or such other hours as Operator and Department may agree from time to time.

2. Customer Service: The Operator shall provide exceptional customer service emphasizing customer satisfaction and responding to customer/passenger complaints on a timely basis. The Operator (and Operator's Third Party Contractor, as applicable) will submit their customer service-training program thirty (30) days prior to the date of Beneficial Occupancy, for the Department's review and approval, in lieu of an established branded concept customer service program, which will be taken at face value.

The Operator shall participate in MDAD customer service program(s) and airport-wide customer service programs implemented by the Department.

E. Maintain

1. Brand: The Operator shall operate its American Express branded lounge and shall maintain and protect the brand name and trade dress in accordance with Operator's prototypical lounge operation and branding.
2. Maintenance: The Operator shall maintain or cause to maintain the Facilities in accordance with this Lease and pursuant to applicable Department guidelines, as may be promulgated from time to time.

2.07 ANNUAL MARKETING PLAN SUBMISSION: Not Used.

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

ARTICLE 3 –PAYMENTS AND REPORTS

3.01 PAYMENTS TO COUNTY: Commencing on the date of Beneficial Occupancy, the Operator agrees that payments of (A) Rent pursuant to **Sub-Article 3.06 "Rental"** and (B) Percentage Fee in accordance with **Sub-Article 3.04 "Percentage Fee to the Department"** shall be due to the County (Rent and Percentage Fee, collectively, the "Lounge Rent"), provided, however, that for each Lease Year, Operator agrees to pay the greater of (i) the

Lounge Rent or (ii) the Minimum Annual Guarantee ("MAG"), which shall commence upon the Beneficial Occupancy of the Private Lounge and pursuant to Sub-Article 3.03 "Escalation of the Minimum Annual Guarantee."

Operator agrees that Operator shall pay the Department a Minimum Annual Guarantee of One Million Dollars (\$1,000,000.00) annually.

The Minimum Annual Guarantee payment shall be in U.S. funds, prorated and payable in twelve equal monthly payments of \$83,333.34 ("Minimum Monthly Guarantee" or "MMG") on or before the first day of each month, in advance, without billing or demand, plus applicable taxes as may be required by law at the offices of the Department as set forth in Sub-Article 3.16 "Address for Payments."

For each month during the term, Operator shall make monthly payments of Minimum Monthly Guarantee and in the event that the sum of the monthly installment of Annual Rent and the Percentage Fee due for any month (the "Monthly Lounge Rent") exceeds the MMG for such month, Operator shall pay to County that amount by which the Monthly Lounge Rent exceeds the MMG.

Payments pursuant to Article 3 "Payments and Reports" does not contemplate and specifically omits any "annual true-up" calculation or credit payment to the Operator. In the event that monthly payments to the County—whether MAG payments or payments of rent plus percentage fees—would, over the term of a lease year, result in total payments to the County in excess of the payment which would be due in the event that the annual MAG was compared to annualized rent plus annualized percentage fees, no refunds or credits will be provided to the Operator.

3.02 NO NEGOTIATIONS OR ADMINISTRATIVE MODIFICATIONS: The Operator understands and agrees, that the terms and conditions of Sub-Article 3.01 "Payments to County" and Sub-Article 3.04 "Percentage Fee to the Department" are not subject to negotiation or adjustment for any reason, including, but not necessarily limited to, airport construction, airline relocation, airline bankruptcies, change in airline service, and the like, except in the event of an act of God or an event of force majeure as such term is defined in Sub-Article 21.10 "Force Majeure". Nor shall the County be liable for any reduction in sales or disruptions or delays caused in whole or in part by any of the foregoing at any time during the Term, and any Extension of this Agreement. If the Operator's Facilities are so damaged as to significantly impact the Operator's operations for a period in excess of seventy-two (72) hours, the Department shall provide a proportionate abatement of the MMG for that portion of the Facilities rendered unusable for that period of time that the County is unable to make repairs required by Sub-Article 6.01 "Department Services". For clarification, the proportionate abatement of the MMG referenced in the preceding sentence shall include a proportionate abatement of Monthly Lounge Rent.

3.03 ESCALATION OF THE MINIMUM ANNUAL GUARANTEE: The Minimum Annual Guarantee shall increase three (3) percent annually as of the first day of each Lease Year during the Term and any Extension.

3.04 PERCENTAGE FEE TO THE DEPARTMENT: A Percentage Fee based on the percentages of Gross Revenues payable for the applicable categories specified in Sub-Article 3.05 "Concession Category Fee" shall be payable by Operator to the County with respect to Gross Revenues received by Operator in each Lease Year. Percentage Fee shall be

reported monthly in accordance with Sub-Article 3.12 "Reports of Gross Revenues" and shall be reported for each Lease year in accordance with Sub-Article 3.18.

Monthly Percentage Fee payments to the Department payable on any unreported Gross Revenues, determined by the annual audit required pursuant to Sub-Article 3.18 "Annual Audit", are considered as having been due on the tenth (10th) Day of the month following the month during which the unreported Gross Revenues were received or accrued.

3.05 CONCESSIONS CATEGORY FEE: The Operator shall pay the Department the Percentage Fee of applicable Gross Revenues for the corresponding category.

CONCEPT CATEGORY	APPLICABLE PERCENTAGE
Guest Fee/ Day Passes	20%**
Food	13%
Beer, Liquor & Wine	18%
Advertising and Promotions	25%
Merchandise	13%
Other	To be negotiated

** Operator will pay the higher of (i) 20% of Gross Revenues from Guest Fee/ Day Passes sold in their Lounge or (ii) prevailing Guest Fee/ Day Passes rate at other Airport Lounges (currently \$9.63 per Guest Fee/ Day Pass).

3.06 RENTAL: The Rental payable with respect to the Lounge shall be the prevailing Class II Terminal rental rate, which is currently \$119.88 per Square Foot, as of the date of Beneficial Occupancy, which shall be payable in accordance with Article 3 "Payments and Reports".

The Concessionaire shall be required to pay the prevailing Terminal rental rates for Storage Space. Payments shall commence on the beneficial occupancy date of Beneficial Occupancy of such space.

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

3.08 COMMON WAREHOUSE LOGISTICS FEE: In the event the Department initiates a Common Logistics Program the actual costs incurred to rent any such off-Airport properties

for storage and the actual costs incurred in the operation of the common logistical support service program (including the purchase or renting of any equipment needed to operate such program), as may be determined by the Department and/or the Operator from time to time, shall be included in the Common Logistics Fee. The Department reserves the right to approve and review the basis of the actual costs and allocation thereof should the Operator elect to implement a common logistics support service program. The Department also reserves the right to either itself impose or require that the Operator impose the Common Logistics Fee in a non-discriminatory manner within store categories. In the event the County elects to implement such fee, the Operator shall be notified, in writing, no less than forty-five (45) Days prior to the implementation of such fee. The Operator may elect not to agree to the fee by opting out of the Agreement in its entirety, and, if so, must notify the Department thirty (30) Days after receipt of written notification by the Department. In the event the Operator does not give such notice, the fee will be implemented accordingly.

3.09 CONCESSION MARKETING FEE: NOT USED

3.10 MAG PERFORMANCE BOND: Within thirty (30) Days of the Lease Effective Date of this Agreement, the Operator shall provide the Department a Performance Bond to guarantee payment of the MAG for the Facilities, and if any, of rental for the lease of storage spaces. Operator shall keep such Performance Bond in full force and effect during the Term and any Extension of this Agreement, as applicable, and thereafter until all financial obligations, reports or other requirements of this Agreement are satisfied. The Performance Bond shall be a surety bond. In the alternative, an irrevocable letter of credit, or other form of security acceptable to the Department may be furnished. Any such form of security instrument shall be endorsed as to be readily negotiable by the Department for the payments required hereunder. The Performance Bond or other security instrument shall be effective for the current year of operation with automatic renewal for each of the remaining years under this Agreement, including any extensions naming the County as obligee and issued by a surety company or companies in such form as approved by the County Attorney. The amount of the Performance Bond or other security instrument shall initially be in an amount equal to seventy-five percent (75%) of the MAG amount for the Facilities, provided for in **Sub-Article 3.01, "Payments to County"**, which is equal to \$750,000, the amount of the Performance Bond shall be adjusted as necessary to reflect any increases in the MAG and lease of storage spaces.

The Department may draw upon such form of security instrument, if the Operator fails to pay any monies or perform any obligations required hereunder following applicable notice and cure periods specified herein. Upon notice of any such draw, Operator shall immediately replace the Performance Bond with a new Performance Bond in the full amount of the Performance Bond required hereunder. A failure to renew the Performance Bond, or increase the amount of the Performance Bond, or other forms of security instrument, if required due to such draw, shall (i) entitle the Department to draw down the full amount of such Performance Bond, and (ii) be a default of this Agreement entitling Department to all available remedies. Provided the Operator is not in default and fully complies with all the payment requirements of this Agreement, the payment security instrument will be returned to the Operator within one hundred eighty (180) Days after the end of the Term or any Extension of the Term.

- A. All bonds shall be written through surety insurers authorized to do business in the State of Florida as Surety, with the following qualifications as to management and financial strength according to the latest edition of Best's Key Rating Guide, published by A.M. Best Company, or its equivalent, subject to the approval of MDAD Risk Management:

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

- B. Surety companies not otherwise qualifying with this paragraph may optionally qualify by:
- 1) Certifying that the surety is otherwise in compliance with the Florida Insurance Code, and
 - 2) Providing a copy of the currently valid Certificate of Authority issued by the United States Department of Treasury under ss. 31 U.S.C. 9304-9308.

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

- C. For bonds in excess of \$500,000 the above provisions will be adhered to, plus the surety insurer must have been listed on the U.S. Treasury list for at least three consecutive years, or currently hold a valid Certificate of Authority of at least 1.5 million dollars and listed on the Treasury list.
- D. The attorney-in-fact or other officer who signs the bond for a surety company must file with such bond a certified copy of his/her power of attorney authorizing him/her to do so.

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

The Bonds shall be delivered to the Department as indicated above.

In the event the Surety on the Bond given by the Operator becomes insolvent, or is placed in the hands of a receiver, or has its right to do business in its State of domicile or the State of Florida suspended or revoked as provided by law the Operator must provide a good and sufficient replacement bond.

Cancellation of any bond or non-payment by the Operator of any premium for any bond required by this Contract shall constitute a breach of this Contract. In addition to any other legal remedies, the Department at its sole option may terminate this Contract.

- 3.11 TAXES:** The Operator shall be solely responsible for the payment of all applicable taxes, levied upon the fees and other charges payable by the Operator to the Department hereunder, whether or not the same shall have been billed or collected by the Department, together with any and all interest, Damages and charges levied thereon. The Operator hereby agrees to indemnify the County and Department and hold it harmless from and against all claims by any taxing authority that the amounts, if any, collected from the Operator and remitted to the taxing authority by the Department, or the amounts, if any, paid directly by the Operator to such taxing authority, were less than the total amount of taxes due, and for any sums including interests and Damages payable by the Department as a result thereof. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.
- 3.12 REPORTS OF GROSS REVENUES:** On or before the tenth (10th) Day following the end of each month throughout the Term and any Extension of this Agreement, the Operator shall furnish to the Department, a Statement of Monthly Gross Revenues, using Exhibit I "Monthly Report of Gross Revenues". The report shall list each Facility under this Agreement, together with any Percentage Fee due to the Department for the applicable month pursuant to Sub-Article 3.04 "Percentage Fee to the Department". The Operator shall certify as to the accuracy of such Gross Revenues in such form as shall be prescribed by the Department. The Department may modify from time to time, the form of reporting upon not less than thirty (30) Days written notice to the Operator. The statement must be signed by an officer (if the Operator is a corporation), partner (if a partnership), or owner (if a sole proprietorship) of the Operator, and identify all Gross Revenues by Facility reported to the Operator during such month. Failure to provide the Monthly Report of Gross Revenues by the tenth (10th) Day shall result in a late fee Damage of fifty dollars (\$50.00) per Day to a maximum of \$750 a month, as provided in Sub-Article 3.23 "Damages".
- 3.13 OTHER REPORTS:** The Operator shall provide the Department with financial data and operating statistics in a format and frequency specified by the Department, and the Department shall provide no less than thirty (30) Days written notice of the format and frequency required for said financial data and operating statistics.
- 3.14 LATE PAYMENT:** In the event the Operator fails to make any payments as required to be paid under the provisions of this Agreement within ten (10) business days of the due date, delinquency charges established by the Board will be imposed. Such rate is currently 1½% delinquency charge per month.
- 3.15 DISHONORED CHECK OR DRAFT:** In the event the Operator delivers a dishonored check or draft to the Department in payment of any obligation arising under this Agreement, the Operator shall incur and pay a service fee of TWENTY-FIVE DOLLARS (\$25.00), if the face value of the dishonored check or draft is fifty dollars (\$50.00) or less, THIRTY DOLLARS (\$30.00) if the face value of the dishonored check or draft is more than fifty dollars (\$50.00) and less than three hundred dollars (\$300.00), or FORTY DOLLARS (\$40.00), if the face value of the dishonored check is three hundred dollars (\$300.00) or more, or five percent (5%) of the face value of such dishonored check or draft, whichever is greater, plus Damages imposed by law. Further, in such event, the Department may require

that future payments required pursuant to this Agreement be made by cashier's checks or other means acceptable to the Department.

3.16 ADDRESS FOR PAYMENTS: The Operator shall pay all monies payable and identify the Agreement for which payment is made, as required by this Agreement, to the following:

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

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

By Mail: Miami-Dade Aviation Department
Finance Division
P.O. Box 592624
Miami, Florida 33152-6624

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

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

By Credit Card: Miami-Dade Aviation Department
Finance Division- Cashier's Office
305-876-0652

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

3.18 ANNUAL AUDIT: Within ninety (90) Days after the end of each Lease Year and within ninety (90) Days following expiration or earlier termination of this Agreement, the Operator shall, at its sole cost and expense, provide to the Department, an audited report of monthly Gross Revenues and Percentage Fees for such prior Lease Year, separately stating its Gross Revenues, containing an opinion, prepared and attested to by an independent certified public accounting firm, licensed in the State of Florida. The audited report, as detailed in Exhibit G "Independent Auditor Report", shall include a schedule of monthly Gross Revenues and Percentage Fees paid to the Department under this Agreement, prepared in accordance with Generally Accepted Auditing Standards. The report shall also be accompanied by a management letter containing the findings discovered during the course of the examination, recommendations to improve accounting procedures, revenue and internal controls, as well

as significant matters under this Agreement. In addition, the audit shall also include as a separate report, a comprehensive compliance review of procedures to determine whether the books of accounts, records and reports were kept in accordance with the terms of this Agreement for the period of examination. Each audit and examination shall cover the period of this Agreement. The last such report shall include the last day of operation. There shall be no changes in the scope of the reports and letters required hereunder without the specific prior written approval of the Department. If such schedules indicate that the Percentage Fees for such period audited have been underpaid, the Operator shall submit payment therefore within forty-five (45) Days after the completion of the reports to the Department as stated in **Sub-Article 3.16 "Address for Payments"** together with interest on any underpaid Percentage Fees at the rate set forth in **Sub-Article 3.14 "Late Payment"**.

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

If it is established that the Percentage Fees have been underpaid to the Department, the Operator shall forthwith, pay the difference with interest thereon at the rate set forth in **Sub-Article 3.14 "Late Payment"** from the date such amount or amounts should have been paid.

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

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

3.20 RECORDS AND REPORTS: The Operator shall, at all times during the Term and any Extension hereof and in accordance with applicable law, maintain at the Operator's principal corporate office located in the United States and make available to the Department in Miami-Dade County, Florida, complete and accurate books and records of all receipts and disbursements from its operations on the Facilities, in a form consistent with good accounting practice. In addition, the Operator shall install or cause to be installed for use at all times in each Facilities such devices and forms as are reasonably necessary to record properly, accurately and completely all merchandise sales and services from each Facilities. The form of all such books of account records and reports shall be subject to the approval of

the Department and/or the auditors of the County (one or more of the following: the designated external auditing firm or other certified public accounting firm selected by the Department, or the Audit and Management Services Department of the County) prior to commencement of operations hereunder.

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

1. The Operator's bank account statements (separate bank accounts shall be maintained for receipts from payments to the Operator and no receipts from any other source shall be deposited in such accounts);
2. A compiled report of transactions by Facilities showing all Gross Revenues and all exclusions from Gross Revenues by category, which report shall be subtotaled by day and totaled by month. The monthly total shall correspond with the amounts reported to the Department on the Operator's monthly "Revenue Reports"; and
3. Such other records, if any, which would normally be examined by an independent certified public accountant in performing an examination of the Operator's Gross Revenues in accordance with generally accepted auditing standards and the provisions of this Agreement.

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

- 3.21 ADDITIONAL FEES DUE:** If the Department has paid any sum or has incurred any obligation or expense for which the Operator agreed to pay or reimburse the Department, or if the Department is required or elects to pay any sum or incur any obligation or expense because of the failure, neglect or refusal of the Operator to perform or fulfill any of the terms or conditions of this Agreement, then the same shall be deemed due and subject to an additional administrative fee of twenty-five percent (25%) of such payment, obligation, or expense.
- 3.22 UTILITIES:** The cost of all utilities used or consumed on the Facilities shall be borne by the Operator; provided, however, except with respect to the Operator's storage space as defined in Sub-Article 1.05 "Storage Space" at the Airport. The Department requires the

Operator where such capability exists, to provide and install meters for utilities used at its expense. If the Facilities are not provided with separate electric, gas, and/or water meters, the Operator agrees to pay for such utilities in the Facilities as a monthly charge, plus any applicable taxes, upon billing by the Department, or utility companies. If billed by the Department, the Department at its sole discretion, will base this monthly charge on (i) a survey of consumption by the Department and current non-discriminatory rates charged others in the Terminal building or (ii) at the option and expense of the Operator on actual usage measured by temporary meters, arranged and paid for by the Operator. This monthly charge may also be adjusted on a non-discriminatory basis and billed retroactively from time to time based on changes in consumption and rates. The Operator hereby agrees to pay the same within thirty (30) Days after it has received the Department's invoice thereof. The Operator shall pay for all other utilities used by it including telephones and telephone service hook-up, data lines and additional electrical and communications services required.

3.23 DAMAGES: If the Operator defaults under any of the covenants or terms and conditions, of this Agreement, Department shall impose the financial Damages described below, as a result of the violation(s), on a daily basis, in addition to any other Damages permissible by law and/or pursuant to the provisions of this Agreement, until said violations are remedied:

<u>Violation</u>	<u>Fee</u>
Violation of Permitted Use of the Facilities	\$ 100 per Day/per Facility
Failure to Maintain Required Hours of Operation	\$ 25 per hour/per Facility
Failure to Submit Required Documents and Reports*	\$ 50 per Day/per Report*
Unauthorized Advertising/Product Sale	\$ 50 per Day/per Facility
Failure to maintain Facilities clean	\$ 50 per Day/per Facility
Failure to maintain Competitive Pricing or to conduct the surveys as required	\$ 50 per Day/per Facility
Installation of Unapproved Items in the Facilities	\$ 50 per Day/per Facility
Violations of other terms and conditions	\$ 75 per Day/per Facility

*Up to \$750 a month

The foregoing is due and payable from the Operator; however, it shall not be construed as prohibiting the Operator from imposing the financial Damages described above, on a daily basis, as applicable, in addition to any other Damages permissible by law. Recovery of these amounts by the County for the duration of the default shall not deprive the County of the right to terminate this agreement pursuant to Article 12 "Default and Termination by County" herein, as may be appropriate.

3.24 PAYMENT SECURITY: On or before the Lease Effective Date of this Agreement, the Operator shall provide the Department with an irrevocable standby letter of credit in the format approved by the Department or cash for the payments required by this Sub-Article in an initial amount equal to twenty-five percent (25%) of the MAG amount which is equal to \$250,000.00. The amount of the payment security shall be adjusted as necessary to reflect any increases in the MAG, and lease of storage spaces, if applicable. The payment security shall be kept in full force throughout the Term and any Extension(s) of this Agreement thereof. The Department may draw upon such payment security instrument if the Operator fails to make the payments secured by this Sub-Article. Upon notice of any such draw, the Operator shall immediately replace the payment security with a new payment security in the

full amount of the payment security required hereunder. A failure to renew the payment security, or increase the amount of the payment security, if required pursuant hereto, shall (i) entitle the Department to draw down the full amount of such payment security, and (ii) shall constitute a default of this Agreement as set forth in **Sub-Article 12.02 "Payment Default"**, entitling Department to all available remedies.

ARTICLE 4 – IMPROVEMENTS TO THE FACILITIES

4.01 IMPROVEMENTS TO THE FACILITIES: On the Lease Effective Date, Tenant shall (i) take possession of the Premises, (ii) cause the Initial Improvements necessary and appropriate to commence operations in the Premises to be substantially completed at Tenant's sole cost, and (iii) cause the Facility to be open for business within three hundred and sixty (360) Days.

The Operator shall be required to invest a minimum of Five Million Dollars (\$5,000,000.00) for the Initial Improvements to all Facilities listed in Exhibit A. Notwithstanding the actual amount of design and engineering costs incurred with respect to improvements for the Facilities, the maximum proportion of soft costs permitted to be included as approved improvements shall be no more than fifteen percent (15%) of the total design and engineering cost. All improvements shall be subject to review and approval by the Department. The Department may, with mutual agreement, fund certain improvements needed to support the concession space and allow the Operator to build such improvements in compliance with MDAD Exhibit E "Retail Concessions Design Guidelines", Exhibit F "Tenant Airport Construction Non-Reimbursable Projects (TAC-N) or "Tenant Airport Construction Reimbursable Projects (TAC-R) Design and Construction Procedures, as may be amended from time to time. The County and Operator acknowledge that the County has not committed to the design or construction of any particular improvement, on either a reimbursable or non-reimbursable basis.

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

Installations and other improvements not constituting Improvements hereunder shall include improvements that (i) are non-fixed, (ii) have not been approved by the Department pursuant to **Sub-Article 4.08 "Cost Documentation"**, and (iii) can be removed without damage to the Facilities. The Operator is liable and shall indemnify the Department for any damage to the Facilities which results from the removal of said improvements. This provision shall survive the termination or expiration of this Agreement.

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

and costs incurred by either the Operator to provide such office or storage space shall not constitute approved improvements.

4.02 DESIGN OF IMPROVEMENTS: Plans for the design of Approved Improvements will be in accordance with Exhibit E "Retail Concessions Design Guidelines", Exhibit F "Tenant Airport Construction Non-Reimbursable Projects (TAC-N) or "Tenant Airport Construction Reimbursable Projects (TAC-R) Design and Construction Procedures", as applicable, the "MDAD Life Safety Master Plan", the "MDAD Public Address System Master Plan", and the "MDAD Design Guidelines Manual" available online at www.miami-airport.com as may be established and amended from time to time. As plans for the Approved Improvement of individual Facilities or common area improvements are completed, the Operator shall submit to the Department for review, approval or modification detailed final plans ("Final Plans") and specifications (including materials, colors, textures and fixtures), construction cost estimates and schedules for the construction of the improvements. The Final Plans shall be prepared by an architectural, interior design and/or engineering firm registered in the State of Florida and in accordance with the Florida Building Code and all applicable State and local laws, ordinances, and regulations.

4.03 ASBESTOS ABATEMENT: Not Used

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

Prior to the commencement of any installation/construction work by the Operator, the Operator shall provide or cause to be provided to the County copies of a fixed price contract or contracts for all work to be performed at the Facilities. The work to be performed under such contract(s) shall be insured by the "Surety Performance and Payment Bond" provided by Operator to the County in the form contained in Exhibit B "Surety Performance and Payment Bond" in this Agreement. The Surety Performance and Payment bond shall be in full force throughout the term of the installation/construction contract.

4.05 IMPROVEMENTS FREE AND CLEAR: All Approved Improvements, upon completion, shall immediately become the property of the County, free and clear of any liens or encumbrances whatsoever, other than the County's obligation to reimburse the Operator for the unamortized value of the approved improvements as provided in this Agreement. The Operator agrees that any contract for construction, alteration or repairing of the improvements or Facilities or for the purchase of material to be used, or for work and labor to be performed, shall be in writing and shall contain provisions to protect the County (and the Operator for contracts entered into by) from the claims of any laborers, subcontractors or material men against the Facilities or improvements.

4.06 OTHER REQUIREMENTS: The Operator shall apply for and obtain a building permit from the County for all appropriate inspections and a Certificate of Occupancy upon

completion. Within sixty (60) Days following the completion of construction of Approved Improvements, the Operator shall furnish to the Operator and the County one complete set each of legible prints (black line), of construction drawings in electronic file format and in full compliance with Autodesk's DWG file format and standard revised as to "as built". Based upon submission date, the AutoCad.dwg version must be within two years of the latest release. MDAD will not accept the submission of any AutoCad drawing deliverable which contains references to external source drawing files. The closeout document package should include all pertinent shop and working drawings, copies of all releases of all claims and a copy of the Certificate of Occupancy provided the Operator does not disseminate such information, refer to Transportation Security Regulations (TSR), 49 C.F.R. 1520, et al., Protection of Sensitive Security Information.

No Facility will be allowed to open without obtaining a Temporary Certificate of Occupancy or a Certificate of Occupancy.

- 4.07 REVIEW OF CONSTRUCTION:** The County shall have the right, but not obligation, to periodically observe the construction to ensure conformity with the Final Plans and any changes thereof requested by the Operator.
- 4.08 COST DOCUMENTATION:** Within one hundred eighty (180) Days from the date of Beneficial Occupancy, the Operator shall submit to the County a certified audit of the monies actually expended in the design and construction of the Approved Improvements by Facility in accordance with the Final Plans, prepared by an independent certified public accounting firm ("Auditor"), approved in advance by the County (the "Certified Audit") to the attention of Controller- MDAD Finance Division with same address as for payments as stated in **Sub-Article 3.16 "Address for Payments"**. The Operator shall be responsible for documenting for the Auditor that the monies that were expended are true and correct. The costs of design and construction, in accordance with the Final Plans and any changes thereto requested by the Operator and approved by the County, including the costs of required bonds, construction insurance, and the construction audit, shall not include the cost of any other consultant or accountant fees, financing or legal fees and personal property of the Operator, as the case may be. No non-receipted expenditures will be credited. Operators not submitting certified audits within the allotted time may be billed a penalty of fifty dollars (\$50.00) per day. Upon reconciliation, any difference due the County shall also include an administrative fee of ten per cent (10%) of the monies due the County on the build-out of the Facilities. In the event of any disputes between the County and the Operator as to whether certain costs are to be included in the audit, said dispute shall be submitted to the consulting engineer named pursuant to the Trust Agreement, as defined in **Sub-Article 17.01 "Incorporation of Trust Agreement by Reference"**. The decision of said consulting engineer, acting in good faith, shall be final and binding upon the parties hereto.

The Department shall notify the Operator in writing that it has approved or disapproved the certified costs for each of the Facilities and the common area improvements (if any) detailed in the Certified Audit within sixty (60) Days from the date of its receipt of the Certified Audit. If the Operator fails to submit the Certified Audit within the time prescribed above for any of the Facilities, then a penalty will be assessed as noted in **Sub-Article 3.23 "Damages"**. The Approved Improvement cost for purposes of calculating the County's obligation to reimburse the Operator for un-amortized Improvement costs for such Facilities pursuant to **Sub-Article 4.09 "Amortization Schedule"** shall equal the lesser of the five

million dollars (\$5,000,000.00) Operator minimum investment or the square footage rate of improvement costs for such Facilities certified by the Auditor.

If the approved total receipted amount is below the Operator minimum investment and is depicted as such in the results of the Certified Audit, the Operator shall be required to pay to the Department the difference between the expended amount and the minimum investment, within one hundred eighty (180) Days from the date of Beneficial Occupancy of the corresponding Facilities.

4.09 AMORTIZATION SCHEDULE: If, at any time during the Term of the Agreement, excluding any extension, the Department requires a Required Relocation or Facilities Change, and as a result of which this Agreement is in accordance with Sub-Article 1.07 "Addition Deletion and Modifications of Facilities", the Department shall reimburse the Operator the unamortized cost of the Initial Improvements for the Facility. The Operator shall amortize the cost of the Initial Improvements for a period not to exceed one hundred twenty (120) months using the straight-line depreciation method.

Approved Improvement that may be amortized shall include the following items only:

1. Directly contracted costs of construction.
2. Furniture, fixture, equipment and signage purchased and installed for direct use in the facility exceeding \$1,000 per item.
3. Design and engineering costs not to exceed fifteen percent (15%) of the total approved construction, installation, store displays, furniture, fixture, equipment and signage cost.

There will be no other reimbursement.

A certified audit of monies for the above expenditures in accordance with the requirements of Sub-Article 4.08 "Cost Documentation" shall be performed at the expense of the Operator within one hundred eighty (180) Days of Beneficial Occupancy. No non-receipted expenditures will be credited. If the approved total receipted amount is below the five million dollars (\$ 5,000,000.00) Operator minimum investment, the Operator will be required to pay the Department the difference between the minimum investment amount and the actual receipted expenditure within ninety (90) Days after billing by the Department. Operators not submitting a certified audit within the allotted time may be billed a Damage of fifty dollars (\$50.00) per Day.

Prior to the commencement of any installation/ construction or other work by the Operator, the Operator shall provide or cause to be provided to the Department copies of a fixed price contract or contracts for all work to be performed at the Facilities. The work to be performed under such contract(s) shall be insured by a Performance and Payment Bond provided by the Operator to the Department in the form contained in Exhibit B "Performance and Payment Bond" in the Agreement. The Performance and Payment Bond shall be in full force throughout the term of the installation/construction contract.

4.10 CONSTRUCTION PERMIT FEE: The Operator shall pay a permit fee to the Department for improvements which would customarily be paid to the County's Building Department as

a condition to issuance of a permit. The permit fee payable by the Operator to the Department is an amount equal to one percent (1%) of the estimated construction cost of the improvements. Such fee shall be used to reimburse the Department its costs of maintaining on-site Building Department staff to review the Operator's plans/specifications. Such fee shall be non-refundable.

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

1) Operator Improvements

Pursuant to the terms of this Agreement, the Operator shall construct or cause to construct certain improvements. The Operator shall provide the Department with a scope of proposed improvements and a preliminary estimate of hard and soft costs for such improvements within a reasonable timeframe. Once the Department and the Operator have mutually agreed on the scope of the improvements and the preliminary estimates, the Operator shall proceed to design and construct or cause to be designed and constructed the improvements in accordance with the provisions of this Agreement.

2) Design and Construction Coordination

Operator shall:

1. Be responsible for construction management and coordination of all improvements to the Facilities.
2. Coordinate meetings architects, if applicable, MDAD's architects, consultants and others, to review procedures, scheduling site surveys and develop build-out schedules.
3. Coordinate the processing and review of improvement submittals. Design and construction shall be in accordance with the MDAD Design Guidelines Manual, Life Safety Master Plan, MDAD Retail Concessions Design Guidelines, Florida Building Code and the TAC-N or TAC-R Procedures, as well as all other applicable codes and regulations.
4. Provide, if applicable, with required information such as, but not limited to, leasehold outline or as-built drawings provided by the Department's Technical Support Division.
5. Provide and coordinate access to Facilities as necessary.
6. Purchase materials and services, and coordinate the fabrication and installation of the Operator development requirement, whereby such elements are the designated responsibility of the Operator, if so implemented.

3) Construction

Operator shall:

1. Attend pre-construction meetings, construction meetings, coordinate construction with if applicable, monitor schedule, and coordinate Facilities development with the Department as required, pursuant to the TAC-N procedures.

2. Adhere to and or cause to adhere to MDAD's TAC-N or TAC-R Design and Construction procedures and requirements.
3. Ascertain that MDAD's TAC-N or TAC-R Design and Construction procedures and requirements, as applicable, are adhered to by all.
4. Monitor and coordinate the construction start, project timetable schedule and completion date for all Facilities.
5. Monitor and report to the Department on on-site activities and progress for improvement work. The Architect/Engineer of record is responsible for day-to-day field observation of all construction activities including, but not limited to inspections, delivery, coordination, and reporting.
6. Monitor construction progress with regard to the schedule and procedures established and make recommendations to the Department for maintaining and improving construction progress as necessary.
7. Establish a uniform system for the timely processing and control of drawings.
8. Review status of drawings with contractor(s) and architect(s) at progress meetings.
9. Review and advise the Department on all changes to the work with regard to cost and impact on the project pro-forma and construction schedule.
10. Monitor punch list completion and review testing and inspection reports for all Facilities.
11. Organize and have available upon request completed project files.
12. Coordinate access to the Facilities to allow staff training and equipment testing.
13. Obtain Certificate of Occupancy the Facilities.
14. Submit Record Drawings (as-built drawings) as per the TAC-N or TAC-R requirements within sixty (60) Days from the issuance date of the Certificate of Occupancy, and deliver them to the Department pursuant to the TAC-N or TAC-R procedures.

4.12 SUSTAINABLE BUILDINGS PROGRAM: Where feasible, Operator shall incorporate Leadership in Energy & Environmental Design ("LEED") elements in its design and construction of the Initial Improvements, including that Operator agrees to meet the LEED Certification required for non-major renovations to existing structures and Operator will endeavor to use LEED Certified materials and products within the space, provided that Operator shall have no obligation to apply for, secure or maintain any particular certification and in no event shall Operator be obligated to implement standards or practices in addition to those standards and practices that would be sufficient to achieve silver certification for the Facilities.

ARTICLE 5 – STANDARDS OF OPERATION

5.01 STANDARDS OF OPERATION: The Operator shall comply with the Department's "Tenant Handbook", Exhibit K; the "Standards of Operations", Exhibit L, the "MIA

Terminal Standards” available on www.miami-airport.com, and all revisions to same promulgated from time to time by the Department.

The Department shall have the right to adopt and enforce reasonable and non-discriminatory rules and regulations and operating performance standards with respect to the use of Facilities, which the Operator agrees to observe and obey. The Department may amend such rules or regulations and operating performance standards from time to time and shall provide copies thereof to the Operator. The Operator shall distribute such rules and regulations and operating performance standards to its employees. The Department shall provide the Operator with reasonable prior written notice, not less than thirty (30) Days, prior to the implementation of any such amendment to the rules or regulations and operating performance standards. Those rules include, but are not limited to, any rules and regulations imposed upon the Department by any governmental agency.

The Operator shall within fifteen (15) Days of receipt of an amendment to Exhibit L “Standards of Operation” implement and comply with (or other Department approved timeline for implementation and compliance with) all amended requirements rules and regulations promulgated for safety or security reasons.’

The Operator acknowledges the desire of the Department, as part of its obligation to ensure the highest level of public service, to provide the public and air traveler an adequate range and quality of service. The Department may monitor, test or inspect the Facilities at any time through the use of its own personnel, and/or the use of a shopping service, and/or by any other reasonable means that do not unduly interfere with the operation of the business. The results of such service audits may be employed by the Department to enforce the obligations in this Agreement.

The Department shall retain the right, in accordance with the provisions of this Agreement, to make reasonable objections to the quality of articles sold, the character of the service rendered to the public, the prices charged, and the appearance and condition of the Facilities, pursuant to Exhibit L “Standards of Operation”, as may be amended from time to time.

ARTICLE 6 – OBLIGATIONS OF THE DEPARTMENT

6.01 DEPARTMENT SERVICES:

- A. Department’s Maintenance Obligation: The Department shall clean, maintain and operate in good condition the terminal building, excluding the Facilities. This obligation includes, but is not limited to, all structural (including, but not limited to, the roof and base floor of the terminal building) and all base building work, maintenance of main electrical and mechanical systems, maintenance of walls and ceilings, and repair/maintenance of the roof. The Department shall maintain the public areas in the terminal building furnished and will provide adequate light, cold water and conditioned air. The Department agrees to make all necessary structural repairs to the Facilities at its own expense; provided, however, that for purposes of this Agreement such structural repairs shall not include any repairs to any equipment installed by the Operator, and further provided that the Operator shall reimburse the Department,

within ten (10) Days of receipt of written demand for such reimbursement, for the cost and expense of all structural repairs required as a result of the negligent or intentional acts of the Operator, its officers, partners, employees, agents, contractors, subcontractors, licensees, or invitees. The Operator shall give the Department written notice (or verbal notice in the event of any emergency conditions which may result in harm to the patrons of the Airport, which verbal notice shall be followed by written notice within twenty-four (24) hours) describing any repair, which is the responsibility of the Department. The Department shall commence the repair process promptly after its receipt of such written notice if the Department agrees that such repair is required and is the Department's responsibility hereunder.

- B. The Operator must ascertain the extent of the existing utility capacities, before designing any new loads to be connected to existing systems and piping. The Department agrees to cooperate in providing access to the Facilities.
- C. All maintenance by the Department may be subject to interruption caused by repair, strikes, lockouts, labor controversies, inability to obtain fuel, power or parts, accidents, breakdowns, catastrophes, national or local emergencies, and other conditions beyond the control of the Department. If the Operator's Facilities are of such a condition as to significantly impact the Operator's operations for a period in excess of seventy-two (72) hours and such damage is not insurable under an insurance policy of the type required to be maintained by the Operator pursuant to this Agreement, the Department may provide a Payment abatement for that portion of the Facilities rendered unusable for that period of time that the Department is unable to make repairs required by **Sub-Article 6.01 "Department Services"**.
- D. **No Other Obligation of Department:** The Operator acknowledges that the Department has made no representations or warranties concerning the suitability of the Facilities for the Operator's use or for any other use, and that except as expressly provided in this Agreement, the Department shall have no obligations whatsoever to repair, maintain, renovate or otherwise incur any cost or expense with respect to the Facilities or any improvements, furnishings, fixtures, trade fixtures, signage or equipment constructed or used on or in the Facilities by the Operator.
 - 1. The Operator hereby confirms that it has made its own investigation of all the costs of doing business under this Agreement, including the costs of furnishings, fixtures, trade fixtures, inventory, signs and equipment needed for the Operator to operate from the Facilities hereunder, that it has done its own projections of the volume of business expected to be generated, that it is relying on its own business judgment concerning its prospects for providing the services required under this Agreement on a profitable basis, and that the Department has not made any representations or warranties with respect to any such matters.
 - 2. The Department does not warrant the accuracy of any statistics or projections relating to the Airport and its operations, which have been provided to the Operator by the Department or anyone on its behalf and the Department shall not be responsible for any inaccuracies in such statistics or their interpretation.
 - 3. All statements contained in this Agreement or otherwise made by the Department or anyone on its behalf concerning any measurement relating to the Facilities or

any other area of the Airport are approximate only, and any inaccuracy in such statements of measurements shall not give rise to any claim by the Operator under or in connection with this Agreement.

4. The Department shall not be liable to the Operator for any loss of business or damages sustained by the Operator as a result of any change in the operation or configuration of, or any change in any procedure governing the use of, the construction improvements of the terminal building.

6.02 SIGNAGE OBLIGATIONS:

- A. The Department shall include Centurion Lounge on all terminal directories and general wayfinding, as deemed appropriate. All signage shall meet all wayfinding and signage guidelines previously established by MDAD.
- B. Operator shall have use of the public circulation floor for advertising space, located below the 3rd story elevator landing outside of the Lounge Space, and within the elevator shaft (the "Amex Branding Area") throughout the term of the Lease. With the prior written approval of the Department, which shall not be unreasonably withheld, conditioned or delayed, Operator shall be permitted to install signage and branding relating to the Centurion Lounge within and on the concourse level elevator shaft that provides public access to the Facility. Exhibit P shows (i) location of such signage and branding and (ii) conceptual signage and branding, although the final design and materials remain to be developed.
- C. In the event that Operator sells or leases this space to third parties, the gross revenues generate by the sale or lease of such space will be included in calculating the percentage fee due to the County pursuant to this Agreement. Operator shall not sell or lease advertising space to third parties without the prior consent of the County as to such particular sale or lease, and shall not allow third parties to display political advertising, material that is immoral, lascivious, or obscene as defined in Section 847.001, Florida Statutes, advertisements which implies or declares an endorsement by MIA of any service and product or point of view without prior written authorization from the Department, or Material promoting competing airports or air carriers that do not currently fly into Miami International Airport.

ARTICLE 7 – FURNITURE, FIXTURES AND EQUIPMENT

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

7.02 AMERICANS WITH DISABILITIES ACT REQUIREMENTS: The Operator will be

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

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

- (A) Require the Operator to remove such equipment, furnishings, fixtures, signs, or carts from the Facilities within five (5) Days following the expiration or earlier termination of this Agreement, subject to the provisions of **Sub-Article 4.01 "Improvements to Facilities"**; or
- (B) Retain any portion of the equipment, furnishings, fixtures, signs, or carts of the Operator (personal property as referred to in **Sub-Article 4.01 "Improvements to Facilities"**) in accordance with the provisions of this Agreement; provided however, the Department shall have no right to use or display any proprietary signs or logos (e.g., brand names owned by, or licensed or franchised to Operator).

ARTICLE 8 – MAINTENANCE

8.01 CLEANING: The Operator shall, at its cost and expense, keep the Facilities clean, neat, orderly, sanitary and presentable at all times. If the Facilities are not kept clean as provided in the Standards of Operation, Exhibit L, the Operator will be so advised and shall take immediate corrective action. Failure to take immediate corrective action may result in Damages being assessed pursuant to **Sub-Article 3.23 "Damages"**.

8.02 REMOVAL OF TRASH: The Operator shall, at its cost and expense, remove or cause to be removed from the Facilities and properly disposed of in Department provided containers, all trash and refuse of any nature whatsoever which might accumulate and arise from the operations hereunder. If the Operator enters into agreements for the janitorial and trash removal or any service within the Facilities, such service providers must have permits issued by the Department to do business at the Airport. Trash shall not be stored in any area visible to the public nor cause a private or public hazard through its means of storage. All edible

items must be contained so as to minimize exposure to pests. Any trash left or stored in any area visible to the public or edible items not properly contained may result in Damages being assessed pursuant to **Sub-Article 3.23 "Damages"**.

The Department reserves the right to charge the Operator retroactively its non-discriminatory proportionate share for waste disposal a proportionate share in a non-discriminatory manner directly by a Department generated bill for actual usage. Such charges shall not exceed the Department's actual costs.

8.03 MAINTENANCE AND REPAIR: Except with respect to the Department's maintenance and repair obligations as set forth in **Sub-Article 6.01 "Department Services"**, the Operator shall maintain and repair or cause to be maintained and repaired the interiors and exterior storefronts of the Facilities. Such maintenance and repairs shall include, but not be limited to, painting, ceiling, walls, floors, laminating doors, windows, equipment, furnishings, fixtures, appurtenances, replacement of ceiling light bulbs, ballast and the replacement of all broken glass, which repairs shall be in quality and class equal to or better than the original work to preserve the same in good order and condition. Maintenance for all equipment furnished by the Operator specifically as a result of their operation shall remain the obligation of the Operator. The Operator shall repair or cause to be repaired, at or before the end of the Term or Extension, if applicable, of this Agreement, all injury done by the installation or removal of furniture and personal property so as to restore the Facilities to the state they were at the commencement of this Agreement, reasonable wear and tear excluded. The Department may, at any time during normal business hours, enter upon the public areas of the Facilities, or with appropriate notice, enter upon the non-public areas of the Facilities, to determine if maintenance is being performed satisfactorily. The Department may enter upon any premise when a premise is not open for business if the Department provides the Operator notice no less than two (2) hours in advance so that a representative of either the Operator, except in the case of real or perceived emergencies where no such representatives shall be required to be present. If it is determined that said maintenance is not satisfactory, the Department shall so notify Operator in writing. If said maintenance is not performed by Operator) to the satisfaction of the Department within seven (7) Days after receipt of such written notice, or if Operator is not using best efforts to diligently perform such maintenance, Department shall have the right to enter upon the Facilities and perform such maintenance and charge the Operator for such services, as provided by **Sub-Article 8.04 "Failure to Maintain"**.

8.04 FAILURE TO MAINTAIN: Upon failure of the Operator to maintain the Facilities as provided in this **Article 8 "Maintenance"**, the Department may enter upon the Facilities and perform all cleaning, maintenance and repairs which may be necessary and the cost thereof plus twenty-five percent (25%) for administrative costs, shall constitute additional rental, and shall be billed to and paid by the Operator, in addition to any Damages imposed by the Department pursuant to **Sub-Article 3.23 "Damages"**.

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

8.05 ENVIRONMENTAL RECYCLING: The Department is actively engaging in the development of environmental programs. A recycling program is planned at the Airport to include the participation of all Airport operators/concessionaire. Participation in this

program, once established, will be mandatory. The Operator shall agree to bear any reasonable and actual costs associated with the implementation and continued operation of this recycling program, or propose for approval by the Department an alternative environmental recycling plan which such approval shall not be unreasonably withheld.

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

- 8.06 FIRE PROTECTION AND SAFETY EQUIPMENT:** The Operator must provide and maintain all fire protection and safety equipment and all other equipment of every kind and nature required by any applicable law, rule, ordinance, resolution or regulation, for the Term and any Extension of this Agreement or any insurance carrier providing insurance covering any portion of the Facilities.

ARTICLE 9 – ASSIGNMENT AND OWNERSHIP

- 9.01 NO ASSIGNMENT:** The Operator shall not assign, transfer, pledge or otherwise encumber this Agreement nor shall the Operator allow others to use the Facilities, without the prior written consent of the Department.

- 9.02 OWNERSHIP OF THE OPERATOR:** Since the ownership, control, and experience of the Operator were material considerations to the County in the award of this concession and the entering into of this Agreement, the Operator shall take no actions which shall serve to transfer or, sell majority ownership or control (deemed to mean more than fifty percent (50%) of the stock) of the Operator without the prior written consent of the Department.

- 9.03 CHANGE OF CONTROL:** If the Operator is a corporation, the issuance of sale, transfer or other disposition of a sufficient number of shares of stock (deemed to mean more than fifty percent (50%) of the stock) in the Operator to result in a change of control of the Operator shall be deemed an assignment of this Agreement for purposes of this Article 9 "Assignment and Ownership". If the Operator is a partnership, transfer of any interest in the partnership, which results in a change in control of such Operator (deemed to mean more than fifty percent (50%) of the ownership interest), shall be deemed an assignment of this Agreement for purposes of this Article 9 "Assignment and Ownership". Notwithstanding anything to the contrary herein contained in Article 9.02 or this Article 9.03, the trading of Tenant's stock (or the stock of any legal entity which, directly or indirectly, controls or is controlled by or is under common control with Operator) on a nationally recognized security exchange shall not be deemed to be an assignment or otherwise prohibited hereunder.

- 9.04 HOLDOVER:**

A. With the Department's Permission:

If the Operator (or anyone claiming through the Operator) shall remain in possession of the Facilities or no less than seventy percent (70%) of the square footage of the Facilities thereof after the termination of this Agreement, by written agreement executed by the

Department the person or entity remaining in possession shall be deemed a tenant at sufferance otherwise subject to all of the provisions of this Agreement. The Operator shall thereafter continue to pay the Minimum Monthly Guarantee; as such Minimum Monthly Guarantee is subject to an annual Consumer Price Index adjustment. Such adjustment will be calculated by dividing the most recent Consumer Price Index published immediately prior to the expiration of the Agreement and the most recent Consumer Price Index published one year immediately prior to the termination date and multiplying such amount by the Minimum Annual Guarantee. The recalculated Minimum Annual Guarantee will be used as the basis for calculating the Minimum Monthly Guarantee. Notwithstanding the adjustment, in no event will any adjustment by the Consumer Price Index cause the Minimum Annual Guarantee for any year to be lower than the amount of such Minimum Annual Guarantee for the Term. If the Consumer Price Index is discontinued or revised during the Term, any such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Consumer Price Index had not been discontinued or revised.

In addition, the Operator shall pay Monthly Percentage Fee (if Operator remains in such Space), on account of the holdover use and occupancy of the Facilities. This provision shall survive the expiration or the termination of this Agreement.

B. Without Department Permission:

If the Operator (or anyone claiming through Operator) shall remain in possession of the Facilities or any part thereof after the termination of this Agreement, without a written agreement executed by the Department, then without limiting the Department's other rights and remedies, the person or entity remaining in possession shall be deemed a tenant at sufferance otherwise subject to all of the provisions of this Agreement. The Operator shall thereafter pay on account of its holdover use and occupancy of the Facilities a sum, at a rate equal to two times (2x) the amount payable monthly as MMG and monthly Percentage Fee, and with all additional rent also payable as provided in this Agreement (the "Holdover Charges"). Imposition of Holdover Charges, extinguishes any unamortized investment amounts owed the Operator by the Department. The Holdover Charges shall be payable weekly in advance. Notwithstanding the above, the Operator shall remain liable to the Department for all damages resulting from such breach, with the amount of any Holdover Charges accepted by the Department on account of the holdover considered as mitigation of such damages. The covenant in this Sub-Article shall survive the expiration or the termination of this Agreement.

ARTICLE 10 – INDEMNIFICATION

10.01 INDEMNIFICATION REQUIRED OF OPERATOR: The Operator shall indemnify, defend, and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and cost of defense, which the County or its officers, employees, agents or instrumentalities may

incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Operator or its employees, agents, servants, partners, principals or any other persons. The Operator shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon.

The Operator expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Operator 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.

ARTICLE 11 – INSURANCE

11.01 INSURANCE REQUIRED OF OPERATOR: Prior to execution of this Agreement by the Department and commencement of the Term of this Agreement, the Operator shall obtain all insurance required under this Article and submit it to the Department, c/o Risk Management, P.O. Box 025504, Miami, Florida 33102-5504 for approval. All insurance shall be maintained throughout the Term, and any Extensions of this Agreement.

The limits for each type of insurance may be revised upon review and approval of the Operator's operations. Additional types of insurance coverage or increased limits may be required if, upon review of the operations, the Department determines that such coverage is necessary or desirable. Any such additional insurance coverage or increased limits shall be agreed upon with Operator.

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

- A. Workers' Compensation as required by Chapter 440, Florida Statutes.
- B. Commercial General Liability Insurance including Contractual Liability, Broad Form Property Damage and Products and Completed Operations in an amount not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage combined. This policy shall include Miami-Dade County as an additional insured with respect to this coverage for claims caused by the acts or omission of Operator or which may arise pursuant to the Operator's operations and activities, including invitees under this Lease.
- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this Agreement in an amount not less than \$500,000* per occurrence for Bodily Injury and Property Damage combined.

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

11.02 CERTIFICATE OF CONTINUITY: The Operator shall be responsible for assuring that the insurance certificates [or memorandum of insurance evidencing the insurance] required in conjunction with Article 11 "Insurance" remain in force for the duration of this Agreement, including the Extension, if applicable. If insurance certificates are scheduled to expire during the lease period, the Operator shall be responsible for submitting new or renewed insurance certificates [or memorandum] for its operations to the Department's Risk Management Unit. If a policy is cancelled prior to the termination date of this Agreement, Operator shall give notice of such cancellation in accordance with the policy terms and conditions.

In the event of a change to any insurance policy required under this Agreement that causes such policy to no longer meet the requirements under this Agreement, Operator shall provide notice to Miami-Dade County thirty (30) Days prior to such change or as soon as practical if thirty (30) Day notice is not possible.

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

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

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

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

11.06 RIGHT TO EXAMINE: The Department reserves the right, upon reasonable notice to examine the original policies of insurance of the Operator (including, but not limited to: binders, amendments, exclusions, endorsements and riders). The Operator agrees to permit or cause to permit such inspection at the offices of the Operators. In addition, upon request (but no later than five (5) Days from the date of request, unless such longer period is agreed to by the Department) the Operator agrees to provide copies to the Department, at the Operator's sole cost and expense.

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

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

11.09 INDEMNIFICATION, CONSTRUCTION BONDS AND INSURANCE REQUIRED:

A. Indemnification, Bonds and Insurance Required from Construction Contractor:

The following language, including the indemnification clause, shall be included in all construction contracts between the Operator and its general contractor(s) and subcontractors:

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

B. Surety Performance and Payment Bonds: Pursuant to and in accordance with Section 255.05, Florida Statutes, the Operator or each contractor performing any part of the work for the Operator shall obtain and thereafter at all times during the performance of the work maintain a combined performance bond and labor and material payment bond for the work (referred to herein as the "Bond") in an amount equal to one hundred percent (100%) of the cost of the improvements, as it may be amended from time to time, and in the form attached hereto as Exhibit "B", Surety Performance and Payment Bond". Prior to performing any portion of the Work, the Operator shall deliver to County the Bonds required to be provided by the Operator or each contractor as set forth in this Agreement.

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

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

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

- a) Providing evidence that the surety has twice the minimum surplus and capital required by the Florida Insurance Code at the time the Request for Qualifications is issued.
- b) Certifying that the surety is otherwise in compliance with the Florida Insurance Code, and
- c) Providing a copy of the currently valid Certificate of Authority issued by the United States Department of Treasury under Section 31 U.S.C. 9304-9308.
- d) Surety insurers shall be listed in the latest Circular 570 of the U.S. Department of the Treasury entitled "Surety Companies Acceptable on Federal Bonds", published annually. The bond amount shall not exceed the underwriting limitations as shown in this circular.
- e) For contracts in excess of \$500,000 the provision of this Sub-Article must be adhered to, plus the surety insurer must have been listed on the United States Treasury list for at least three (3) consecutive years, or currently hold a valid Certificate of Authority of at least 1.5 million dollars and listed on the Treasury list.
- f) Surety bonds guaranteed through U.S. Government Small Business Administration or Contractors Training and Development Inc. will also be acceptable.
- g) The attorney-in-fact or other officer who signs an Exhibit B, "Surety Performance and Payment Bond" for a surety company must file with such bond a certified copy of his/her power of attorney authorizing him/her to do so.

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

The Bond shall be delivered to the Department upon execution of the contract between the Operator and its contractor, as the case may be.

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

The Operator shall cause its contractor(s) to provide certificates of insurance and copies of original policies, if requested, which shall clearly indicate that the construction contractor has obtained insurance in the type, amount and classifications as required for

strict compliance with this Sub-Article. Evidence of such coverage must be submitted prior to any construction:

- (a) Workers' Compensation as required by Chapter 440, Florida Statutes.
- (b) Commercial General Liability Insurance including Contractual Liability, Broad Form Property Damage and Products and Completed Operations in an amount not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage combined. The County and the Operator must be shown as an additional insured with respect to this coverage for claims caused by the acts or omissions of the contractor.
- (c) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this Agreement in an amount not less than \$500,000* per occurrence for Bodily Injury and Property Damage combined.

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

- D. **Certificate Continuity:** The contractor(s) shall be responsible for assuring that the insurance certificates required in conjunction with this Sub-Article remain in force throughout the performance of the contract and until the work has been accepted by the Operator and approved by the Operator and the Department. If insurance certificates are scheduled to expire during the contract period, the contractor(s) shall be responsible for submitting new or renewed insurance certificates to the Operator.
- E. **Insurance Company Rating Requirements:** All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "A-" as to financial strength, and no less than "Class VII" as to financial size, according to the latest edition of Best's Key Rating Guide, published by A.M. Best Company, or its equivalent, subject to the approval of the MDAD Risk Management Office.
- F. **Right to Examine:** The Department reserves the right, upon reasonable notice, to examine the original policies of insurance (including but not limited to: binders, amendments, exclusions, endorsements, riders and applications) to determine the true extent of coverage. The contractor shall be required by the Operator to agree to permit such inspection at the offices of the Department. In addition, upon request (but no later than five (5) Days from the date of request, unless such longer period is agreed to by the Department) the Operator agrees to provide copies to the Department, at the Operator's sole cost and expense.
- G. **Personal Property:** Any personal property of the contractor, or of others, placed in the Facilities shall be at the sole risk of the contractor or the owners thereof, and the Department shall not be liable for any loss or damage thereto, irrespective of the cause of such loss or damage.

ARTICLE 12- DEFAULT AND TERMINATION BY COUNTY

12.01 EVENTS OF DEFAULT: An "Event of Default" default shall occur if there is a breach of this Agreement by the Operator. In addition to those defaults defined in **Sub-Article 12.02 "Payment Default"**, **Sub-Article 12.03 "Other Defaults"**, and **Sub-Article 12.04 "Habitual Default"**, an Event of Default, may result from one (1) or more of the following occurrences:

- (A) The Operator has violated the terms and conditions of this Agreement;
- (B) The Operator has failed to make prompt payment to subcontractors or suppliers for any service or work provided for the design, installation, operation, or maintenance of the Operator's Facilities;
- (C) The Operator has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Operator's creditors, or the Operator has taken advantage of any insolvency statute or debtor/creditor law, or the Operator's affairs have been put in the hands of a receiver;
- (D) The occurrence of any act, which operates to deprive the Operator of the rights, power, licenses, permits or authorities necessary for the proper conduct and operation of the activities authorized herein;
- (E) Abandonment or discontinuance of operations by Operator of its business by any act(s) of the Operator.
- (F) Any persistent violation on the part of the Operator, its agents or employees of the traffic rules and regulations of local, County, State or Airport or disregard of the safety of persons using the Airports, upon failure by Operator to correct the same;
- (G) Failure on the part of the Operator to maintain the quality of service required by the terms of this Agreement, including, but not limited to, any cessation or diminution of service by reason of the Operator being unable for any reason to maintain in its employ the personnel necessary to keep its business in operation and available for public use, unless such failure is due to strike, lockout, or bona fide labor dispute;
- (H) Failure by the Operator to maintain its equipment in a manner satisfactory to the Director;
- (I) The Operator has failed to obtain the approval of the Department where required by this Agreement;
- (J) The Operator has failed to provide adequate assurances as required under **Sub-Article 12.10 "Adequate Assurances"**;
- (K) The Operator has failed to comply with **Sub-Article 14 "Airport Concession Disadvantaged Business Enterprises-Voluntary"**;
- (L) The Operator has failed in a representation or warranty stated herein; or
- (M) The Operator has received three (3) notices of default, of any kind, within a twenty-four (24) month period.

Unless a shorter time period is otherwise specified herein with respect to specific breaches of this Agreement, the Operator shall be entitled to the cure period provided for in Sub-Article 12.03 "Other Defaults" below.

12.02 PAYMENT DEFAULT: Failure of the Operator to make MAG/MMG payments and Percentage Fee payments and other charges required to be paid herein when due and fails to cure the same within five (5) Days after written notice shall constitute a default, and the County may, at its option, terminate this Agreement after five (5) Days notice in writing to the Operator.

12.03 OTHER DEFAULTS: The Department shall have the right, upon thirty (30) Days written notice to the Operator to terminate this Agreement upon the occurrence of any act of default unless the same shall have been corrected within thirty (30) Days after written notice; provided, however, that the Department may, but is not required to, extend the time for cure as individual circumstances may warrant such extension not be construed as a waiver of any of the Department's rights hereunder. In the event of a specific provision of this Agreement provides for a shorter cure period in the event of a specific default, that shorter time period shall take precedence over this section.

The notice of default shall specify the Termination Date by when the Operator shall discontinue the services.

12.04 HABITUAL DEFAULT: Notwithstanding the foregoing, in the event that the Operator has frequently, regularly or repetitively defaulted in the performance of or has breached any of the terms, covenants and conditions required herein, to be kept and performed by the Operator, regardless of whether the Operator has cured each individual condition of breach or default as provided for in Sub-Article 12.02 "Payment Default" and Sub-Article 12.03 "Other Defaults" above, the Operator may be determined by the Director to be an "habitual violator". At the time that such determination is made, the Director shall issue to the Operator a written notice, advising of such determination and citing the circumstances thereof. Such notice shall also advise the Operator that there shall be no further notice or grace periods to correct any subsequent breach(s) or default (s) and that any subsequent breach or default, of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and collectively shall constitute a condition of noncurable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, the Department may terminate this Agreement upon the giving of written notice of termination to the Operator, such termination to be effective upon the seventh (7th) Day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Operator shall have no further rights hereunder. Immediately upon receipt of said notice of termination, the Operator shall discontinue its operations at the Airport and proceed to remove all its personal property in accordance with Sub-Article 12.11 "Actions at Termination" hereof.

12.05 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE: If an Event of Default occurs, the Department shall notify the Operator by sending a notice of default, specifying the basis for such Event of Default, and advising the Operator that such default must be cured within the timeframes specified in this Agreement or this Agreement with the Department may be terminated.

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

12.07 TERMINATION FOR ABANDONMENT: This Agreement may be terminated in its entirety upon the abandonment by the Operator of the Facilities or the discontinuance of the Operator's services at the Airport for any period of time exceeding twenty-four (24) consecutive hours, and the failure to cure the same within three (3) calendar days after written notice unless such abandonment or discontinuance has been caused by civil disturbance, governmental order or Act of God that prevents the Operator from providing services on the Facilities for the purposes authorized in Article 2 "Use of Facilities". Such termination shall constitute an event of default, and the County shall be entitled to all remedies for such default provided for in this Agreement.

12.08 TERMINATION FOR CAUSE: The Department may terminate this Agreement, effective immediately if: (i) the Operator attempts to meet its contractual obligation(s) with the County through fraud, misrepresentation or material misstatement; or (ii) a principal of the Operator is convicted of a felony during the Term or any Extensions thereof if applicable, or (iii) if the Operator is found to have submitted a false certification or to have been, or is subsequently during the term of this Agreement, placed on the Scrutinized Companies for Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. The Department may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or joint venture or other entity has with the County and that such individual, corporation or joint venture or other entity shall be responsible for all direct and indirect costs associated with such termination, including attorney's fees.

The foregoing notwithstanding, any individual, firm, corporation, joint venture, or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to ten (10) years in accordance with the County's debarment procedures. The Operator may be subject to debarment for failure to perform, and all other reasons set forth in § 10-38 of the Code of Miami-Dade County, Florida (the "Code").

12.09 TERMINATION FOR CONVENIENCE: The Department, in addition to the rights and options to terminate for cause, or any other provisions set forth in this Agreement, retains the right to terminate this Agreement upon thirty (30) Days written notice at its sole option at any time for convenience, without cause, when in its sole discretion it deems such termination is in the best interest of the Department. In such circumstance, the County will solely be responsible for paying the amortized costs of any improvements constructed by the Operator as described in Sub-Article 4.09 "Amortization Schedule", but the County shall not be responsible for any other costs or damages, including but not limited to lost profits, loss of opportunity, borrowing costs, carrying costs, damage to reputation, loss of goodwill, loss of income or any consequential or indirect damages.

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

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

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

- (A) Stop all work as specified in the notice to terminate;
- (B) Take such action as may be necessary for the protection and preservation of the Facilities and other Department materials and property;
- (C) Vacate, quit and surrender, all Facilities and storage spaces and account for all furnishings, fixtures, equipment, software, vehicles, records, funds, inventories, commodities, supplies and other property of the County on or before the date of termination.

If terminated for cause, the Operator shall be liable to the County for all damages, direct and indirect, incurred by the County as a result of such termination, including but not limited to loss of future MAG payments, loss of revenue, loss of passengers, loss of opportunity, or loss of goodwill as may be permitted by law. The existence of a bond or letter of credit supplied pursuant to **Article 3 "Payments and Reports"** of this Agreement shall not serve as a limitation on damages beyond the penal sum of the bond or letter of credit, and the County may avail itself of the bond or letter of credit, or both, and also all remedies as may be available at law or equity against the Operator.

ARTICLE 13 – CLAIMS AND TERMINATION BY OPERATOR

13.01 ADMINISTRATIVE CLAIM PROCEDURES: If the Operator has any claim against the County arising under this Agreement, it will be made in writing within thirty (30) Days of the occurrence of the event to the Director. The exact nature of the claim, including sufficient detail to identify the basis for the claim and the amount of the claim shall be clearly stated. The dispute will be decided by the Director or their designee, who will mail or otherwise furnish a written copy of the decision to the Operator at the address furnished in **Sub-Article 18.09 "Notices"**. The decision of the Director will be final and conclusive unless, within thirty (30) Days from the date of receipt of such copy, the Operator mails or otherwise furnishes to the Department a written appeal addressed to the Mayor. The decision

of the Mayor, or his duly authorized representative for the determination of such appeals, will be final and conclusive unless within thirty (30) Days of the Operator's receipt of such decision, the Operator files an action in a court of competent jurisdiction. In connection with any appeal proceeding under this provision, the Operator shall be afforded an opportunity to be heard and to offer other evidence in support of the appeal. Pending final decision of a dispute hereunder, the Operator shall proceed diligently with the performance of this Agreement and in accordance with the County's decision. Failure to perform in accordance with the decision of the Director or the Mayor shall be cause for termination of this Agreement in accordance with **Sub-Article 12.03 "Other Defaults"**. The failure of the Operator to comply with this administrative claim procedure shall be cause for a waiver of claim and an abandonment of any claim arising out of the event.

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

- (A) Issuance by any court of competent jurisdiction of any injunction substantially restricting the use of the Airport for airport purposes, and the injunction remaining in force for a period of more than one hundred eighty (180) Days.
- (B) A breach by the County of any of the material terms, covenants or conditions contained in this Agreement required to be kept by the County and failure of the Department to remedy such breach for a period of one hundred eighty (180) Days after receipt of written notice from the Operator of the existence of such breach.
- (C) The assumption by the United States Government or any authorized agency thereof, or any other governmental agency, of the operation, control or use of the airport premises or any substantial part, or parts thereof, in such a manner as substantially to restrict the Operator's provision of services for a period of one hundred eighty (180) Days.

ARTICLE 14 – AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISES- VOLUNTARY

14.01 AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISES (ACDBE) REQUIREMENTS:

ACDBE REQUIREMENTS: ACDBE participation is voluntary, but not required for this Agreement. ACDBE goal can be achieved either through the Operator being an ACDBE itself, a partner or joint venture, or subcontracting a percentage of gross revenues.

The Operator, _____ committed _____ % ACDBE participation.

If the Operator elects to participate, 1) Notarized Monthly Utilization Report (MUR) reflecting ACDBE revenue; 2) Notarized Monthly Activity Report (MAR) of ACDBE JV

Partner commencing thirty (30) days after beneficial occupancy and monthly thereafter, on or before the 10th of every month.

14.02 COUNTING ACDBE PARTICIPATION TOWARD CONTRACT GOALS:

1. When an ACDBE participates in a contract, only the value of the work actually performed by the ACDBE toward the ACDBE goal will be counted.
2. When an ACDBE performs as a participant in a joint venture a portion of the total dollar value of the contract **during the complete contract term**, equal to the clearly defined portion of the work of the contract that the ACDBE performs will be counted toward ACDBE goals as outlined in **Appendix I**. "Airport Concession Disadvantaged Business Enterprise Participation Plan/Provision" and ACDBE Joint Venture Guidance by the U. S. Department of Transportation, Federal Aviation Administration (USDOT-FAA) ACDBE Schedule 8.
3. Expenditures to an ACDBE Operator toward ACDBE goals, will be counted only if the ACDBE is performing a commercially useful function as defined below:
 - (a) An ACDBE performs a commercially useful function when it is responsible for execution of specific quantifiable work of the contract and is carrying out its responsibilities by actually performing, or managing, or supervising the specific identified work.
 - (b) MDAD will determine whether an ACDBE is performing a commercially useful function by evaluating the specific duties outlined in the Joint Venture Agreement; the sub-concession agreement or other agreements in accordance with industry practices.
 - (c) An ACDBE does not perform a commercially useful function if its role is limited to that of an extra participant in a financial or other transaction, contract, or project through which funds are passed in order to obtain the appearance of ACDBE participation.
 - (d) If an ACDBE does not perform or exercise responsibility for at least seventy (70%) percent of its participation or if the ACDBE subcontract's a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that the ACDBE is not performing a commercially useful function.
 - (e) When an ACDBE is presumed not to be performing a commercially useful function as provided in paragraph (c) of this section, the ACDBE may present evidence to rebut this presumption. MDAD will determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
4. MDAD's decision on commercially useful function matters is final.

14.03 ACDBE GOAL ACHIEVED THROUGH JOINT VENTURE (“JV”) PARTNERING:

Respondents may satisfy a part of the ACDBE goal by Joint Venturing with an ACDBE as detailed in the ACDBE Joint Venture Guidance by the U.S.DOT-FAA; ACDBE Schedule 8.

The Joint Venture Agreement must specify the following:

- (1) Each ACDBE joint venture (“JV”) partner must be responsible for a clearly defined portion of the work to be performed. The work should be detailed separately from the work performed by the non-ACDBE JV partner as specified in the Joint Venture Guidance by U.S. DOT-FAA (Schedule 8).

The work should be submitted as part of this solicitation and annually thereafter to the Aviation Department’s Minority Affairs Division. The work to be performed by the ACDBE joint venture partner should be store specific with regards to tasks and locations or as a distinct element of work is specified.

The ACDBE Joint Venture partner will be required to spend the minimum amount of aggregate time on-site, focused on the operation of the Facilities. Such “minimum amount of aggregate time” is defined as ten hours per week.

- (2) Each joint venture partner must submit a notarized Monthly Utilization Report and notarized Monthly Report of ACDBE Joint Venture Activity providing details of how the performance objectives were achieved and providing documentation of that achievement on the form. This information should include, but not limited to:
 - a. Details of training sessions, including class rosters and lesson plans.
 - b. Deliverables and work products.
 - c. Time sheets of partner employees used to fulfill objectives. Time sheets must accurately reflect hours worked and compensation earned.
 - d. Proof that employees of partner actually work for them (payroll, payroll tax returns and the like).
- (3) Each ACDBE partner must share in the ownership, control, management, and administrative responsibilities, risks and profits of the JV in direct proportion to its stated level of JV participation.
- (4) Each ACDBE JV partner must perform work that is commensurate with the Agreement.

Without limiting the requirements of the Agreement, the County will have the right to review and approve all agreements utilized for the achievement of these goals.

14.04 CERTIFICATION-AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)

ACDBE firms must maintain their certification throughout the term of this Agreement.

14.05 AFFIRMATIVE ACTION AND AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PROGRAMS:

The Operator acknowledges that the provisions of 14 CFR Part 152, Affirmative Action Employment Programs, Provisions of Title VI of the Civil Rights Act of 1964, and 49 CFR Part 23, Airport Concession Disadvantaged Business Enterprise Programs, are applicable to the activities of the Operator under the terms of the Agreement, unless exempted by said regulations, and hereby agrees to comply with all requirements of the Department, U.S. Department of Transportation and the Federal Aviation Administration.

These requirements may include, but not be limited to, the compliance with Airport Concession Disadvantaged Business Enterprise and/or Employment Affirmative Action participation goals, the keeping of certain records of good faith compliance efforts, which would be subject to review by the various agencies, the submission of various reports and, if directed by the MDAD, the contracting of specified percentages of goods and services contracts to Airport Concession Disadvantaged Business Enterprises. In the event it has been determined, in accordance with applicable regulations, that the Operator has defaulted in the requirement to comply with the provisions of this section and fails to comply with the sanctions and/or remedies then prescribed, the County shall have the right, upon written notice to the Operator, to terminate this Agreement, pursuant to Default language referenced in the Agreement.

The Operator shall include the following nondiscrimination language in contracts with MDAD which is an assurance and clarification clause requested by the DOT and approved by the Miami Dade Aviation Director:

"This agreement is subject to the requirements of the US Department of Transportation's Regulations 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23".

"The concessionaire agrees to include the above statements in any subsequent concession agreement covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements".

The provisions of this Section shall be considered to be in addition to and not in lieu of the provisions of Title VI of the Civil Rights Act of 1964 applies.

The Operator agrees to include the above statements in any subsequent agreements.

14.06 ACDBE MENTORING, ASSISTANCE AND TRAINING PROGRAM:

Consistent with the goal of providing ACDBE's with hands-on participation and the responsibility for a clearly defined portion of the Airport Concession operations, subject to **Section 4 "Voluntary Airport Concession Disadvantaged Business Enterprises"** hereof, each ACDBE shall have the duty and responsibility to operate certain areas of the concession(s) following a mentoring period, if needed, which shall include but not be limited to the following specific duties and responsibilities:

A. Store Operations

- (1) Passenger profile analysis
- (2) Cash handling/sales audit
- (3) Enhancing sales
- (4) Selling to the customer
- (5) Staffing to meet customer levels
- (6) Opening and closing procedures

B. Personnel

- (1) Employment practices
- (2) Compliance with wage and hour laws
- (3) Compliance with County and Airport requirements
- (4) Designing compensation and benefits plans
- (5) Management and staff training to enhance product knowledge and customer service
- (6) Warehousing packaging and sales reporting of merchandise

C. Shop Design and Display

- (1) Retail layout
- (2) Merchandising techniques
- (3) Visual display techniques

D. Loss Prevention

- (1) External and internal theft
- (2) Shop security

E. Books, Records and Reports

(1) The books of account and supporting records of the joint venture(s) and the sub-concessionaire(s) shall be maintained at the principal office and shall be open for inspection by the MDAD or the ACDBE sub-concessionaire(s) or Joint Venture(s), upon reasonable prior written notice, during business hours.

(2) The books of account, for both financial and tax reporting purposes shall be maintained on the accrual method of accounting. The Operator shall provide to the sub-concessionaire(s) or joint venture(s), within an agreed upon time after the end of each month

during the term of this Agreement, an unaudited operating (*i.e.*, income) statement for the preceding month and for the year-to-date.

(3) Reports of the ACDBE Mentoring Program shall be submitted to the Department's Minority Affairs and Business Management Divisions, outlining the specific areas of training (*i.e.*, components covered, total number of hours of training, training material covered, etc.).

14.07 AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN:

The Operator shall contract with those firm(s) as are listed on the Operator's ACDBE Participation Plan approved by the Department, and shall thereafter neither (i) terminate such ACDBE firm(s), nor (ii) reduce the scope of the work to be performed, nor (iii) decrease the percentage of participation, nor (iv) decrease the dollar amount of participation by the ACDBE firm(s) without the prior written authorization of the Department.

The MDAD shall monitor the compliance of the Operator with the requirements of this provision during the term and/or extension of this Agreement.

The MDAD shall have access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records, records of expenditures, agreements between the Operator and the ACDBE Participant, and other records pertaining to ACDBE Participation Plan.

If at any time the MDAD has reason to believe that the Operator is in violation of this provision, the County may, in addition to pursuing any other available legal remedy, impose sanctions which may include, but are not limited to, the termination or cancellation of the Agreement in whole or in part, unless the Operator demonstrates, within a reasonable time, its compliance with the terms of this provision. No such sanction shall be imposed by the MDAD upon the Operator except pursuant to a hearing conducted by the ACDBELO and/or Director.

ARTICLE 15 - RULES, REGULATIONS AND PERMITS

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

15.02 VIOLATIONS OF RULES AND REGULATIONS: The Operator agrees to pay, on behalf of the County, any Damage, assessment or fine issued against the County, or the

Department 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 Operator, its agents, employees, or invitees, have violated any law, ordinance, regulation or rule described in **Sub-Article 15.01 "Rules and Regulations"** or any plan or program developed in compliance therewith. The Operator further agrees that the substance of **Sub-Article 15.02 "Violations of Rules and Regulations"** and **Sub-Article 15.01 "Rules and Regulations"** shall be included in every Sub-Lease and other agreements which the Operator may enter into related to its activities under this Agreement and that any such Sub-Lease and other agreement shall specifically provide that "Miami-Dade County, Florida is a third party beneficiary of this and related provisions." This provision shall not constitute a waiver of any other conditions of this Agreement prohibiting or limiting assignments, subletting or subleasing.

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

15.04 PROHIBITION ON USING PRODUCTS CONTAINING TRANSFATS – RESOLUTION NO. R-456-07: The Operator shall not market or distribute at the designated Facilities under this Agreement any pre-packaged, prepared or other foods, including catered foods, derived from or containing trans-fats. The Operator shall, periodically review existing inventories and projected products, to assure that only trans-fat free products are being offered for public consumption.

Except for the aforementioned modifications, and in all other respects, the Agreement shall remain in full force and effect in accordance with the terms and conditions specified therein.

15.05 LABOR PEACE REQUIREMENT – RESOLUTION NO. R-148-07: The Operator provided a signed copy of the labor peace agreement for their employees to assure that no labor dispute or unrest will disrupt their operations at Miami International Airport (MIA). See Exhibit M. Furthermore, the County has the right, in the event of a labor disruption, to suspend its obligations under the contract while the labor disruption is ongoing and to use alternative means to provide the service that is affected by the labor disruption. In the event an Operator is unable to reach an agreement with a labor organization regarding the terms of a Labor Peace Agreement, the dispute between the Operator and the labor organization shall be resolved by expedited binding arbitration in which the decision shall be rendered within ten (10) Days of the request for arbitration. The Operator and the labor organization shall equally share the costs of arbitration. The Operator shall ensure that all sub-tenants also sign a Labor Peace Agreement.

ARTICLE 16 – GOVERNING LAW

16.01 GOVERNING LAW; VENUE: This Agreement shall be governed and construed in

accordance with the laws of the State of Florida. The venue of any action on this Agreement shall be laid in Miami-Dade County, Florida and any action to determine the rights or obligations of the parties hereto shall be brought in the courts of the State of Florida.

16.02 NOTICE OF COMMENCEMENT OF CIVIL ACTION: In the event that the County or the Operator commence a civil action in the state or Federal courts for Miami-Dade County, where such action is based in whole or in part upon an alleged breach of this Agreement, the County and the Operator agree to waive the procedures for initial service of process mandated by Chapters 48 and 83 of the Florida Statutes, by Rule 1.070 of the Florida Rules of Civil Procedure, and by Rule 4(c) of the Federal Rules of Civil Procedures. In such event, the County and the Operator agree to submit to the jurisdiction of the court in which the action has been filed when initial service has been made either by personal service or by certified mail, returned receipt requested upon the representatives of the parties indicated in **Sub-Article 18.09 "Notices"** of this Agreement, with a copy provided to the County Attorney and the attorney, if any, which the Operator has designated in writing. Notwithstanding the foregoing, and in addition thereto, the Operator, if a corporation, shall designate a registered agent and a registered office and file such designation with the Florida Department of State in accordance with Chapters 48 and 607 of the Florida Statutes.

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

ARTICLE 17 – TRUST AGREEMENT

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

17.02 ADJUSTMENT OF TERMS AND CONDITIONS: If at any time during the Term or any Extension thereto, as applicable, a court of competent jurisdiction shall determine that any of the terms and conditions of this Agreement, including the rentals, fees and charges required to be paid hereunder to the Department by the Operator or by other operators under other

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

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

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

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

Exception: The above application of one quarter of one percent (0.25%) fee assessment shall not apply to the following contracts: (a) contracts for legal services; (b) contracts for financial advisory services; (c) auditing contracts; (d) facility rentals and lease agreements; (e) concessions and other rental agreements; (f) insurance contracts; (g) revenue-generating contracts; (h) professional service agreements under \$1,000; (i) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order No. 3-38; (m) federal, state and local government-funded grants; and (n) interlocal agreements.

Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter of one percent (0.25%) in any exempted contract at the time of award.

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

ARTICLE 18 – OTHER PROVISIONS

- 18.01 PAYMENT OF TAXES:** The Operator shall pay all taxes lawfully assessed against its interests in the Facilities and any storage spaces and its services hereunder, provided however, that the Operator shall not be deemed to be in default of its obligations under this Agreement for failure to pay such taxes pending the outcome of any legal proceedings instituted in courts of competent jurisdiction to determine the validity of such taxes. Failure to pay same after the ultimate adverse conclusion of such contest shall constitute an Event of Default, pursuant to Sub-Article 12.03 “Other Defaults” hereof.
- 18.02 ALTERATIONS BY OPERATOR:** The Operator shall not alter or modify the Facilities and or any storage spaces, except in accordance with Article 4 “Improvements to the Facilities” herein, without first obtaining written approval from the Department.
- 18.03 RIGHTS TO BE EXERCISED BY DEPARTMENT:** Wherever in this Agreement rights are reserved to the County, such rights may be exercised by the Department.
- 18.04 ADMINISTRATIVE MODIFICATIONS:** It is understood and agreed to that the Department, upon written notice to the Operator, shall have the right to modify administratively and to revise Articles and the Exhibits to this Agreement, including the provisions of Sub-Article 1.07 “Addition, Deletion and Modification of Facilities”, Sub-Article 18.02 “Alterations by Operator”, Sub-Article, 21.02 “Right to Amend”, and Sub-Article 21.04 “Right to Modify.
- 18.05 SECURITY:** The Operator acknowledges and accepts full responsibility for the security and protection of the Facilities. The Operator fully understands and acknowledges that any security measures deemed necessary by the Operator for protection of the Facilities shall be the sole responsibility of the Operator and shall involve no cost to the Department.
- 18.06 RIGHTS OF DEPARTMENT AT AIRPORT:** The Department shall have the absolute right, without limitation, to make any repairs, alterations and additions to any structures and premises at the Airport. The County shall, in the exercise of such right, be free from any, and all liability to the Operator for business damages occasioned during the making of such repairs, alterations and additions except those occasioned by the sole acts of negligence or intentional acts of the County, its employees, or agents.
- 18.07 OTHER DEPARTMENT RIGHTS:** The Operator shall be liable for any physical damage caused to the Facilities by the Operator, its employees, agents, contractors, subcontractors or

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

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

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

To the County:
(Mailing Address)

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

or (physical address):

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

To the Operator:
American Express Travel Related Services Company, Inc.
Attn: Vice President, Americas & Global BlueWork, GBS GREWE
Three World Financial Centre
200 Vesey Street
New York, NY 10285

and
American Express Lease Administration
c/o CB Richard Ellis, Inc.
5100 Poplar Avenue, Suite 1000
Memphis, TN 38137

and
American Express Real Estate
Attn: GBS Global Real Estate
1755 North Brown Rd.
M/S 13829-04-06
Lawrenceville, GA 30043

and
American Express
Attn: GRE Finance Manager
777 American Expressway
Mail Drop 05-01-10C
Ft. Lauderdale, FL 33337

and
Sills Cummis & Gross P.C.
One Riverfront Plaza
Newark, New Jersey 07102
Attn: Mark S. Levenson, Esq.

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

- 18.10 SEVERABILITY:** If any provision of this Agreement or the application thereof to either party to this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions of this Agreement which can be given effect without the invalid provision, and to this end, the provisions of this Agreement shall be severable.
- 18.11 RIGHTS RESERVED TO DEPARTMENT:** All rights not specifically granted the Operator by this Agreement is reserved to the Department.
- 18.12 COUNTY LIEN:** The County shall have a lien upon all personal property of the Operator in the Facilities to secure the payment to the Department of any unpaid monies accruing to the Department under the terms of this Agreement.
- 18.13 AUTHORIZED USES ONLY:** The Operator shall not use or permit the use of the Facilities or the Airport for any illegal or unauthorized purpose or for any purpose which would increase the premium rates paid by the Department or invalidate any insurance policies of the Department or any policies of insurance written on behalf of the Operator under this Agreement.
- 18.14 NO WAIVER:** There shall be no waiver of the right of the Department to demand strict performance of any of the provisions, terms and covenants of this Agreement nor shall there be any waiver of any breach, default or non-performance hereof by the Operator unless such

waiver is explicitly made in writing by the Department. Any previous waiver or course of dealing shall not affect the right of the Department to demand strict performance of the provisions, terms and covenants of this Agreement with performance hereof by the Operator.

18.15 SECURED AREAS/AIRFIELD OPERATIONS AREA (AOA) STERILE AREAS SECURITY: The Operator acknowledges and accepts full responsibility for compliance with all applicable Federal, State, and Local laws, rules and regulations including those of the Homeland Security, Transportation Security Administration's (TSA) Code of Federal Regulations 49 CFR Part 1542 et al, Federal Aviation Administration FAA, Customs and Border Protection CBP, the MDAD Airport Security Plan and applicable Security Directives issued by TSA and the Aviation Department as set forth from time to time relating to Operator's activities at the Miami International Airport (MIA).

In order to maintain high levels of security at MIA, the Operator must obtain MDAD photo identification badges for all the Operator employees who are authorized access to the Secured/AOA/Security Identification Display Area (SIDA), Sterile Concourse Areas or any other restricted areas of the Airport as may be required and designated in the Airport's Security Plan. All Operator employees will be required to obtain photo identification badges and will be subject to fingerprint-based criminal history records checks.

The Operator shall be responsible for requesting MDAD to issue identification badges to all employees who the Operator requests to be authorized access to the Secured/AOA/SIDA/Sterile Concourse Areas and any other restricted areas of the airport as may be required and designated in the Airport's Security Plan 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 employer of the Operator or upon final acceptance of the work or termination of this Agreement. The Operator will be responsible for fees associated with lost and unaccounted for badges as well as the fee(s) for fingerprinting and ID issuance.

All employees of the Operator who must work within MDAD Secured/AOA/SIDA/Sterile Concourse areas or any other restricted areas at MIA shall be supplied with MDAD identification badges as specified above, which must be worn at all times while within the referenced secured areas. Badges shall be worn/displayed on outer garments above the waist so as to be clearly visible in order to distinguish, on sight, employees assigned to a particular company area. Each employee must complete the Security Identification Display Area SIDA training program conducted by the MDAD Security Division Credentialing Office before any ID badge is issued to such employee and comply with all other TSA, Homeland Security, FAA, CBP and MDAD requirements as specified by the MDAD at the time of application for the ID badge before an ID badge is issued.

Operator Ramp Permits will be issued to the Operator authorizing vehicle entrance to the Airfield Operations Area (AOA) through specified Miami-Dade Aviation Department vehicle access control gates for the term of any Project. These permits will be issued only for those vehicles that must have access to the site during the performance of the work. These permits will be only issued to company owned vehicles or company leased vehicles (leased from a commercial leasing company). AOA decals, passes, or permits to operate within the AOA will not be issued to privately owned or privately leased

vehicles. All vehicles operating within the AOA must have conspicuous company identification signs (minimum of three inch lettering) displayed on both sides of the vehicles.

All vehicles operating within the AOA must be provided with the Automobile Liability Insurance required elsewhere in this Agreement. Proof of such insurance is provided to MDAD Airside Operations Division upon request.

Only Operator staff with proper access zone pictured MDAD SIDA ID badges shall be allowed to operate a motor vehicle on the AOA without a MDAD escort. The Operator shall require such employee to have a current, valid, appropriate Florida driver's license and to attend and successfully complete the AOA Driver Training Course, Reoccurring AOA Driver and Movement Area Driver training programs conducted periodically by the Department. The privilege of a person to operate a motor vehicle on the AOA may be withdrawn by the Department because of violation of AOA driving rules or loss of Florida driver's license.

The Operator agrees that its personnel, vehicles, cargo, goods, and other personal property are subject to being searched when attempting to enter, leave or while on the AOA. It is further agreed that the MDAD has the right to prohibit an individual, agent, or employee of the Operator 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, including repeated failure to comply with MDAD's or the TSA, Homeland Security, FAA, CBP, SIDA access control policies, rules and regulations. Any person denied access to the AOA or whose prior authorization has been revoked or suspended on such grounds shall be entitled to a review hearing before the Director or his/her authorized designee within a reasonable time. Prior to such hearing, the person denied access to the AOA should be advised, in writing, of the reason for such denial.

The Operator 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 and to maximize compliance with TSA, Homeland Security, FAA/Federal Inspection Services agencies and MDAD access control and security policies and procedures as may be required and designated in the Airport Security Plan and the Miami-Dade Aviation Department Rules and Regulations Chapter 25.

The Operator understands and agrees that vehicle and equipment shall not be parked/stored on the AOA in areas not designated or authorized by MDAD nor in any manner contrary to any posted regulatory signs, traffic control devices, or pavement markings.

The Operator understands and agrees that 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 Operator in areas under the jurisdiction or control of such agencies. Persons not approved or consented to by the Federal Inspection Services agencies who enter such areas are subject to fines, which shall be borne entirely by the persons and/or the Operator.

Notwithstanding the specific provisions of this Article, the Owner shall have the right to add to, amend, or delete any portion hereof in order to meet reasonable security requirements of MDAD or of the TSA/Homeland Security/FAA/Federal Inspection Services agencies.

The Operator shall ensure that all employees so required participate in such safety, security and other training and instructional programs, as MDAD or appropriate Federal agencies may from time to time require.

Operator agrees that it will include in all contracts and subcontracts with its MIA sub-consultants, service providers, and suppliers an obligation by such parties to comply with all security requirements applicable to their operations at the Airport. The Operator agrees that in addition to all remedies, Damages, and sanctions that may be imposed by TSA, Homeland Security, FAA, Federal Inspection Services Agencies or MDAD upon Operator sub-consultants, suppliers, and their individual employees for a violation of applicable security provisions. The Operator shall be responsible to the Owner for all such violations and shall indemnify and hold the Owner harmless for all costs, fines and Damages arising there from, such costs to include reasonable attorneys' fees.

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

18.17 MODIFICATIONS: This Agreement may be modified and revised in writing and duly executed by the parties hereto. Such modification may be made unilateral by the Department only as permitted pursuant to Sub-Article 18.04 "Administrative Modifications", Sub-Article 21.02 "Right to Amend", and Sub-Article 21.04 "Right to Modify" and all other modification shall require approval of the Board of County Commissioners. Any oral representation or modification concerning this Agreement shall be of no force or effect. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with this Agreement.

18.18 RADON DISCLOSURE: In accordance with Section 404.056, Florida Statutes, the following disclosure is hereby made: "Radon Gas: Radon is a naturally occurring radioactive gas. When accumulated in a building in sufficient quantities, it may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit."

18.19 TRADEMARKS AND LICENSES: The Department may, from time to time, require the Operator as part of its advertising and marketing program to utilize certain patents, copyrights, trademarks, trade names, logos, computer software and other intellectual property owned by the Department in the performance of this Agreement which patents, copyrights, trademarks, trade names, logos, computer software and intellectual property may have been created pursuant to the terms of this Agreement. Such permission, when granted, shall be evidenced by a nonexclusive license executed by the Operator and the Department, on behalf of the Department granting the Operator the right, license and privilege to use a

specific patent, copyright, trademark, trade name, logo, computer software or other intellectual property without requiring payment of fees therefor. Failure of the parties to execute a formal license agreement shall not vest title or interest in such patent, copyright, trademark, trade name, logo computer software or intellectual property in the using party.

- 18.20 HEADINGS:** The headings of the various Articles and Sub-Articles of this Agreement, and its Table of Contents are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.
- 18.21 BINDING EFFECT:** The terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns. This provision shall not constitute a waiver of any conditions prohibiting assignment or subletting.
- 18.22 GOVERNMENTAL DEPARTMENT:** Nothing in this Agreement shall be construed to waive or limit the governmental authority of the County as a political subdivision of the State of Florida.
- 18.23 INDEPENDENT CONTRACTOR:** The Operator shall perform all services described herein as an independent contractor and not as an officer, agent, servant, or employee of the Department. All personnel provided by the Operator in the performance of this Agreement shall be considered to be, at all times, the sole employees of the Operator under its sole discretion, and not employees or agents of the Department: Except as provided in § 2-11.1(s) of the Code, the Operator represents and warrants: (i) it has not employed or retained any company or person other than a bona fide company or employee working solely for the Operator to solicit or secure this Agreement; and (ii) it has not paid, or agreed to pay any company or other person any fee, commission, gift, or other consideration contingent upon the execution of this Agreement. A breach of this warranty makes this Agreement voidable by the Department without any liability to the Contractor for any reason.
- 18.24 OTHER LIENS:** The Operator shall not permit any mortgages, deeds of trust or similar liens to be imposed on the Facilities, the leasehold, or the furniture, fixtures and equipment or any portion thereof. Operator shall not permit or suffer any liens, including mechanics'; materialmen's and tax liens to be imposed upon the Facilities, or any part thereof, without promptly discharging the same. Notwithstanding the foregoing, Operator may in good faith contest any such lien if the Operator provides a bond in an amount and form acceptable to Department in order to clear the record of any such liens. The Operator further agrees that it shall not sell, convey, mortgage, grant, bargain, encumber, pledge, assign or otherwise transfer its leasehold interest in the Facilities or any personal property or trade fixtures in the Facilities, including any furniture, fixtures and equipment or any part thereof or permit any of the foregoing to occur. The Operator shall assume the defense of and indemnify and hold harmless County against any and all liens and charges of any and every nature and kind which may at any time be established against said Facilities and improvements, or any part thereof, as a consequence of any act or omission of Operator or as a consequence of the existence of Operator's interest under this Lease. Notwithstanding, Operator may utilize Third Party Contractors to accomplish the obligations of this Agreement.

18.25 FIRST SOURCE HIRING REFERRAL PROGRAM ("FSHRP")

Pursuant to Section 2-2113 of the Code of Miami-Dade County, for all contracts for goods and services, the successful Bidder, prior to hiring to fill each vacancy arising under a County contract shall (1) first notify the South Florida Workforce Investment Board ("SFWIB"), the designated Referral Agency, of the vacancy and list the vacancy with SFWIB according to the Code, and (2) make good faith efforts as determined by the County to fill a minimum of fifty percent (50%) of its employment needs under the County contract through the SFWIB. If no suitable candidates can be employed after a Referral Period of three to five days, the successful Bidder is free to fill its vacancies from other sources. Successful Bidders will be required to provide quarterly reports to the SFWIB indicating the name and number of employees hired in the previous quarter, or why referred candidates were rejected. Sanctions for non-compliance shall include, but not be limited to: (i) suspension of contract until Contractor performs obligations, if appropriate; (ii) default and/or termination; and (iii) payment of \$1,500/employee, or the value of the wages that would have been earned given the noncompliance, whichever is less. Registration procedures and additional information regarding the FSHRP are available at <https://iapps.southfloridaworkforce.com/firstsource/> or by contacting the SFWIB at (305) 594-7615, Extension 407. (Refer to Exhibit O)

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

ARTICLE 19 - DEPARTMENT'S RIGHTS TO APPROVE SUB-LEASES

Operator shall not sub-lease this Agreement or any of the rights and privileges hereunder, or contract for the performance of any of the services to be provided by the Operator hereunder without the Department's prior written approval, which approval may be granted or withheld by Department in the exercise of its sole discretion. Operator may utilize Third Party Contractor(s) to accomplish the obligations of this Agreement.

ARTICLE 20 - WAIVER OF CLAIMS

The Operator hereby waives any and all claims it now has or may hereafter have against the County and the Department, and against any member, including, without limitation, all members of the Board of County Commissioners, officers, agents or employees of each, for any loss of anticipated profits caused by any suit or proceeding attacking directly or indirectly the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement or any part thereof, or by judgment or award in any suit or proceeding declaring this Agreement null and void or voidable, or delaying the same or any part thereof from being carried out. The Operator hereby further waives any and all claims for compensation for any and all loss or damage sustained by reason of any

delay in making the Facilities available to the Operator or by reason of any defects or deficiencies in the Facilities or in the terminal building including any defect or deficiency in the Facilities or in the terminal building which substantially impedes the Operator's or its' ability to operate a concession at the Facilities or because of any interruption in any of the services thereto, including, but not limited to, power, telephone, heating, air conditioning or water supply systems, drainage or sewage systems, and Operator hereby expressly releases the County and Department from any and all demands, claims, actions, and causes of action arising from any of such causes.

ARTICLE 21 - REQUIRED, GENERAL AND MISCELLANEOUS PROVISIONS

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

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

21.03 OPERATOR COVENANTS AND ASSURANCES:

A. Covenants Against Discrimination:

1. The Operator on behalf of itself, its , successors in interest and its assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Facilities or the Airport; (2) that in the installation of any equipment at the Airport and the furnishing or services in connection therewith, no person on the grounds or race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; and (3) that the Operator shall operate at the Airport in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally assisted programs of the Department of Transportation-effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended. Likewise, the Operator shall comply with laws of the State of Florida, prohibiting

discrimination because of race, color, religion, sex, national origin, age, handicap or marital status. Should the Operator authorize another person or entity, with Department's prior written consent, to provide services or benefits in or in connection with its rights or obligations under this Agreement, the Operator shall obtain from such person or entity a written agreement pursuant to which such person or entity shall, with respect to the services or benefits which it is authorized to provide, undertake for itself the obligations contained in this paragraph. The Operator shall furnish the original or a true copy of such agreement to Department.

2. The Operator will provide all information and reports required by said Code of Federal Regulations, or by directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its Facilities as may be determined by Department or the Federal Aviation Administration to be pertinent to ascertain whether there has been compliance with said Regulations and directives. Where any information required of the Operator is in the exclusive possession of another who fails or refuses to furnish this information, the Operator shall so certify to Department or the Federal Aviation Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.
3. In the event of a breach of any of the above nondiscrimination covenants, Department shall have the right to impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate. Such rights shall include the right to terminate this Agreement and to reenter and repossess the Facilities and the improvements thereto, and hold the same as if this Agreement had never been made. The rights granted to Department by the foregoing sentence shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.
4. The Operator assures County that no person shall be excluded on the grounds or race, creed, color, national origin or sex from participating in or receiving the services or benefits of any program or activity covered by Title 14, Code of Federal Regulations, Part 152, Subpart E, Federal Aviation Administration, Nondiscrimination in Airport Aid Program, and that it will be bound by and comply with all other applicable provisions of such Subpart E, as it may be amended from time to time.
5. The Operator further assures County that it and its will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall on the grounds of race, creed, color, national origin, sex, age or handicap be excluded from participating in any activity conducted at or in connection with its operations at the Facilities. The Operator also assures County that it will require its contractors and to provide assurances to the same effect and ensure that such assurances are included in contracts and sub-lease agreements at all tiers which are entered into in connection with the Operator's services hereunder.
6. a) This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23, Subpart F. The Operator agrees

that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement covered by 49 CFR Part 23, Subpart F.

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

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

21.04 RIGHT TO MODIFY: The parties hereto covenant and agree that, during the Term and/or Extension, if applicable, this Agreement may be unilaterally modified by the Department, upon advice of its legal counsel, in order to conform to judicial or Federal Trade Commission or FAA rulings or opinions. This Sub-Article shall not preclude the Operator from contesting said rulings or opinions, but the Operator shall abide by the unilateral change while such a challenge is pending. Except as otherwise specifically provided in this Agreement, this Agreement may not be modified except by a written instrument signed by both parties.

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

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

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

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

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

1. The Operator shall, at its own cost and expense, procure and keep in force during the Term and any Extension thereto if applicable, all necessary licenses, registrations, certificates, bonds, permits, and other authorizations as are required by law in order for the Operator to provide its services hereunder and shall pay all taxes, (including sales and use taxes), assessments including, without limitation, storm water utility fees and impact fees which may be assessed, levied, exacted or imposed by all governmental authorities having jurisdiction on the Operator's property, on its services, on its Gross Revenues, on its income, on this Agreement and the fees payable to the County hereunder, on the rights and privileges granted to the Operator herein, on the Facilities and on any and all equipment installed on the Facilities and the Operator shall make and file all applications, reports, and returns required in connection therewith.
2. The Operator agrees to repair promptly, at its sole cost and expense and in a manner acceptable to the Department, any damage caused by the Operator or any of its officers, agents, employees, contractors, subcontractors, licensees or invitees to the Airport or any equipment or property located thereon.
3. The Operator is not authorized to act as the County's agent hereunder and shall have no authority, express or implied, to act for or bind the County hereunder and nothing contained in this Agreement shall be deemed or construed by the County or the Operator or by any third party to create the relationship of partnership or of joint venture. No provision of this Agreement shall be deemed to make the County the joint employer of any employee of the Operator.
4. The County shall have the right during the Operator's normal business hours (and at any time during an emergency) to inspect the Facilities and the property of the Operator located thereon, in order to enforce this Agreement, to enforce applicable laws and regulations, and to protect persons and property.
5. The Article and paragraph headings herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision of this Agreement.
6. Time is expressed to be the essence of this Agreement.
7. This Agreement will inure to the benefit of and shall be binding upon the parties hereto and their authorized successors and assigns.
8. If any covenant, condition or provision of this Agreement is held to be invalid by any court of competent jurisdiction, such holding shall not affect the validity of any other covenant, condition or provision contain herein.
9. Except as otherwise provided herein, if certain action may be taken only with the consent or approval of the County, or if a determination or judgment is to be made by

the County, such consent or approval may be granted or withheld, or such determination or judgment shall be made, in the sole discretion of the County or the County.

10. The County's Ethics Commission has also adopted rules delineating the responsibilities of lobbyists and County personnel in implementing the requirements of the lobbying section of the Conflict of Interest and Code of Ethics Ordinance. The Operator shall comply with these requirements.

21.10 FORCE MAJEURE: Strictly in relation to the obligations of each party to the other under this Agreement, and not for any other purpose or for any benefit of a third party, each party shall be excused from the timely performance of their respective obligations or undertakings provided in this Agreement, if the performance of such obligations or undertakings is prevented or delayed, retarded or hindered by strikes, lockouts, boycotts, actions of labor unions, labor disputes, labor disruptions, work stoppages or slowdowns, unless involving employees of the Operator, embargo's, general shortages of labor, equipment, premises, materials or supplies in the open market, acts of God, acts of the public enemy, acts of governmental authority, including, without limitation, the FAA, the DOT, the TSA, the EPA, the DOJ, or civil and defense authorities, extreme weather conditions, war (declared or undeclared), invasion, insurrection, terrorism, riots, rebellion or sabotage.

21.11 ENTIRE AGREEMENT: This Agreement, together with the Exhibits attached hereto, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and any prior agreements, representations or statements made with respect to such subject matter, whether oral or written, and any contemporaneous oral agreements, representations or statements with respect to such subject matter, are merged herein; provided, however, that the Operator hereby affirms the completeness and accuracy of the information provided by Operator to County, and in all attachments thereto and enclosures therewith, submitted by the Operator to County in connection with the award of this Agreement. None of the provisions, terms or conditions contained in the Agreement may be modified or otherwise altered except as may be specifically authorized by **Sub-Article 18.04 "Administrative Modifications"** or the Sub-Articles stated therein, or by written instrument executed by the parties hereto.

SPACE 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.

OPERATOR

AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.
(Legal Name of Corporation)

ATTEST:

Secretary Carol Schwartz
(Signature and Seal)
Carol Schwartz
Secretary



By: Stephen Squeri
Stephen Squeri
Group President, Global Corporate Services

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

By: _____
Mayor

Approved for Form
and Legal Sufficiency

Attest: Harvey Ruvin, Clerk

Assistant County Attorney

By: _____
Deputy Clerk

Resolution No.: _____

Date: _____