

# MEMORANDUM

Agenda Item No. 11(A)(8)

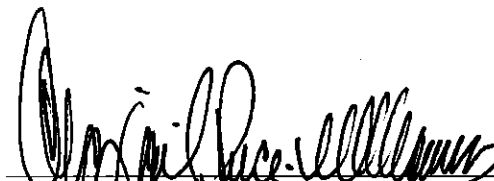
**TO:** Honorable Chairwoman Audrey M. Edmonson  
and Members, Board of County Commissioners

**DATE:** July 23, 2019

**FROM:** Abigail Price-Williams  
County Attorney

**SUBJECT:** Resolution approving a Development Lease Agreement ("Agreement") between Miami-Dade County and WMD Tamiami LLC ("WMD"), for Lease of approximately 34 acres at Miami Executive Airport ("TMB") for a term of three years, with rent to the County of \$2,450,000.00 aggregated across the term of the Lease, and providing for an investment of \$60,000,000.00 in development by WMD; approving a subsequent Occupancy Lease Agreement ("Lease") for a term of 50 years, and for a projected annual rent payment to the County of \$2,800,000.00; authorizing County Mayor to execute same and exercise all rights conferred therein, including termination, and to perform all acts necessary to effectuate same; waiving the provisions of Resolution No. R-273-15 as it relates to insurance for sub-tenants

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Joe A. Martinez.

  
Abigail Price-Williams  
County Attorney

APW/smm

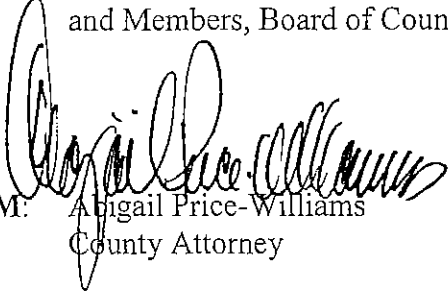


# MEMORANDUM

(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson  
and Members, Board of County Commissioners

DATE: July 23, 2019

FROM:   
Abigail Price-Williams  
County Attorney

SUBJECT: Agenda Item No. 11(A)(8)

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
- ☐ Statement of social equity 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 present \_\_\_\_, 2/3 membership \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) \_\_\_\_) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 11(A)(8)  
7-23-19

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

RESOLUTION APPROVING A DEVELOPMENT LEASE AGREEMENT ("AGREEMENT") BETWEEN MIAMI-DADE COUNTY AND WMD TAMiami LLC ("WMD"), FOR LEASE OF APPROXIMATELY 34 ACRES AT MIAMI EXECUTIVE AIRPORT ("TMB") FOR A TERM OF THREE YEARS, WITH RENT TO THE COUNTY OF \$2,450,000.00 AGGREGATED ACROSS THE TERM OF THE LEASE, AND PROVIDING FOR AN INVESTMENT OF \$60,000,000.00 IN DEVELOPMENT BY WMD; APPROVING A SUBSEQUENT OCCUPANCY LEASE AGREEMENT ("LEASE") FOR A TERM OF 50 YEARS, AND FOR A PROJECTED ANNUAL RENT PAYMENT TO THE COUNTY OF \$2,800,000.00; AUTHORIZING COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME AND EXERCISE ALL RIGHTS CONFERRED THEREIN, INCLUDING TERMINATION, AND TO PERFORM ALL ACTS NECESSARY TO EFFECTUATE SAME; WAIVING THE PROVISIONS OF RESOLUTION NO. R-273-15 AS IT RELATES TO INSURANCE FOR SUB-TENANTS

**WHEREAS**, in 2007, the Board adopted Resolution No. R-650-07 authorizing the County Mayor or County Mayor's designee to advertise a Request for Proposal ("RFP") for Public Private Investor Projects ("PPIPs") to develop designated parcels of land at TMB; and

**WHEREAS**, WMD was selected via this RFP process to develop such parcels at TMB;  
and

**WHEREAS**, the County and WMD engaged in negotiations over the terms of the resulting Lease and Agreement; and

**WHEREAS**, these negotiations were made complicated by the Great Recession, FAA constraints, and issues related to zoning, all of which were ultimately overcome; and

**WHEREAS**, pursuant to the Agreement, WMD will have three years to, finance, permit, design, and construct commercial and retail facilities at TMB, both on the south side of S.W. 128 Street and on the north side of S.W. 128 Street; and

**WHEREAS**, during the term of the Agreement, WMD shall pay to the County rent, in the aggregate, of \$2,450,000.00; and

**WHEREAS**, after completion of this development, WMD shall be entitled to occupy the facilities for a term of 50 years pursuant to the Lease, and shall pay the County approximately \$2,800,000.00 per year in rent, with that amount increasing by 2.5 percent per year, and reset at market rate every 10 years; and

**WHEREAS**, development of addition non-airline sources of revenues is of critical importance in keeping the MDAD airport system competitive; and

**WHEREAS**, WMD's tenancy at TMB will make the MDAD airport system materially more competitive; and

**WHEREAS**, WMD is an airport tenant pursuant to 125.012, Fla. Stat.; and

**WHEREAS**, development of this parcel of airport property to generate revenues to support the aviation system is a lease of an aviation facility pursuant to 125.35, Fla. Stat., and

**WHEREAS**, the County Mayor has recommended approval of the Lease and Agreement, as described in Exhibit A hereto; and

**WHEREAS**, this Board desires to accomplish the purposes outlined in the Mayor's Memorandum, which is incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:**

**Section 1.** The foregoing recitals are incorporated in this resolution and are approved.



**Section 2.** This Board approves, pursuant to 125.012 and 125.35, Fla. Stat., the three year Development Lease Agreement (“Agreement”) between Miami-Dade County and WMD Tamiami LLC, in generally the form attached hereto as Exhibit “B,” which provides for:

a. The lease of approximately 34 acres at TMB, which shall be developed by WMD at a cost of no less than \$60,000,000.00;

b. Rent for the initial 3 year term in the aggregate amount of \$2,450,000.00.

**Section 3.** This Board approves, pursuant to 125.012 and 125.35, Fla. Stat., the 50 year Occupancy Lease Agreement (“Lease”) between Miami-Dade County and WMD Tamiami LLC, in generally the form attached hereto as Exhibit “C,” which provides for:

a. The lease of approximately 34 acres at TMB, previously developed by WMD pursuant to the Agreement;

b. Rent per year in the initial amount of \$2,800,000 per year, to be escalated every year by 2.5 percent, and reset to market rate every 10 years.

**Section 4.** This Board authorizes the County Mayor or County Mayor’s designee to execute the Agreement and Lease for and on behalf of Miami-Dade County, exercise any and all rights conferred therein, including termination, and perform all acts necessary to effectuate same subject to the satisfaction of the requirements in the Agreement and Lease.

**Section 5.** This Board further directs the County Mayor or County Mayor’s designee to appoint staff to monitor compliance with the terms of the Agreement and Lease and to provide the Property Appraiser’s Office with copies of the executed Agreement and Lease, in accordance with Resolution No. R-791-14.

**Section 6.** This Board waives the provisions of Resolution No. R-273-15 related to provision of insurance by sub-tenants.

The Prime Sponsor of the foregoing resolution is Commissioner Joe A. Martinez. It 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:

Audrey M. Edmonson, Chairwoman	
Rebeca Sosa, Vice Chairwoman	
Esteban L. Bovo, Jr.	Daniella Levine Cava
Jose "Pepe" Diaz	Sally A. Heyman
Eileen Higgins	Barbara J. Jordan
Joe A. Martinez	Jean Monestime
Dennis C. Moss	Sen. Javier D. Souto
Xavier L. Suarez	


The Chairperson thereupon declared this resolution duly passed and adopted this 23<sup>rd</sup> day of July, 2019. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the 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



# Memorandum



**Date:**

**To:** Honorable Commissioner Joe A. Martinez,  
Board of County Commissioners

**From:** Lester Sola  
Chief Executive Officer and Director  
Miami-Dade Aviation Department

A handwritten signature in black ink, appearing to read "Lester Sola", written over the printed name and title.

**Subject:** Resolution Approving a Development Lease Agreement and an Occupancy Agreement with WMD TAMIAMI LLC at Miami Executive Airport and Waiving the Provisions of Resolution No. R-273-15

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**Recommendation**

It is recommended that the Board of County Commissioners (Board) adopt the attached resolution approving the simultaneous execution of two separate lease agreements with WMD TAMIAMI LLC (WMD), which allow for the development and management of non-aviation facilities in an area located at the entrance of Miami Executive Airport (TMB) consisting of approximately 34 acres of land. The area is known as "Area 7" (the Premises). Both Agreements are authorized for negotiation under Section 125.35 and 125.012, Florida Statutes as the land associated with each agreement is part of TMB, and the proposed development and occupancy of such land is in the best interest of the County aviation system.

The first agreement is a three year development lease agreement entitled: "Three Year Development Lease Agreement between Miami-Dade County, Florida, as Lessor and WMD TAMIAMI LLC, as Lessee for Premises at Miami Executive Airport" (3-Year Development Lease Agreement). It provides for the lease of the Premises at TMB for a period of three years, during which term WMD will finance, permit, design, and construct commercial and retail facilities within the Premises in two phases. The first phase to be developed is on the south side of S.W. 128 Street and the second phase is on the north side of S.W. 128 Street. The three year construction deadline may be extended if substantial completion has been reached on 75 percent of the improvements in each phase as provided for under the terms of this 3-Year Development Lease Agreement, or if the County grants the additional time due to project delays outside of WMD's control. In order to reach substantial completion, a Temporary Certificate of Occupancy or a Certificate of Occupancy (as appropriate) must have been issued.

The second agreement is a fifty year lease occupancy agreement entitled: "Fifty Year Lease Agreement between Miami-Dade County, as Lessor and WMD TAMIAMI LLC, as Lessee for Premises at Miami-Executive Airport" (50-Year Occupancy Agreement). It provides for the occupancy of the constructed commercial and retail facilities. The term of the 50-Year Occupancy Agreement commences concurrently with the expiration of the term of the 3-Year Development Lease Agreement provided that the 3-Year Development Lease Agreement is not terminated by either party; if so, then the 50-Year Occupancy Agreement shall terminate at the same time with the 3-Year Development Lease Agreement with written confirmation from both parties.

The attached Resolution waives the provisions of Resolution No. R-273-15, which requires WMD's sub-tenants to provide the same level of insurance that WMD must provide under the 50-Year

Occupancy Agreement. The waiver is justified because the County's 50-Year Occupancy Agreement applies only to WMD and not to WMD's sub-tenants who are leasing space in a building not constructed or owned by the County.

#### **Delegation of Authority**

The County Mayor or County Mayor's designee has the authority to execute the 3-Year Development Lease Agreement and the 50-Year Occupancy Agreement, and to exercise the termination provisions specified in Article 14 of both lease agreements, which provisions include but are not limited to termination in case WMD fails to: 1) make the required investment of \$60,000,000, 2) reach substantial completion by the three year construction deadline to the extent that the construction deadline has not been extended as permitted by the terms and conditions of the 3-Year Development Lease Agreement, and 3) make all payments of rentals, fees, and charges required.

#### **Scope**

The proposed development project will be constructed at the main entrance of TMB on S.W. 128 Street and S.W. 137 Avenue in District 11, which is represented by Commissioner Joe A. Martinez. However, the impact of this agenda item is countywide as TMB is a regional asset.

#### **Fiscal Impact/Funding Source**

Implementation of 3-Year Development Lease Agreement will generate revenues to the County throughout the three-year period while infrastructure improvements are being constructed, as will the 50-Year Occupancy Agreement throughout the fifty year occupancy period of the newly constructed commercial and retail facilities.

#### **3-Year Lease Development Agreement**

Per the terms and conditions of the 3-Year Development Lease Agreement, WMD will be responsible for paying all costs related to the development of the commercial and retail facilities that will be constructed in two phases. The required total investment for both phases is \$60,000,000, with an estimated cost of \$20,000,000 for Phase I on 10.82 acres of land, and an estimated cost of \$40,000,000 for Phase II on the remaining 23.23 acres. Additionally, WMD will pay the County (at a minimum) for the duration of the three year build-out period, annual land rent of \$350,000 during the first year, \$700,000 during the second year, and \$1,400,000 during the third year, making for a total of \$2,450,000.

#### **50-Year Occupancy Agreement**

Per the terms and conditions of the 50-Year Occupancy Agreement, WMD shall pay the County a projected annual land rent of \$2,800,000, which will increase annually by 2.5 percent, subject to an appraisal review every 10 years. In addition, no later than 120 days following the first anniversary of the effective date of the 50-Year Occupancy Agreement, and not later than 120 days following each subsequent anniversary of the effective date of this Agreement during the term of this Agreement, the County will receive two percent of the amount of the gross revenues (from the leases, sub-leases or licenses) that exceed the annual land rent.

#### **Track Record/Monitor**

WMD has no previous contracts with the County. Miami-Dade Aviation Department (MDAD) Division Director Michele Raymond of Real Estate Management and Development will oversee the implementation of both Agreements.

**Background**

In 2007, the Board adopted Resolution No. R-650-07 authorizing the County Mayor or County's Mayor's designee to advertise a Request for Proposal (RFP) for Public Private Investor Projects (PPIPs) to develop designated parcels of land at Miami International Airport (MIA) and/or at TMB. As such, on June 5, 2007, MDAD advertised RFP No. MDAD-06-03 seeking proposals from qualified investors to finance, construct, renovate, manage and/or operate development projects at both MIA and at TMB.

Two responsible, responsive firms submitted proposals for the development of specific land parcels on the Premises, at TMB. Each firm made a technical presentation before members of the County's Competitive Selection Committee (CSC) after which sealed price envelopes were opened and read aloud. Due to the unique nature of the proposed development project at TMB, a formula was created to calculate the Net Present Value (NPV) of the proposed development project. After accounting for the NPV, members of the CSC determined the overall ranking by adding together the technical points score and the points based on the NPV for each firm as shown below.

<b>Firm</b>	<b>Technical Points</b>	<b>Rank based on Technical</b>	<b>Price based on NPV</b>	<b>Points based on NPV</b>	<b>Adjusted Score</b>	<b>Overall Ranking</b>
TA 137 <sup>th</sup> Avenue Associates	5,467	2	\$14,384,091	1,823	7,290	2
WMD Tamiami	5,525	1	\$15,782,207	2,000	7,525	1

In March 2008, the CSC's recommendation to negotiate with the highest-ranked proposer (WMD) was approved, and the first rounds of negotiations began the following month. A series of complex issues required extensive negotiation such as: 1) land values, 2) market values (rent), 3) limitations on increases in land rent adjustments, 4) additional rent payments for improvements after passage of the amortization period, and 5) transfer fees, if the lease interest is transferred or sold. Additionally, the proposed development project required amendments to the Comprehensive Development Master Plan and applicable zoning provisions.

Shortly after the negotiations began, the South Florida real estate economy collapsed along with the general economy nationwide. Even after the economy showed signs of improvement in 2012 and bank loans to construct projects were again becoming available, negotiations were delayed by a series of zoning issues that took time to resolve in order to allow development at TMB. Furthermore, MDAD had forwarded the occupancy lease agreement to the Federal Aviation Administration (FAA) for review proposing an initial lease term of 55 years and the FAA would not accept any lease term greater than 50 years. This required WMD and MDAD to renegotiate the lease term, resulting in MDAD's providing WMD with a "not to exceed" three year development lease for the construction of the development project, followed by a fifty year occupancy lease, making for a total term of 53 years. After a lengthy review, the FAA accepted the new lease terms.

WMD is required to relocate existing airport structures at its own cost; install new fences and create traffic circulation patterns separating WMD's facilities from MDAD activities at TMB; install secondary access roadways to the north and south of the development areas for use by MDAD and emergency response vehicles; install a sidewalk along S.W. 137 Avenue that is compatible with the proposed community-friendly sidewalk surrounding TMB; and comply with all FAA and MDAD requirements.

WMD will comply with all of the requirements mandated by the County for construction contracts including but not limited to: Responsible Wages, Living Wage, Art in Public Places Program, Residents First Training and Employment Program, and the Employ Miami-Dade Program, in addition to all applicable contract measures determined by the Internal Services Department's Small Business Development Division such as the Community Business Enterprise (CBE) Program, the Community Small Business Enterprise (CSBE) Program, and all other Programs and Ordinances applicable to the construction of this development project as of the effective date of the 3-Year Development Lease Agreement.

C: Jack Osterholt, Deputy Mayor, Office of the Mayor

## Exhibit B

Lease No. \_\_\_\_\_

Document name \_\_\_\_\_

### THREE YEAR DEVELOPMENT LEASE AGREEMENT

BETWEEN

MIAMI-DADE COUNTY, FLORIDA, AS LESSOR,

AND

WMD TAMIAMI LLC, AS LESSEE,

FOR PREMISES AT

MIAMI EXECUTIVE AIRPORT

THIS THREE YEAR DEVELOPMENT LEASE AGREEMENT (hereinafter sometimes referred to as this "Agreement", or as this "Lease", or as this "3 Year Lease") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida ("County" or "Lessor"), and WMD TAMIAMI LLC, a Florida limited liability company ("Lessee").

WITNESSETH:

WHEREAS, County owns and operates Miami Executive Airport ("TMB") through its Aviation Department ("MDAD"); and

WHEREAS, TMB has areas of land associated with its Airport that are capable of being developed for aviation, aviation-support, and non-aviation purposes;

WHEREAS, Lessee is an experienced developer of property who desires to develop a particular parcel of airport property at TMB in the manner, and in accordance with the terms, of this Lease;

WHEREAS, simultaneously with the execution of this 3 Year Lease, County and Lessee have entered into and executed that certain separate "Fifty Year Occupancy Lease Agreement" (hereinafter sometimes referred to as the "Fifty Year Lease" or as the "50 Year Lease" or as the "Occupancy Lease"), pursuant to the terms of which the County has leased to Lessee the "Premises" (as hereinafter defined) for a term of fifty (50) years which shall commence simultaneously with, and automatically upon, the expiration of the term of this 3 Year Lease,

provided, that this 3 Year Lease shall not have been duly terminated by either party prior to such expiration;

WHEREAS, Lessee understands that all design, construction, occupancy and use of facilities either already located on the parcel or to be constructed on the parcel must be done in strict accordance with MDAD and FAA requirements;

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

## ARTICLE 1

### DEFINITIONS

- 1.1 Agreement, or Lease, or 3 Year Lease: This written Development Lease Agreement between the County and the Lessee, including the Exhibits attached hereto and all amendments hereto and/or thereto which may, from time to time, be executed by the County and Lessee.
- 1.2 Alterations: Any alterations to the Premises and Improvements after completion of the Improvements.
- 1.3 Airport: Miami Executive Airport, where the Premises are located.
- 1.4 Certificate of Occupancy (C.O): Any certificate of occupancy issued under the building code then applicable to the Premises.
- 1.5 Intentionally Deleted.
- 1.6 County: Miami-Dade County acting through its Aviation Department. The County as used in this Agreement shall mean Miami-Dade County acting through its Board of County Commissioners and includes the regulatory departments that include, but are not limited to, the Aviation Department, the Regulatory and Economic Resources ("RER") Department, the Department of Transportation and Public Works, and the Department of Water and Sewer, or their successors.
- 1.7 Date of Beneficial Occupancy (DBO): The DBO shall be the earliest of: (i) the date on which Substantial Completion of the Work associated with any building (other than temporary structures, construction trailers and the like) to be occupied or used by Lessee or its sub-lessees has occurred and the appropriate code enforcement agency has issued a C.O. or Temporary C.O. so the Lessee and/or its sublessee(s) can occupy or utilize the building for its intended use, (ii) the date on which Substantial Completion of the Work associated with the building would have occurred and on which the appropriate governmental agency would have issued a C.O. or Temporary C.O. for work associated with the building, but for the occurrence of Lessee Delays, or (iii) the date on which Lessee commences any use of the building for its intended use.



- 1.8 Department: Miami-Dade County's Aviation Department, a department of Miami-Dade County, sometimes referred to as MDAD or County, represented by and acting through the Aviation Director or designee(s).
- 1.9 [Intentionally Deleted.]
- 1.10 Director: The Aviation Director of the Miami-Dade County Aviation Department, or his or her designee.
- 1.11 Effective Date: Subject to the provisions of Section 1.12 below, the date upon which the last of the following shall occur: (a) [intentionally deleted] (b) ten (10) days after the date of the adoption of a resolution by the Miami-Dade County Board of County Commissioners approving the Lease and waiving, as to Lessee's sublessees (and any sub-sublessees, if applicable) the sublessee insurance requirements under County Resolution No. R-273-15, unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by Miami-Dade Board of County Commissioners, and (c) the date of expiration of the Lessee's Feasibility Period. The Effective Date of this Lease will be confirmed in writing by the parties promptly following the determination of the Effective Date.
- 1.12 Lessee's Feasibility Period: The period of one hundred eighty (180) days following the date upon which the last of the events referred to in Section 1.11(a) and (b) above shall have occurred. Anything in the foregoing or in any other provision of this Lease to the contrary notwithstanding, it is expressly understood and agreed that the Effective Date of this Lease shall in no event occur prior to the expiration of Lessee's Feasibility Period.
- 1.13 [Intentionally Deleted]
- 1.14 Final Acceptance: The Lessee's acceptance of any of the Improvements from its contractor upon certification by the Lessee's architect/engineer that the completed improvements, or portion thereof, have been completed in accordance with the Plans and Specifications. Final Acceptance may be evidenced by a writing to such effect from the Lessee or by the Lessee's making of the final payment of the fee to its contractor for the completion of the completed Improvements unless otherwise stipulated at the time of making such payment.
- 1.15 [Intentionally Deleted.]
- 1.16 Impact Fees: Those impact fees payable by Lessee to the County or to another governmental jurisdiction prior to or at the time of the submission of Lessee's permit application for the construction of the Improvements.
- 1.17 Improvements: Those facilities that the Lessee and/or any of its sublessees and/or assignees will design and construct, or cause to be designed and constructed, pursuant to this Agreement. The Improvements will include the Phase I and Phase II Improvements, unless Lessee exercises its right not to construct the Phase II Improvements.
- 1.18 Lessee: The entity whose name appears in the first paragraph above and its successors and assigns.

- 1.19 Lessee Delay: Any delay in the design or construction of the "Project" (defined in Section 5.1(A) below) that occurs by reason of acts or omissions on the part of Lessee, or those acting for or under the direction of Lessee, or a third party acting for or under the direction of any of Lessee's agents or contractors (other than an act of Force Majeure). If a Lessee Delay occurs and if concurrently a delay occurs for a reason other than a Lessee Delay, and if the Lessee is not responsible for such concurrent delay, the period in which an overlap in the delays occurs will not constitute a Lessee Delay.
- 1.20 MDAD: Miami-Dade County's Aviation Department, as operator of TMB.
- 1.21 [Intentionally Deleted]
- 1.22 [Intentionally Deleted]
- 1.23 [Intentionally Deleted]
- 1.24 Plans and Specifications: The drawings and specifications prepared by the Lessee's or any sublessee's or assignee's architect/engineer that show the approximate locations, character, dimensions (including height), floor area and major exterior design elements of each building proposed to be constructed on the Premises, subject to more detailed requirements as provided in Article 5
- 1.25 Record Drawings (As-built Drawings): Reproducible drawings in a format reasonably acceptable to MDAD showing the final completed Improvements as built, including any changes to the Improvements performed by Lessee's or any of its sublessee's and/or assignee's contractor(s) that Lessee's or any of its sublessee's and/or assignee's architect(s)/engineer(s) consider(s) significant, based on marked-up as-built prints, drawings and other data furnished by Lessee's and/or any of its sublessee's and/or assignee's contractor.
- 1.26 Risk Management Division: A Division of MDAD.
- 1.27 Substantial Completion: The stage in the progress of the Work when the Work or designated portion thereof is completed in accordance with the approved Plans and Specifications to the extent that Lessee or its sublessee(s) can occupy or utilize the relevant portion of the Improvements for their intended use. At this stage, all punch list work should be able to be completed by Lessee's or its sublessee(s)' contractor in 60 days or less.
- 1.28 TAC-N: MDAD's "Tenant Airport Construction-Nonreimbursable" procedures to be followed by Lessee hereunder for the construction of any Improvements on the Premises, as reflected on Exhibit "A" (subject, however, to such modifications therein and/or waivers thereof, which may be agreed to or granted by MDAD in its sole discretion from time to time).
- 1.29 Temporary C.O.: Any temporary or partial certificate of occupancy issued under the building code then applicable to construction in Miami-Dade County.

- 1.30 Trust Agreement: The 2002 Amended and Restated Trust Agreement between the County and the Trustee and Co-Trustee relating to the County's obligations pertaining to the aviation revenue bonds issued thereunder, and further referenced in Article 20 of this Agreement.
- 1.31 Work: All labor, materials, tools, equipment, services methods, and procedures necessary or convenient to performance by Lessee or any of its sublessees or assignees or by the Lessee's or sublessee's or assignee's contractor for the fulfillment of Lessee's and/or its sublessees' obligation to construct improvements in accordance with the terms of this Agreement.

## ARTICLE 2

### TERM AND PREMISES

#### 2.1 Term:

(A) The County hereby leases to the Lessee, and the Lessee hereby leases from the County, effective on the Effective Date, the area described in Article 2.2 (the "Premises"), to have and to hold the same unto Lessee and its sublessees, successors and assigns (and all other parties lawfully claiming by, through or under Lessee and/or its sublessees, successors and/or assigns) for the term of this Lease, together with the right to construct, and/or cause to be constructed, and occupy, and/or cause or permit to be occupied, the improvements described in Article 5 (the "Improvements") hereof for an initial term (the "Term") that commences on the Effective Date and that ends at 11:59 p.m. (Eastern Time) on the third (3<sup>rd</sup>) anniversary of the Effective Date, subject to any extension(s) thereof pursuant to any other provision(s) of this Lease.

(B) Lessee shall have the right, both prior to and during Lessee's Feasibility Period, to undertake, inter alia, such analyses and studies as to the Premises and the feasibility of the transaction contemplated in this Lease, and such discussions with prospective subtenants, lenders and/or investors, as Lessee shall consider necessary and/or desirable in order to, among other things, verify the suitability of the Premises for Lessee's proposed development and the acceptability of this Lease to Lessee's prospective subtenants, lenders and investors. In the event that Lessee shall not be satisfied, in its sole, absolute and unfettered discretion, with the results of the analyses, studies, discussions and other inquiries conducted by Lessee during Lessee's Feasibility Period, then Lessee shall have the absolute right, at any time prior to 5:00 p.m. on the last day of Lessee's Feasibility Period, to deliver written notice (which may be via email) of Lessee's election to terminate this Lease and the transaction contemplated herein. In the event that Lessee shall timely deliver such termination election notice to Lessor, this Lease and the transaction contemplated herein shall be deemed terminated effective as of the end of Lessee's Feasibility Period and Lessee shall be entitled to receive an immediate refund of any security or other deposits theretofore posted by Lessee under or in connection with this Lease, but otherwise each party shall bear its own costs.. Thereupon, each party hereto shall be released and relieved of all duty, liability or obligation to the other party in connection with this Lease and the transaction contemplated herein.

(C) For avoidance of doubt, it is expressly understood and agreed that if, prior to the end of the term of this 3 Year Lease (as the same may have been extended pursuant to any provision hereof), this 3 Year Lease shall be duly terminated either in whole or in part pursuant to any termination right set forth herein, then the 50 Year Lease shall be deemed to have been simultaneously terminated either in whole or in the same part as well, all without need of any further action or agreement of the parties; provided, however, that promptly following written request by either party, the other party shall sign a document in form reasonably acceptable to Lessor and Lessee confirming the termination of either or both agreements or the parts thereof as to which same had been terminated as aforesaid.

(D) During the Term of this Lease, and subject to any applicable restrictions contained in this Lease, Lessee and its sublessees, successors and assigns (and all other parties lawfully claiming by, through or under Lessee and/or its sublessees, successors and/or assigns) shall have and hold, exclusively, the Premises and all development rights and lease rights pertaining to the Premises, including the right to construct, and/or cause to be constructed, and to occupy and operate, and/or sublease, all Improvements located from time to time upon the Premises or any part or parts thereof, all in accordance with and to the extent permitted by this Lease.

## 2.2 Premises; New Survey:

(A) The Premises leased herein include the parcel and improvements described in Exhibit "B" hereto, together with the right of ingress to and egress from the Premises over and across public roadways serving the Airport and, to the extent within Lessor's control, over and across any other easement areas which might be depicted on the "Site Plan" or "New Survey" (both defined below) for the Lessee, its sub-lessees, successors and assigns and their respective agents and employees, patrons and invitees, suppliers of service and furnishers of materials. Said right shall be subject to such laws, rules, regulations and orders relating to the utilization of roadways and easements on the Airport as well as those located inside the Airport's Air Operations Area (AOA) and/or Security Identification Display Areas (SIDA) as now or may hereafter have application at the Airport, provided that same are enforced in a non-discriminatory manner against Lessee and its sublessees and their respective employees, contractors, invitees and customers. Nothing herein contained shall be construed to grant to the Lessee the right to use any other space or area, or other Airport facilities, improved or unimproved, which are leased to a third party, or which the County has not specifically leased to, or otherwise made available to, the Lessee under this Lease.

(B) Prior to the end of Lessee's Feasibility Period, Lessee shall have a new boundary survey of the Premises prepared at its cost to determine the actual size of the Premises and the legal description of same and the location and configuration of any ingress, egress and other easements (the "New Survey"), which New Survey shall determine the land area of the Premises (in both acres and square feet) for all Lease purposes and the legal description to be attached hereto. The County shall have the right to review and provide corrections to the New Survey if the New Survey is not consistent with Exhibit "B".

(C) The County undertakes and agrees to deliver vacant possession of the Premises to Lessee on the Effective Date, free and clear of all leases, occupancy agreements, tenancies and other parties in possession.

2.3 Infrastructure Related to Lessee's Improvements:

- (A) Lessee and/or its sublessees shall have the right and obligation upon and subject to the terms and provisions of this Lease) to provide at its or their costs all infrastructure required for the construction, use and operation of their respective intended Improvements on the Premises, including but not limited to, the right to connect to all necessary and then-available utility lines, including electric, sewer, water and natural gas, to provide sanitary sewage, including the right to construct lift stations as needed, to construct facilities for the discharge and collection of storm water drainage, and to run utility lines and drainage lines through and across the adjacent portions of the Airport property to and within the boundaries of the Premises. Lessee and/or its sublessees shall be further entitled to use, improve, as needed, and/or develop and construct access roads and loop roads serving the Premises and the Improvements. The rights herein are subject to (a) approval of the County's applicable licensing and regulatory agencies (e.g., the zoning, planning and building departments); and (b) MDAD's reasonable approval (or its deemed approval) to the extent required under Article 5 hereof, and (c) FAA's review and acceptance thereof. To the extent MDAD facilities are involved, MDAD (joined by the County, to the extent required) shall grant Lessee licenses at no additional cost to Lessee (except as to recording costs and Lessee's costs of assisting with the preparation of such documents, which Lessee must absorb), needed by Lessee and/or its sublessees and/or their respective successors and/or assignees to provide the infrastructure contemplated herein as reasonably approved (or deemed approved) to the extent required under Article 5.
- (B) In addition to the relocation of the communication beacon in accordance with Section 2.8(C) below, Lessee shall also be responsible for relocating (i) all fences depicted on Exhibit "C" hereof which are labeled "Fences to be Removed", and (ii) all fences reasonably required by the FAA or MDAD, and for re-installing such fences in the locations depicted on Exhibit "C" hereof which are labeled "Location of Relocated Fences", or such other locations reasonably identified by the FAA or MDAD, or else providing new fences in such area (if reasonably directed by Lessor) to insure the integrity of the Air Operations Area (AOA) of the Airport. Any such re-installed or new fencing shall meet the customary standards directed by Lessor and the FAA.
- (C) Additionally, Lessee shall also be responsible for installing, within the portion of the Premises adjoining S.W. 137<sup>th</sup> Avenue, an eight-foot (8') wide sidewalk (or other sidewalk of a different dimension as required by the County) to accommodate pedestrian traffic and bicycles, such sidewalk to match the dimensions and design of the sidewalk for pedestrian traffic and bicycles to be installed by the Lessor in the areas immediately adjacent to Lessee's Premises. Such sidewalk shall meet the County's building codes or the requirements of any site plan approval for Lessee's Improvements, if different from the then-current code requirements.

2.4 Title Matters; Survey(s); Property Reports; Memorandum of Lease.

(A) Defects in Title; Title to Premises and Lessee's Improvements: The County represents and warrants that it has full right and authority to lease the Premises to Lessee as provided in this Agreement. Lessee may obtain a title commitment for the Premises from a title insurance company licensed to do business in the State of Florida and if same reflects any conditions to title that are not acceptable to Lessee, then Lessee shall provide notice thereof to the County on or before the end of Lessee's Feasibility Period. The County shall determine whether County is willing to cure such title objections and should County fail to cure said title objections to the satisfaction of Lessee on or before thirty (30) days after the County's receipt of written notice from Lessee specifying said title objections (or within such longer period of time as Lessee and the County may agree upon), then Lessee, within thirty (30) days, may (1) cause the portion of the Premises affected by the title objection to be removed from the Premises with a corresponding reduction in the rents to be payable by Lessee thereon, (2) terminate the Agreement, or (3) waive its title objection. If Lessee elects such a termination of this Agreement in its entirety, Lessee shall have no further obligations to Lessor under this Agreement, except for any environmental and indemnity obligations as set forth in Articles 8, 9.15 and 11.1 for events occurring prior to such termination, and all rental payments made by Lessee to Lessor shall be returned to Lessee which shall be Lessee's exclusive remedy for such a termination. It is expressly understood and agreed that, except as expressly set forth herein, the County and Lessee do not agree to undertake, and nothing contained in the Agreement shall require or be construed to require the County or Lessee to undertake, any action or proceeding or to incur any expense in order to eliminate any other title defect or exception, or to render title to the Premises either marketable or insurable.

Anything in the foregoing or elsewhere in this Lease to the contrary notwithstanding, it is expressly understood and agreed as follows:

- (i) if the County shall elect, at its option, to endeavor to cure the title objections raised by Lessee in its title objection notice referred to above, or if the County shall be required to undertake any "Remedial Actions" (defined in Article 8.2 below) then to the extent such actions adversely affect the Lessee's (or its sublessees') construction activities or any other operations of Lessee or its sublessees contemplated by this Lease, the "Construction Deadline" (defined in Article 5.6 below) and the "Investment Deadline" (defined in Article 5.8 below) shall each be extended on a day-for-day basis for each day in which the County is endeavoring to effectuate the cure of any such title objection and/or the completion of such Remedial Actions, as the case may be; and
- (ii) the County shall be obligated to take reasonable steps to cure, discharge and otherwise remove all liens, encumbrances and other title defects and matters first coming into existence from and after the effective date of the title insurance commitment obtained by Lessee as noted above; provided, however, if the County, acting reasonably and in good faith, determines that it is unable for any reason to effect such corrective steps, Lessee's remedies shall be as set forth in this Article 2.4(A).

(B) Title to Premises:

(1) Notwithstanding any contrary provision of this Agreement, title to all Improvements placed upon the Premises by or at the direction of Lessee (or by or at the direction of any of its sublessees) during the Term shall be deemed to immediately vest in the Lessee (or such sublessee, subject, however, to the terms of Lessee's sublease[s] with such sublessee[s]) for the Term, subject to the County's rights under this Agreement, unless Lessee (and, in the case of Improvements constructed by any sublessee, unless such sublessee, joined by Lessee) shall, within sixty (60) days following the Construction Deadline, as the same may be extended from time to time, elect in writing addressed to the County to have such title, as to any specific Improvement, vest in the County, subject to Lessee's (and/or such sublessee's) rights under this Agreement (or under any applicable sublease[s]).

(2) At the end of the Term, and provided that the term of the Fifty Year Lease shall not have commenced upon (or contemporaneously with) the expiration of the term of this 3 Year Lease, title to all Improvements (except for personalty and fixtures removed by Lessee [or by any sublessee] pursuant to this Agreement) shall vest in the County and, regardless of whether Lessee or any sublessee had theretofore elected to have the title to any Improvement and its FF&E vest in the County, Lessee shall execute (and any sublessee[s] who shall have elected (with the Lessee's joinder) to have its or their Improvements and FF&E vest in the County as aforesaid shall also execute) any documents required to confirm the conveyance of such title in the County, free and clear of any mechanics liens or similar encumbrances.

(C) Existing Surveys, Environmental Reports, Soil Tests, Evidence of Zoning and Concurrency Compliance, Contracts and Other Documentation:

(1) Lessee acknowledges that except as may otherwise be expressly set forth in this Lease (e.g., in Sections 2.4, 2.8 and 8.2 hereof), the County has made no representation as to the suitability of the Premises for Lessee's development purposes, as set forth in Article 2.8. Notwithstanding such fact, on or before the fifteenth (15<sup>th</sup>) business day following the date of this Lease, MDAD shall provide to Lessee, to the extent that the same shall be in MDAD's immediate possession or reasonable control and unless otherwise theretofore provided to the Lessee: (i) a copy of any and all existing surveys of the Premises as well as any and all existing surveys of any larger tract(s) which include(s) the Premises or any part thereof (it being acknowledged that the County has no obligation hereunder to provide a new survey of the Premises, but the County shall deliver any such existing surveys in its possession or reasonable control); (ii) a copy of any and all existing soil tests relating to the Premises or any part thereof; (iii) a copy of any and all existing environmental reports relating to the Premises; (iv) copies of all existing contracts (including service contracts) affecting the Premises; and (v) other like documentation, reports and written information in the County's possession or reasonable control respecting the physical conditions of the Premises and the existing improvements thereon.

(2) In addition to Lessee's obtaining a New Survey, as noted in Article 2.2 above, Lessee shall also have the right, not later than the end of the Lessee's Feasibility

Period, to obtain at its cost updated (or new) soils reports, environmental reports and other customary studies pertaining to the Premises.

(3) If Lessee, in the exercise of its reasonable discretion, is not satisfied with any of the materials provided by the County or obtained by Lessee as aforesaid, or if Lessee shall otherwise determine that all or any portion of the Premises is not suitable for Lessee's proposed development, or that this Lease is not acceptable to Lessee's prospective subtenants, lenders and investors, then the Lessee may terminate this Lease as to the entirety of the Premises at any time prior to the close of business on the last day of the Lessee's Feasibility Period. The County agrees that it will cure any existing (i.e., as of the Effective Date) violations applicable to the Premises at its expense to the extent required under Article 8, and should it fail to do so, then Lessee may cure same and the reasonable costs incurred in doing so may be taken as a credit by Lessee against the next due Rent payments hereunder. Anything in the foregoing or in any other provision of this Lease to the contrary notwithstanding, the maximum credit available to Lessee pursuant to the preceding sentence shall be an amount equal to the product computed by multiplying (x) the total land area of the Premises (expressed in square feet), by (y) the applicable "Per Square Foot Initial Annual Rental Rate" (as said term is defined in Section 4.1(A)(II) of the Fifty Year Lease.

(D) Memorandum of Lease: The parties shall join in the execution of a memorandum of this Lease for the purpose of recordation, and Lessee shall pay any recording costs associated therewith, in the form attached hereto as **Exhibit "D"**.

2.5 [Intentionally Deleted.]

2.6 [Intentionally Deleted.]

2.7 [Intentionally Deleted.]

2.8 Suitability of Premises.

(A) The Lessee acknowledges that except as provided in Article 8.2 below and in Section 2.4 above, (1) the Lessor has made no representations as to the Premises or the suitability of the Premises for the purposes of the Lessee, (2) the Lessor will comply with its obligations to the extent set forth in Article 8.2 and Article 2.4, (3) the Lessor has no obligation to perform or cause to be performed any maintenance, repairs, renovations, cleanups, painting, or the like on the Premises, and that the Premises are leased in an as is condition, except to the extent of: (a) Lessor's responsibilities for environmental conditions under Article 8; and (b) Lessor's maintenance requirements in Article 6; (4) Lessee has made or shall make whatever site inspections it deems reasonably necessary so as to be apprised of the conditions of the Premises, both above ground and below ground (provided, however, that nothing contained herein shall be deemed to absolve Lessor of or from any of its obligations under this Lease including, but not limited to those relating to environmental contamination, violations of Environmental Laws, Hazardous Materials, Environmental Claims, Environmental Conditions and other matters referred to in Article 8 below), and has made or will make its own determination that the Premises are suitable for Lessee's intended use, subject, however, to the performance of the County's obligations as



set forth in Article 8.2 below and in Section 2.4 above, and (5) subject to the provisions of Article 8.2 below and Section 2.4 above, including, but not limited to the performance of the County's obligations as set forth in Article 8.2 below and in Section 2.4 above, Lessee has made, or will make such other inspections of the Premises as Lessee may deem necessary in or to satisfy itself that the conditions of the Premises, facilities and utilities in their current state are satisfactory to the Lessee or that the same will be satisfactory upon due performance by the County of its obligations as set forth in Article 8.2 below and in Section 2.4 above.

(B) Lessee's obligations under this Agreement, such as those set forth in Article 8.1(C) to make commercially reasonable good faith efforts to obtain all land use, construction, and operating permits and approvals required of the Lessee at the Lessee's sole cost and expense, shall not require Lessor to take any action or perform any tasks within or without the Premises, other than providing reasonable support to and cooperation with Lessee to enable the Lessee to obtain such permits and approvals, including, but not limited to, COs, TCOs, and certificates of use, all of which shall remain the Lessee's exclusive obligation to take or perform in order to obtain such permits and approvals. Except as otherwise set forth in this Agreement, Lessor will not be responsible for any cost, loss, or damage which may be necessary or incurred by the Lessee to make the Premises suitable for the Lessee's use. Except as otherwise set forth in this Agreement, the Lessor has no obligation to perform or cause the performance of any maintenance, repairs, site work, or any other tasks in order to enable the Lessee to make use of the Premises or to enable Lessee to obtain any permits, authorizations, or licenses to make use of the Premises, which tasks shall remain the Lessee's exclusive obligation to perform in order to obtain such permits; provided however, that the Lessor shall undertake its responsibilities under Articles 2.4, 2.8 and 8.2.

(C) The County hereby authorizes Lessee, at its cost and expense, to demolish those buildings and facilities on the Premises, to the extent described in Exhibit "E" hereto, and in addition, Lessee shall be required, at its cost and expense, to relocate the communications beacon and existing fences from their current location on the Premises to a new location within the Airport as shown on Exhibit "F" hereto. Such demolition and relocation shall be done in strict compliance with any and all applicable requirements of Article 5.

2.9 Use of Improvements Prior to CO or TCO Prohibited: If a certificate of occupancy (a "CO") or temporary certificate of occupancy (a "TCO") is required in order for Lessee to lawfully occupy or use any building constructed upon the Premises, Lessee shall not occupy or use that building prior to issuance of the applicable CO or TCO.

2.10 [Intentionally Omitted].

2.11 Intentionally Deleted.

2.12 Eminent Domain:

(A) Generally. As used in this Article 2.12, a "Taking" or "Taken" shall mean a taking of all or any portion of the Premises for public or quasi-public use by any lawful power or

authority by exercise of the right of condemnation or eminent domain or by agreement with those having the authority to exercise such right.

In the event of:

- (i) any Taking of all of the Premises; or
- (ii) any Taking of a material portion of the Premises, such that the operation of the business of Lessee or of any sublessee upon or within the Premises as a whole or the portion of the Premises so Taken shall be materially impaired; or
- (iii) any Taking which shall result in the elimination or material impairment of vehicular or pedestrian access to and from the Premises or any material portion thereof; or
- (iv) any Taking which shall result in the elimination or material impairment of parking areas or facilities within the Premises or any portion thereof,

then, in any of such events, Lessee shall have the right to terminate this Lease as to the affected portion of the Premises (or as to the whole of the Premises, i.e., in the event of a Taking of all or such a substantial portion of the Premises as will render continued use or occupancy of the balance thereof substantially non-feasible) by giving at least sixty (60) days' prior written notice thereof to the County, such notice to be given by Lessee within ninety (90) days of the date of the Taking in question.

Upon the expiration of such 60-day period following the date of Lessee's aforementioned notice, this Lease shall terminate as to the affected portion of the Premises (or the whole thereof, as the case may be) without any further liability on the part of either Lessee or the County, except for a proration between the parties for the rent payable by Lessee hereunder and for payment to Lessee and/or its sublessees of its/their share of the award for the taking in accordance with the further provisions of this Lease.

Upon any Taking of only a portion of the Premises, the rent payable by Lessee under this Lease shall be equitably reduced in proportion to Lessee's (or its sublessee's or sublessees') loss of use of the affected portion of the Premises and the interference with the business operations of Lessee and/or its sublessee(s) therein.

Lessor and Lessee agree that the provisions of Article 10.2(C)(8) below shall apply as relates to the rights of "Leasehold Mortgagees" in connection with any Taking occurring (or award issued) during any period of time in which any Leasehold Mortgage shall be in effect.

(B) Award. Lessee shall be entitled to present at any trial on the issue of full or just compensation, and no compensation settlement or sale in lieu of condemnation shall be entered into by Lessor without Lessee's prior written consent. Lessee shall be entitled to recover, out of any condemnation award or proceeds of sale in lieu of condemnation, compensation for the value of Lessee's unexpired leasehold interest including but not

limited to compensation for the value of the property taken, severance damages to the remainder, improvements, fixtures, personal property and moving costs. Lessee shall be further entitled to separately claim business damages to the extent allowed by law. Lessor's right to recover a portion of any award or sales proceeds shall be limited to the value of Lessor's reversionary interest in the Premises as of the date of termination.

(C) Temporary Taking: In the event of a temporary Taking, this Agreement shall not terminate by reason thereof but Lessee shall not be required to pay rents or other charges related to any temporarily occupied portion of the Premises. Lessee shall perform all other obligations under this Agreement, except to the extent that Lessee may be prevented from so doing due to the temporary Taking. In the event of any such temporary Taking, Lessee shall be entitled to present at trial evidence concerning the taking of or damage to its leasehold interest, business damages, and moving costs, and Lessor shall not enter into any compensation settlement or agreement without Lessee's prior written consent. Subject to Article 2.12 (B), Lessee shall be entitled to recover out of any condemnation award or proceeds of a sale in lieu of a temporary condemnation, the value of any leasehold interest temporarily taken, any damage to its remaining leasehold interest as a result of the temporary taking, and moving costs.

(D) Additional Provisions Relating to County Takings. County shall have the right to exercise its power of condemnation in accordance with Florida law in whatever manner and to whatever extent is provided by Florida law, provided, however, that such power shall not be exercised for purposes of frustrating the transaction contemplated herein. All compensation due to Lessee and its sublessees with respect to such condemnation shall be governed by Florida law and the provisions of Section 2.12(B) above. If the County so exercises its right to condemn any portion of the Improvements and then permits Lessee and/or any sublessee(s) to continue to occupy any portion of the condemned Improvements, Lessee shall be obligated to pay rentals as set forth in this Lease (or an equitably allocated portion thereof, in the case of a partial Taking) on such condemned Improvements all in the manner and at the times then applicable under this Lease to the condemned Improvements so continued to be occupied by Lessee or such sublessee(s).

Further, if within sixty (60) months following any taking of all or any portion Premises, the County shall elect to again lease (or sell) the Premises (or the portion thereof so taken), then before proceeding with any lease (or sale transaction) with any other party (a "Third Party"), the County shall be required, first, to offer to Lessee in writing (the "Offer") the right, at Lessee's option either (x) to reinstate this Lease as to the Premises or the portion thereof so taken for term equal to the portion of the Term of this Lease that had been remaining as of the date of the taking, or (y) to lease (or, if applicable, purchase) the Premises (or the applicable portion thereof) for the same rental (or purchase price) and on the same terms and conditions as the County had been prepared to accept from such Third Party. The Offer shall be accompanied by information as to the identity of the Third Party and its principals, as well as a true, correct and complete copy of the lease and/or other agreement(s) and, if applicable, guaranty agreements and/or the like, proposed to be entered into by the County with such Third Party (and, if applicable, with affiliates of such Third Party). Lessee shall have a period of forty-five (45) following its receipt of the Offer and accompanying documentation referred to above to make the election referred to in Clause (x) or (y) above, failing which the County shall be free to proceed forward with a

lease or sale to the Third Party for a rental (or price, if applicable) and on terms no more favorable to the Third Party than those contained in the Offer. If, within one hundred eighty (180) days following delivery of the Offer to Lessee, the County shall fail to consummate a transaction with the Third Party identified in the Offer, or if the County shall offer or agree to accept a rental (or purchase price, if applicable) and/or other terms that are more favorable to the Third Party than those originally disclosed to Lessee in the Offer and accompanying documentation, then Lessee's rights under this section shall be reinstated and the County shall not proceed forward with any lease or sale to any Third Party without again (i) delivering a new Offer, and required supporting information and documentation to Lessee and (ii) granting Lessee the same rights as set forth above with respect to such new Offer.

- 2.13 Maintenance and Repair by Lessee after Condemnation of Improvements: In the event County condemns the Improvements or any portion of them and, in either case, permits Lessee to occupy such Improvements, Lessee shall be responsible at its own cost to maintain and repair the Premises and Improvements for the period of such occupancy. Lessee's obligations to maintain and repair the Improvements occupied by Lessee shall be as specified in Article 6. The parties do not intend that the foregoing provisions of Article 2.12 or this Article 2.13 will in any way affect the amount of compensation payable to Lessee in connection with the condemnation, which condemnation shall be subject to Florida or federal condemnation law at the time of taking; however, the foregoing shall not be deemed to prohibit Lessee from asserting, inter alia, against the condemning authority a claim for costs incurred for repairs, alterations or replacements caused or made necessary by the Taking.
- 2.14 Department's Right to Develop Airport. Nothing in this Lease or otherwise shall prevent or preclude MDAD from leasing to or permitting the use by another party or parties of any other portion of the Airport outside the Premises for development purposes, whether such use is for aviation, aviation support or commercial purposes. Such purposes may be consistent with the development purposes intended by or contemplated by this Lease or in direct competition therewith. Nothing shall preclude or prevent MDAD from operating and developing the entire Airport (outside the Premises) in a manner not inconsistent with law, and for avoidance of doubt, it is expressly understood and agreed, that there shall be no prohibition, restriction or limitation on any customary aviation uses desired by MDAD.
- 2.15 [Intentionally Deleted.]
- 2.16 Lessee's Option to Eliminate Parcel(s) From Lease: If, prior to the expiration of the Lessee's Feasibility Period, due to environmental issues, adverse soil conditions, inability to obtain necessary governmental approvals, or the like, the parties mutually determine (each party agreeing to act reasonably in this regard) that Lessee is not reasonably able to comply with its requirements hereunder, or will not reasonably be able to develop and construct the Improvements as originally contemplated by Lessee, Lessee shall have the option, upon thirty (30) days prior written notice to the Lessor to be given not later than the end of the Lessee's Feasibility Period, to terminate this Lease with respect to all or any affected or designated portion of the Premises and in such event, the Lease will be amended to remove such area from the Premises and this Lease will be modified to exclude such portion of the Premises from this Lease for all purposes, including, but not limited to, the

payment of Rent in connection with same, and the obligations for Annual Rent shall likewise be reduced appropriately; provided, however, that if the area that is removed hereunder cannot be economically developed by MDAD, MDAD shall advise Lessee of such fact along with any analysis leading to or supporting MDAD's conclusions, and Lessee shall thereupon have the choice of terminating the Agreement in its entirety or moving forward with the development of the entire Premises, notwithstanding the continued presence of the conditions that gave Lessee the right to terminate the lease as to such affected portion of the Premises .

### ARTICLE 3

#### USE OF PREMISES AND IMPROVEMENTS

- 3.1 Authorized Uses of Premises and Improvements. In addition to the construction of the Improvements thereon, pursuant to the provisions of Article 5 hereof, the Premises and Improvements shall be used for any or all of the following purposes (collectively, the "Authorized Uses") only:

All lawful commercial, retail, office, service, restaurant, professional, financial, mixed uses and any other lawful purposes, but specifically excluding any residential use and any "Unauthorized Purposes" (defined below).

For avoidance of doubt, Lessor and Lessee expressly acknowledge and agree that except as to Section 15.3 hereof, notwithstanding any contrary provision of this Lease (including, but not limited to, Section 8.1 hereof), or of any applicable law, ordinance, rule or regulation, any and all of the "Authorized Uses" set forth in this Lease shall be permitted uses and shall not be restricted or prohibited except to the extent, if applicable, that such Authorized Uses are explicitly prohibited by any such law, ordinance, rule or regulation that is in effect as of the date of this Lease.

3.2 [Intentionally Deleted].

3.3 [Intentionally Deleted.]

3.4 [Intentionally Deleted]

- 3.5 Unauthorized Purposes: The Lessee shall not use the Premises, Improvements or the Airport for any "Unauthorized Purpose" (as hereinafter defined). Lessee shall include in all of its subleases provisions that prohibit its sublessees from using the Premises, Improvements, or the Airport for any Unauthorized Purpose, and shall make good faith commercially reasonable efforts to prevent the use of the Premises or Improvements or the Airport for any Unauthorized Purposes by any of its sublessees or any of the assignees, licensees, invitees, customers, agents, employees or contractors of Lessee and/or its sublessees. Similarly, the County shall make good faith commercially reasonable efforts to prevent interference with the development and use of the Premises by Lessee and its sublessees.

As used herein, the term "Unauthorized Purpose" shall be deemed to mean and refer to any illegal or prohibited use of the Premises, the Improvements, or the Airport (including, but not limited to, the Prohibited Uses set forth in Exhibit "G"), or any other use thereof in any manner which interferes with or adversely affects the operation or maintenance of the Airport or otherwise constitutes an airport hazard including, but not limited to, any use that adversely affects the effectiveness or accessibility of the Airport's navigational aids or the drainage, sewerage, water, electrical, communications, fire protection or other systems installed or located at the Airport. Anything in the foregoing to the contrary notwithstanding, it is specifically acknowledged and agreed as follows:

- (a) that following the date of this Lease, the County shall not make changes in the operation or maintenance of the Airport, or regulations related to same (unless the changes are specifically made not applicable to the Premises) if the effect of such changes shall be to prohibit any Authorized Use set forth in Article 3.1 hereof, or to cause the cessation of or interference with then-existing uses of the Premises or Improvements (provided that such then-existing use is an Authorized Use), it being understood and agreed that nothing contained in the foregoing shall be construed to limit the power of eminent domain pursuant to Section 2.12 above; and
- (b) that the Authorized Uses set forth in Article 3.1 above shall not be deemed to be Unauthorized Purposes.

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

3.7 Lessee's Rights To Operate on Airport Not Exclusive: It is expressly understood and agreed that, except within the area of the Premises hereunder, the rights granted under this agreement are non-exclusive and Lessor reserves the right to grant similar privileges and similar leases to other lessees on other parts of TMB and to take any and all actions (including the leasing of Airport property other than the Premises for any lawful purpose) that Lessor is permitted to take under federal, state, and local law.

#### ARTICLE 4

##### RENTALS AND PAYMENTS

###### 4.1 Rent.

- (A) Annual Rental: As annual rental (the "Annual Rent") for the Premises, the Lessee shall pay to the County the following sums:

- (I) During the one-year period commencing on the Effective Date of this Lease, and ending on the calendar day immediately preceding the first anniversary of the Effective Date of this Lease, Lessee shall pay to the County as and for Annual Rent, the sum of Three Hundred Fifty Thousand and No/100 Dollars (\$350,000.00) per year, payable in equal monthly installments in the amount of Twenty-Nine Thousand One Hundred Sixty-Six and 67/100 Dollars (\$29,166.67) each in advance on the first day of each month during such one-year period;
- (II) During the one-year period commencing on the first anniversary of the Effective Date of this Lease, and ending on the calendar day immediately preceding the second anniversary of the Effective Date of this Lease, Lessee shall pay to the County as and for Annual Rent, the sum of Seven Hundred Thousand and No/100 Dollars (\$700,000.00) per year, payable in equal monthly installments in the amount of Fifty-Eight Thousand Three Hundred Thirty-Three and 33/100 Dollars (\$58,333.33) each in advance on the first day of each month during such one-year period; and
- (III) During the one-year period commencing on the second anniversary of the Effective Date of this Lease, and ending on the calendar day immediately preceding the third anniversary of the Effective Date of this Lease, Lessee shall pay to the County as and for Annual Rent, the sum of One Million Four Hundred Thousand and No/100 Dollars (\$1,400,000.00) per year, payable in equal monthly installments in the amount of One Hundred Sixteen Thousand Six Hundred Sixty-Six and 67/100 Dollars (\$116,666.67) each in advance on the first day of each month during such one-year period.

(B) [Intentionally Deleted.]

#### 4.2 Security Deposit:

Until such time as construction of the infrastructure Improvements for the Premises shall have been substantially completed, Lessee shall be required to post with the County, as security for the performance by Lessee of its obligations under this Lease, a bond issued by a bonding company licensed to do business in the State of Florida, or an irrevocable letter of credit issued by a commercial bank licensed to do business in the State of Florida, or a cash deposit, such bond, letter of credit and/or cash deposit to be in an amount equal to \$350,000 said amount being equal to the Annual Rent payable during the first year following the Effective Date of this Lease. Promptly following substantial completion of the infrastructure Improvements for either of the two phases of the Project to be developed on the Premises, the County shall return to Lessee the bond, letter or credit or remaining balance of the cash deposit, as the case may be, then being held by the County in a prorated amount based on the square footage of the phase upon which the infrastructure Improvements have been completed as compared to the square footage of the entire Premises. Upon Lessee's completion of the infrastructure Improvements for the entire Premises, Lessor shall return to Lessee the balance of the bond, letter of credit, or remaining balance of the cash deposit.

4.3 [Intentionally Deleted.]

4.4 [Intentionally Deleted.]

4.5 Sales Taxes and Other Charges. Lessee shall pay to the Lessor, in addition to the foregoing rents, all applicable State sales taxes as well as all federal, state or local taxes or other charges arising out of Lessee's use of the Premises. In the event that Lessee shall register as a dealer for Florida sales tax purposes and complies with then-existing regulations of the state taxing authority regarding such registration, Lessee shall not be required to pay sales tax to Lessor on the Annual Rent, Percentage Rent or any other sums which are deemed rent or additional rent under this Lease, to the extent permitted or allowed by State law or such regulations of the Department of Revenue.

4.6 Holdover Rental: In the event that the Lessee remains in possession of the Premises and Improvements beyond the expiration of the Term or the earlier termination of this Agreement, the Lessee shall be bound by all of the terms and conditions of this Agreement to the same extent as if this Agreement were in full force and effect during the time beyond the expiration date of this Agreement. However during any such possession of the Premises and Improvements as a holdover tenant after the County has demanded in writing the return of the Premises and Improvements, the Lessee shall be liable for holdover rental in an amount equal to the sum of (a) 125% of the Annual Rent payable during the last year of the Term of the Lease, plus (b) all Percentage Rent payable pursuant to Article 4.1(B)(1)(a) and (b) above, plus all other sums payable by Lessee to the County under this Lease for so long as the Lessee remains in possession after such demand.

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

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

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

Miami-Dade County Aviation Department  
Finance Division  
Third Floor  
Building 5A  
4200 N.W. 36 Street  
Miami, Florida 33122.

4.8 Late Payment Charge: In the event the Lessee fails to make any payments, as required to be paid under the provisions of this Agreement, within ten days after same shall become due, interest at the uniform default rate for similar lease obligations established from time to time by the Board of County Commissioners shall accrue against the delinquent payment(s) from the original due date (and not from just the last day of the applicable grace



period) until the Department actually receives payment. In no event shall such rate exceed eighteen percent (18%) per annum. The right of the County to require payment of such interest and the obligation of the Lessee to pay same shall be in addition to and not in lieu of the rights of the County to enforce other provisions herein, including termination of this Agreement, and to pursue other remedies provided by law.

- 4.9 Dishonored Check or Draft: In the event that the Lessee delivers a dishonored check or draft to the County in payment of any obligation arising under the terms of this Agreement, the Lessee shall incur and pay a service fee of TWENTY-FIVE DOLLARS, if the face value of the dishonored check or draft is \$50.00 or less; THIRTY DOLLARS if the face value of the dishonored check or draft is more than \$50.00 and less than \$300.00; and FORTY DOLLARS if the face value of the dishonored check or draft is \$300.00 or more, or FIVE PERCENT of the face value of such dishonored check or draft, whichever is greater. Further, in such event, the Department may require that future payments required pursuant to this Agreement be made by cashier's check or other means reasonably acceptable to the Department.
- 4.10 Utilities: the rentals paid by the Lessee under this Article 4 do not in any manner cover the cost for any electrical, water and sewer, storm drainage and other utilities' consumption. The Lessee shall be solely responsible for the payment, to the appropriate billing entities, whether it be the Department or others, for all utilities usage on the Premises and Lessee shall not permit any liens to be filed against the Premises and Improvements for failure to pay such utility charges.
- 4.11 Intentionally Deleted.
- 4.12 Intentionally Deleted.

## ARTICLE 5

### IMPROVEMENTS

#### 5.1 Improvements to Premises:

- (A) (1) Subject to the provisions of this Lease, the Lessee and/or any sub-lessee shall design, construct and pay for, in one or more "Phases" or "Sub-Phases", and in a sequence that is consistent with the sequence identified in Exhibit "C" hereto or else is reasonably approved by MDAD, a commercial, retail, office, service, restaurant, financial, non-residential mixed-use and/or other non-residential project (sometimes herein, the "Project") substantially as shown on the site plan (the "Site Plan") for the Premises attached hereto and incorporated herein as Exhibit "C", which Site Plan is hereby approved by Lessor. Such Site Plan may be modified by Lessee from time to time with the County's prior written approval as to any material modifications, such approval not to be unreasonably withheld, conditioned, or delayed. The County's failure either to approve a proposed material modification of the Site Plan or to furnish Lessee with written notice setting forth the grounds for the County's disapproval thereof (which grounds may not be unreasonable, arbitrary or capricious) within fourteen (14) business days after the County's receipt

of Lessee's written request for such approval will constitute the County's approval of the proposed modification.

It is expressly acknowledged, understood and agreed that while Exhibit "C" contains a conceptual graphic depiction of numerous buildings proposed to be constructed on the Premises, said Exhibit "C" omits any conceptual graphic depiction of one (1) of more other buildings (collectively, the "Optional Future Buildings", and each, individually, an "Optional Future Building") which Lessee, at its option, may in the future wish to construct or to cause or permit one or more its sublessees to construct on the Premises. However, Exhibit "C" does identify the anticipated approximate future locations (the "Future Building Areas") for such Optional Future Buildings. Should Lessee desire, at any time during the term of this Lease, to proceed (or to permit any sublessee to proceed) with the construction of any such "Optional Future Building", Lessee shall seek Lessor's consent to one or more modifications of the Site Plan for the Premises to add any or all of such Optional Future Buildings in the Future Building Areas identified on Exhibit "C" or in such other location(s) as may be approved by Lessor. Lessor's approval with respect to any such requested site plan modification shall not be unreasonably withheld, delayed or conditioned.

(2) The development of the Project as aforesaid may be undertaken either by Lessee directly, and/or by one or more contractors engaged by Lessee, and/or by one or more other parties, including sublessees, to whom Lessee may delegate responsibility for development of any portion(s) of the Project.

(3) In connection with such development activities, Lessee shall have the right to create, relocate or cause to be relocated any utility lines within the Premises as may be reasonably required for the development of the Project, the foregoing to be done with the consent and cooperation of the County and any approvals required from the applicable utility company or other party in whose favor such easement runs, which consent by the County shall not be unreasonably withheld, conditioned or delayed.

(4) If any comprehensive land use plan amendments, concurrency certifications, CDMP and/or DRI designations, zoning and/or rezoning approvals and/or other like entitlements are required for the development and/or operation of the Project (whether at the inception of the Project or at any other time during this Lease), then: (i) Lessee shall be responsible for, and agrees to, apply for same and diligently pursue approval thereof at its cost and expense; and (ii) the County will fully cooperate with Lessee in connection with such filing and pursuit of approval of such applications as is necessary and/or reasonably requested by Lessee, and will execute any such applications, consents thereto or other instruments required to be signed by the County as owner of the Premises or reasonably requested by Lessee in connection with its seeking of such approvals.

(5) All the Improvements shall become part of the Premises and shall be the property of (and all depreciation deductions and like benefits associated therewith may be taken by) Lessee or its sublessees, but such Improvements shall become the

property of the County at the end of the Term or upon the earlier termination of this Agreement. At the County's request, Lessee shall execute in favor of the County appropriate documentation that conveys its interest in the Improvements to the County free and clear of any liens or encumbrances within thirty (30) days after the end of the Term or the date of any earlier termination of this Agreement.

(B) Intentionally Deleted.

(C) Except as may be otherwise specifically set forth in this Lease, the Lessee shall bear and be solely responsible for all costs arising out of the Improvements, including, but not limited to, the following:

- (1) Land use approvals development fees, concurrency fees, and permit fees for the design, construction, and subsequent use of the Improvements and infrastructure;
- (2) Design and construction of the Improvements and infrastructure, including but not limited to utilities, roads, parking lots, and landscaping;
- (3) Financing, construction bonding and insurance, building permits, impact and concurrency fees, utility installations and/or hook-ups or other infrastructure, as may be required to make the Premises suitable for the use of the Improvements;
- (4) Construction audits (as may be required elsewhere herein);
- (5) Consultants, accountants, financing charges, legal fees, furnishings, equipment, and other personal property of the Lessee; and
- (6) All other direct or indirect costs associated with the approvals, design, construction, and financing of the Improvements, and their subsequent maintenance and use (other than the cost to remediate Recognized Environmental Conditions not caused by Lessee as provided in Article 8.2).

D. Except as may be otherwise specifically set forth in this Lease, Lessee acknowledges that the Lessor shall have no funding or maintenance responsibility for any of the Improvements, utilities, and infrastructure to be constructed by Lessee.

### 5.3 Design of Improvements:

- (A) Not later than one hundred and twenty (120) days after the Effective Date of this Lease, the Lessee shall commence the design of the infrastructure Improvements for Phase I of the Project (the "Phase I infrastructure Improvements"). The design and design process of the Improvements must comply with (i) all applicable regulations and requirements of the Federal Aviation Administration, and (ii) Lessor's TAC-N procedures, as such procedures may be amended from time to time. The design of Improvements need not, however, comply with the

Department's Design Guidelines Manual, unless MDAD indicates that compliance is required for a particular structure, provided, however, that MDAD acknowledges that none of the structures depicted on the Site Plan attached hereto as Exhibit "C" will require such compliance.

- (B) The Lessee and its architect/engineer have the responsibility to insure that the project design shall be in accordance with all applicable federal, state and local laws, ordinances and codes, as well as all applicable FAA regulations and, to the extent applicable (and not waived or modified by the County) the provisions of MDAD's TAC-N requirements to the extent shown in Exhibit "A". Notwithstanding any other provision of this Agreement or requirement of the County or MDAD and without in any way affecting or diluting Lessee's responsibility to comply with the Building Code, Lessee has no obligation to comply with the MDAD Deliverables Requirements Manual (DRM), the Airport Life Safety Master Plan (LSMP) and the MDAD Design Guideline Manual (DGM), except to the extent requirements therein are included in the provisions of the Building Code that have general application throughout Miami-Dade County to all retail/commercial projects being developed in the County.
- (C) Before commencing construction of any building on the Premises, Lessee must submit to the Department for its review a proposed development plan for such building depicting the anticipated location of the proposed building on the Premises together with a set of Plans and Specification for such building. Except as and to the extent otherwise explicitly required by this Agreement, the Department's review will be limited to the exterior architectural features of the Improvements and determining whether any aspect of the improvements reflected in the Plans and Specifications under review will (i) materially interfere with any operations conducted elsewhere on the Airport, (ii) not be in material compliance with federal or MDAD siting or height criteria, it being understood and agreed that the buildings depicted on the Site Plan attached hereto as Exhibit "C", as the same may be amended from time to time with the County's approval (or deemed approval) shall be deemed to be in compliance with such siting and height criteria, or (iii) be materially at variance with any preliminary designs provided to Lessee depicting the siting or size of such building(s).
- (D) Upon receipt of each submission of any Plans and Specifications, the Department shall review and/or comment upon, in writing, that submission within the time period established in Article 5.3(D) below. Except to the extent that Lessee requests reconsideration of the Department's comments, Lessee must incorporate the Department's reasonable comments relating to the matters referred to in Article 5.3(B) above into the Plans and Specifications prior to the next review submittal. The Lessee may request reconsideration of any of the Department's comments. Such request shall include documentation supporting the Lessee's position. The Department shall review the request for reconsideration and shall either approve or disapprove the request or alter its initial comments in light of the reconsideration. The process outlined in this Subsection 5.3(C) shall continue until such time as the Department shall have approved the submission in question, it being expressly understood and agreed (x) that such approval shall not be unreasonably withheld or

conditioned and (y) that such approval shall be deemed granted unless written notice to the contrary setting forth the County's reasonable grounds for disapproval shall be delivered to Lessee within fourteen (14) days of Lessee's request for approval, and (z) that such approval may not be withheld except on account of the matters outlined in Clauses (i), (ii) and/or (iii) of Subsection 5.3(C) above.

- (E) MDAD'S review and approval of Lessee's proposed Improvements or their alteration, as well as MDAD's review and approval of Lessee's proposed design and construction of the proposed Improvements or their alteration, at any time during the Term shall be limited to review and approval of:
- (1) the exterior architectural features for the Improvements considering the surrounding buildings and facilities of Lessor;
  - (2) all aspects of the interfaces, if any, to be constructed by Lessee between the Improvements and existing MDAD utilities and structures;
  - (3) compliance with:
    - (a) Article 3 above,
    - (b) the Airport Master Plan,
    - (c) Comprehensive Development Master Plan (CDMP),
    - (d) the Airport Layout Plan,
    - (e) FAA requirements,
    - (f) federal and state requirements (provided, however, that MDAD shall not disapprove any proposed Improvement[s] on this basis where such Improvement[s] are approved by the applicable federal and state agencies having primary jurisdiction over these requirements),
    - (g) environmental, life safety, and building code requirements (provided, however, that MDAD shall not disapprove any proposed Improvement[s] on this basis where such Improvement[s] are approved by the County departments having primary jurisdiction over these requirements, with MDAD having primary jurisdiction over environmental requirements and shared primary jurisdiction over life safety and building code requirements as relates to TAC-N and any other matters over which MDAD has jurisdiction pursuant to Section 5.3[A] above), and
    - (h) the utilities master plan including the storm water master plan (provided, however, that MDAD shall not disapprove any proposed Improvement[s] on this basis where such Improvement[s] are approved by the County building department or other applicable departments having primary jurisdiction over these requirements, with MDAD having shared

primary jurisdiction over environmental requirements to extent applicable in the review of such storm water master plan).

- (F) As soon as reasonably practicable, but in no event later than thirty (30) days prior to Lessee's submission to the County building department of each application for a building permit for Improvements to be constructed by Lessee, Lessee shall also submit to the Department fifteen (15) sets of: (a) of Lessee's aforesaid application; (b) a summary project schedule; and (c) cost estimate for the Improvements. The Department may from time to time request that other documents be submitted by Lessee for a particular Improvement, and Lessee shall comply with such reasonable request. At the end of any construction of an Improvement, the as-built documents shall be provided in electronic format as well as hard copy, with MDAD identifying the type of electronic format acceptable to MDAD at the time.
- (G) Approval by the Department of the Plans and Specifications does not constitute certification or warranty by the Department as to the quality of the Plans and Specifications prepared by the Lessee's or its sublessee(s)' architect(s) and/or engineer(s), that the Plans and Specifications are free of design errors or omissions, or that they are in compliance with all applicable laws, codes, rules or regulations of the authorities having jurisdiction over the construction of the improvements.
- (H) After the Department approves any Plans and Specifications that Lessee has submitted for review, Lessee may not make a material change in the scope of those Plans and Specifications without the Department's reasonable approval.
- (I) The Department shall review, comment upon, or approve within 14 business days each submission Lessee makes in accordance with this Section 5.3, it being understood and agreed that the Department's approval shall not be unreasonably withheld or conditioned. The Department's failure either to approve a submission or to furnish Lessee with written notice setting forth the grounds for the Department's disapproval thereof (which grounds may not be unreasonable, arbitrary or capricious) within that time period will constitute the Department's approval of the submission.

5.4 Submission of Certain Documents Prior to Commencement of Construction and Following Completion of Construction:

- (A) At least ten (10) days prior to commencing construction of each building or other improvement comprising a portion of the Project, Lessee or its sublessee(s) shall submit (or cause to be submitted) the following to the Department's Facilities Project Manager, who will be assigned to this Agreement (provided, however, that if the County has not notified Lessee in writing of the name of the Facilities Project Manager so assigned, then such items shall instead be submitted to the Director):
  - (1) A copy of the building permit(s);
  - (2) All bonds required under Article 5.10 below;

(3) Environmental Insurance policy to the extent required under Article 12 below;

(4) Consents from Lessee's general contractor and architect to the conditional assignment of Lessee's rights under its contracts with such parties to the County, in compliance with Article 5.12.

(5) (a) Payment to MDAD of one and one-half percent (1½%) of the budgeted construction hard costs for the particular building or other improvement for which a building permit shall be requested, which sum shall be tendered and accepted in discharge of Lessee's or its sublessee's building permit fee and any building permit inspection fee of the County's applicable departments, including the Building Department, Fire Rescue Department, and Department of Environmental Resources Management, related solely to building permits and inspection fees, together with a certificate of the applicant, or its general contractor as to the then current budgeted (or agreed) amount of such hard costs of construction. If the final construction hard costs at the conclusion of the construction of the building or other improvement in question are higher or lower than the budgeted amount, the difference shall be multiplied by 1½ % and shall either be paid by the applicant to the Department if the resulting number is a positive amount or refunded to the applicant by the Department if the resulting number is negative. Except as otherwise provided in the immediately preceding sentence, such 1½% payment shall be non-refundable. Until and unless MDAD eliminates the program under which the 1½% is collected by MDAD for these fees, such 1½ % payment constitutes full payment for all building and inspection fees required by the County for construction of the Improvements upon which the 1½% is based regardless of the actual amounts, whether more or less, that MDAD pays to or otherwise compensates such departments or agencies for these fees on Lessee's behalf. In furtherance of the foregoing, MDAD shall within five (5) days following MDAD's receipt of the 1½% payment advise the County's Building Department and any other applicable County departments that the fee has been received from Lessee so that the building permit fee is not an impediment to the Building Department's issuance of the building permit. In this connection, it is expressly understood and agreed that each Lessee's sublessee's shall be deemed third party beneficiaries of the rights provided in this Section 5.4(A)(5).

(b) In addition, if Lessee or a sublessee obtains a building permit and allows the permit to expire prior to completion of the Improvements without having secured extension(s) thereof, then Lessee or such sublessee shall be required to pay an additional one-half of one percent (½ of 1%) of the budgeted construction hard costs as administrative fees for plans processing reviews required by Building Department staff to issue a building permit. Such additional one-half of one percent (½ of 1%) fee shall be non-refundable and shall be payable in addition to the 1½ % payment required pursuant to this Article 5.4.

(c) Lessee shall not be authorized to begin construction until the above-listed items have been so submitted to the Department. If Lessee begins construction prior to submission of the Documents in the form required pursuant to this

Article 5.4, the Department shall be authorized to halt Lessee's construction activities without any liability to the County until such time as Lessee satisfies this requirement. In such event, no extensions of time shall be granted by the Department to Lessee.

- (B) Within thirty (30) days following the completion of construction of any Improvement for which a Certificate or Temporary Certificate of Occupancy is issued (or within such other reasonable time as may then be required by the TAC-N Procedures), the Lessee shall furnish the following documents to the Department:
- (1) Documents showing that all permits relating to the Improvement in question have been closed out;
  - (2) Documents that Lessee has obtained lien waivers from the general contractor and all parties designated by the Department, along with any final affidavit of the general contractor required by Chapter 713, Florida Statutes;
  - (3) A copy of the Temporary Certificate of Occupancy or Certificate of Occupancy for any above-ground building or a Certificate of Completion from Lessee's or sublessee's architect for any infrastructure or below-ground facility;
  - (4) An engineer's certificate of substantial completion as to all infrastructure improvements constructed on the Premises, and an architect's certificate of substantial completion as to each building constructed on the Premises;
  - (5) At least one copy of an as-built survey of the area covered by the Improvement; and
  - (6) Two (2) complete sets of as-built construction drawings and two (2) AutoCad files of the as-built construction drawings in a compact disk format or other format reasonably designated by the Department, including all pertinent shop and working drawings and such other as-built drawings as the Department may reasonably require.

#### 5.5 Construction Schedule; Inspections.

- (A) Lessee may construct the Project in two Phases: Phase I will be the portion of the Project located, generally, to the south of Southwest 128<sup>th</sup> Street, and Phase II will be the portion of the Project located, generally, to the north of Southwest 128<sup>th</sup> Street, subject, however, to reasonable adjustment of such phases by Lessee from time to time. Attached hereto as Exhibit "H" is a preliminary development schedule for Phase I. Prior to the commencement of the construction of the Phase I infrastructure Improvements, Lessee shall deliver to the County a copy of its construction schedule for such infrastructure improvements. From time to time thereafter during the course of development of the Project, Lessee shall deliver, or cause to be delivered, new or amended construction schedules for other components of the Project, including infrastructure improvements and vertical construction.



- (B) During construction of any and all of the Improvements, MDAD and appropriate County departments shall have the right to inspect or to have inspected the construction to assure that construction is in substantial conformance with the approved Plans and Specifications and County requirements. Failure of any County Department to make any such inspection shall not impose any liability on the Department or the County, nor constitute the County's acceptance of the Improvement as being in accordance with Lessee's obligations hereunder.

5.6 Completion of Improvements: On or before the third (3<sup>rd</sup>) anniversary of the Effective Date (said third [3<sup>rd</sup>] anniversary being hereinafter sometimes referred to as the "Construction Deadline"), as such Construction Deadline may be extended from time to time in accordance with the further provisions of this Article 5.6, Lessee shall be required:

- (a) to substantially complete construction of (i) the Phase I infrastructure Improvements, and (ii) not less than seventy-five percent (75%) of the balance of the Phase I Improvements; and
- (b) to substantially complete the construction of (i) the Phase II infrastructure Improvements, and (ii) not less than seventy-five percent (75%) of the balance of the Phase II Improvements.

Substantial completion of construction shall be evidenced by a Temporary Certificate of Occupancy ("TCO") or a Certificate of Occupancy ("CO"), as may be applicable.

Anything in the foregoing to the contrary notwithstanding, it is understood and agreed that if Lessee shall have substantially completed the infrastructure Improvements for either Phase by the Construction Deadline set forth above, then the Construction Deadline as relates to the remaining Improvements in such Phase shall be automatically extended *for up to two (2) successive periods of one (1) year each*, i.e., until the fifth (5<sup>th</sup>) anniversary of the Effective Date, so long as Lessee, either pursuant to this Section 5.6, or pursuant to Section 5.8(B) below, shall commence paying the following sums on the on the calendar day immediately following the initial Construction Deadline date:

- (i) full Annual Rent for such Phase at the rate of \$1.99 per square foot during the first one (1) year extension period, and at the rate of \$2.04 per square foot during the second one (1) year extension period; plus
- (ii) percentage rent for such Phase in an amount equal to two percent (2%) of the amount by which Lessee's actual "Gross Revenues" (as defined in Article 4.1[B] of the Fifty Year Lease) from such Phase during each annual extension period, if any, shall exceed the Annual Rent payable by Lessee to the County during such annual extension period.

The above sums shall continue to be payable throughout each extension period.

All other sums in addition to the Annual Rent, the "adjusted" percentage rent and the "regular" percentage rent referred to above that are payable by Lessee under this Lease

shall continue to be payable as and when and in the amounts elsewhere provided in this Lease and/or in the Fifty Year Lease, as applicable.

For avoidance of doubt, it is understood and agreed that there shall be no duplication of (x) the amounts required to be paid by Lessee under the foregoing provisions of this Article 5.6 and (y) the amounts required to be paid by Lessee under Article 5.8(B) below and therefore, so long as Lessee shall be paying the amounts referred to Article 5.8(B) below, Lessee shall not also be required to pay a duplicate sum in the amounts referred to in this Article 5.6.

The time periods and deadlines set forth in this Section 5.6 as well as all other time periods and deadlines set forth elsewhere in this Lease shall be subject to extension for delays resulting from Force Majeure events or to the extent of Lessor-caused delays, including but not limited to a moratorium on construction applicable to the Premises that is legally binding on Lessee or its sublessees.

Further, if the Project (or any Phase thereof) and/or Improvements are subject to development of regional impact requirements under Florida Statutes ("DRI") or require material traffic mitigation measures under applicable Florida "concurrency" statutes ("Traffic Concurrency") or require platting approvals ("Platting"), the deadline to substantially complete the Improvements in such Phase shall be extended beyond the Construction Deadline by the number of months (not to exceed six (6) months) measured by the actual delay in development caused by the DRI or Traffic Concurrency or Platting requirements.

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

5.7 Failure to Complete on a Timely Basis:

- (A) If the Date of Beneficial Occupancy ("DBO") as to not less than seventy-five percent (75%) of the Improvements for either Phase as identified on Exhibit "C" shall not be achieved on or before the 3-year Construction Deadline set forth in Article 5.6 above, as the same may have been extended in accordance with the provisions of said Article 5.6, then, unless Lessee submits evidence that any delay is outside of the reasonable control of Lessee or its sublessee(s) or unless such time requirements are extended by the Department, in writing, based on a showing of good faith effort by the Lessee or its sublessee(s), then, while neither Lessee nor any such sublessee(s) shall be deemed in default under this Lease on account of such failure to timely achieve such DBO (or on account of any associated failure to make the full amount of the Required Investment), the County shall have the right, at its option, to exercise the following rights as to such Phase as the County's sole and exclusive rights in the circumstances, it being expressly understood and agreed that the County shall not have the right in such circumstances to exercise any other rights or remedies which would be available to the County under this Lease in the case of default by Lessee or any sublessee(s), including any termination rights under Article 14 below:

(B) If construction of the Improvements in either Phase has not commenced by the Construction Deadline established pursuant to Article 5.6 above (as the same may be extended from time to time in accordance with the further provisions of said Article 5.6), then, in such event, MDAD shall send Lessee a written notice of the County's intent to take back the undeveloped Phase and the date (not to be less than six (6) months from the date of Lessee's receipt of the notice) on which the take back shall be effective. If MDAD exercises the take back option, such take back of the undeveloped Phase shall become effective on the stated date in the take back notice, unless

(aa) Lessee provides MDAD within the six (6) month period of time from the date of Lessee's receipt of the notice with a copy of a site work permit, building permit or other permit for construction of the Improvements on such Phase, and

(bb) Lessee and/or any sublessee(s) shall promptly commence and thereafter diligently prosecute construction of not less than seventy-five percent (75%) of the Improvement on such Phase to completion within a reasonable period of time thereafter, subject to extension for delays resulting from Force Majeure events, and/or from any acts or omissions in violation of this Lease on the part of the County or any of its agencies, or from any moratorium affecting such Phase which may be enacted.

On the effective date of the take back of the undeveloped Phase in accordance with this Article 5.7(B), this Lease shall be deemed for all purposes to have expired and terminated as to such undeveloped Phase as if such effective date of take back had been the originally scheduled last day of the term of this Lease as to such Phase and accordingly each party shall have all such rights and obligations as to such Phase as would otherwise have pertained had such effective date of take back been the originally scheduled last day of the term of this Lease as to such Phase.

(C) If construction of the Improvements has commenced by the Construction Deadline established pursuant to Article 5.6 above (as the same may be extended from time to time in accordance with the further provisions of said Article 5.6), but if the DBO for a minimum of seventy-five percent (75%) of the Improvements on either Phase has not occurred by such Construction Deadline date (as same may have been extended), MDAD shall send Lessee a written notice of the failure to substantially complete the construction a minimum of seventy-five percent (75%) of the Improvements on the applicable Phase within the time period required by this Lease. The notice shall require Lessee or the applicable sublessee(s) to respond to the notice within a stated period of time (which shall in no event be less than thirty [30] days), and if Lessee or the applicable sublessee(s) fail(s) to provide a reasonable excuse (and a "reasonable excuse" shall not include the consequences of, or difficulties resulting from, or financial problems of Lessee arising out of or associated with, national or local economic conditions) as to why the construction of a minimum of seventy-five percent (75%) of the Improvements on such Phase has not been completed for causes beyond the reasonable control of Lessee or such

sublessee(s), then MDAD shall provide Lessee with a second written notice stating the time (which must be a reasonable period of time) within which Lessee or the applicable sublessee(s) must complete the construction a minimum of seventy-five percent (75%) of the Improvements on such Phase or else commence specific actions that will result in completion of a minimum of seventy-five percent (75%) of the Improvements on such Phase within a reasonable period of time. If Lessee fails to complete the construction of a minimum of seventy-five percent (75%) of the Improvements on such Phase or commence the required steps so that it may complete the construction of a minimum of seventy-five percent (75%) of the Improvements on such Phase, in either case within the indicated period of time, MDAD shall have the right to provide Lessee with a further written notice of the County's intent to take back the Phase upon which a minimum of seventy-five percent (75%) of the Improvements were not so completed and the date on which the take back shall be effective. Such take back of each applicable Phase shall become effective on the date stated in the take back notice, unless substantial completion of a minimum of seventy-five percent (75%) of the Improvements on such Phase shall be achieved by such specified date. If the take back of any given Phase shall become effective as aforesaid, the County shall have no obligation to compensate Lessee in any manner for such take back and the County shall have the right following such take back to complete the construction or else demolish the Improvement, the reasonable costs of which demolition shall be chargeable to Lessee.

(D) On the effective date of the take back of any Phase in accordance with Article 5.7(C) above or in connection with the partial termination of this Lease pursuant to any other provision of this Lease,

- (i) this Lease shall be deemed for all purposes to have been bifurcated into two leases, one relating to the Phase so taken back, and the other relating to the balance of the Premises not so taken back;
- (ii) the term of the lease relating to the Phase so taken back shall be deemed for all purposes to have expired and terminated on such effective date of the take back as if such effective date of the take back had been the originally scheduled last day of the term of this lease relating to the Phase so taken back, and accordingly each party shall have all such rights and obligations as would otherwise have pertained under such lease of the Phase so taken back had such effective date of take back been the originally scheduled last day of the term of such lease, including the obligation to return vacant possession of such Phase to the County.

Notwithstanding the take back of any Phase, it is expressly understood and agreed that both the Phase so taken back and the remaining balance of the Premises not so taken back, and the respective owners, lessees, sublessees, licensees and invitees thereof, shall each have and retain the continuing benefit of, and rights to use and enjoy, all utility, drainage, access, parking and other easements and licenses that were theretofore in existence and/or

that may theretofore have been established by Lessee for the benefit of its sublessees as of the date of the take-back of any such Phase; and

- (iii) this Lease shall remain and continue in full force and effect as to the balance of the Premises not taken back by the County in accordance with this Article 5.7(C) or such other provision of this Lease (i.e., notwithstanding the take back of the Phase in question as aforesaid) and (except as otherwise provided herein) all rights and obligations of the parties as relates to such remaining balance of the Premises shall remain and continue in full force and effect, i.e., as if the Phase so taken back had never been included as a part of the "original" Premises leased and demised to Lessee under this Lease; and
- (iv) the Annual Rent payable by Lessee under this Lease as relates to the balance of the Premises which had not been taken back by the County shall be reduced by a fraction:
  - (aa) whose numerator shall be the number of square feet of land area contained within the Phase which the County shall have taken back as aforesaid; and
  - (bb) whose denominator shall be the aggregate number of square feet of land area contained within the entire Premises.
- (E) Notwithstanding any contrary provision of this Article 5.7, or of Article 14 of this Lease, or of any other provision of this Lease, it is expressly understood and agreed that if construction of the infrastructure Improvements in either Phase has been substantially completed by the Construction Deadline, then Lessee's failure to timely complete a minimum of seventy-five percent (75%) of all Improvements within such Phase by the Construction Deadline shall not give rise to any take back or termination rights on the part of the County, whether under this Article 5.7, or under Article 14 of this Lease, or under any other provision of this Lease, so long as Lessee shall make all required payments called for under Article 5.6 above to extend the Construction Deadline as and to the extent permitted by this Lease.
- (F) Anything in the foregoing to the contrary notwithstanding, it is understood and agreed that Lessor and/or MDAD shall also have the right, but not the obligation to extend the sixty (60) month outside Construction Deadline for a period of time that is commensurate with conditions that caused Lessee to fail to meet such outside Construction Deadline. Lessee understands that neither Lessor nor MDAD shall have any obligation to so extend such outside Construction Deadline, and may decline to do so for reasons solely within Lessor's and/or MDAD's discretion.

5.8 Investment:

- (A) Subject to the further provisions of this Article 5.8, Lessee hereby agrees that on or before the third (3<sup>rd</sup>) anniversary of the Effective Date of this Lease (the "Investment Deadline"), Lessee and/or its sublessees shall be required to make the minimum aggregate investment(s) set forth below (the "Required Investment") in connection with the permitting, design, leasing, development and construction of the Project proposed to be developed on the Premises, including but not limited to all fees, costs and expenses relating to: site work, infrastructure, building and other improvements and Work in, on, under, at and peripheral to the Premises (including any and all on-site and off-site road, water, sewer, drainage, utility and other improvements and facilities); landscaping and signage; permit, concurrency, impact and other fees; architects, engineers and other design and other professionals; construction, development, management and other fees; insurance, bonding and that portion of the finance costs relating to fees and charges incurred by Lessee in connection with Lessee's construction financing, and all other reasonable and necessary hard costs, soft costs, fees, and expenses of the types customarily incurred in connection with development projects similar to the Project, but specifically excluding costs associated with purchase of personal property, movable trade fixtures and other removable equipment (as differentiated from plumbing, electrical, lighting, communications, HVAC and other similar types of equipment).

The Required Investment shall be as follows:

- (i) The Required Investment for Phase I of the Project shall be the sum of \$20,000,000.00; and
- (ii) The Required Investment for Phase II of the Project shall be the sum of \$40,000,000.00;

provided, however, that if the amount invested either Phase shall be less than the Required Investment referred to above, but the amount invested in the other Phase shall be greater than the Required Investment referred to above, then so long as the combined amount invested for both Phases shall equal or exceed the combined amount of the Required Investment for both Phases, the requirements of this Section shall be deemed to have been satisfied.

- (B) Anything in the foregoing to the contrary notwithstanding, it is understood and agreed that if Lessee shall have substantially completed and paid for the infrastructure Improvements for either Phase (and provided the County with reasonable evidence of such payment) by the Investment Deadline set forth above, then the Investment Deadline as relates to the balance of the Required Investment for such Phase shall be automatically extended for successive periods of one year each, so long as Lessee, either pursuant to Section 5.6 above, or pursuant to this Section 5.8(B), shall commence paying the following sums on the calendar day immediately following such Investment Deadline date:

- (i) full Annual Rent for such Phase at the rate of \$1.99 per square foot during the first one (1) year extension period, and at the rate of \$2.04 per square foot during the second one (1) year extension period; plus
- (ii) percentage rent for such Phase in an amount equal to two percent (2%) of the amount by which Lessee's actual Gross Revenues from such Phase during each annual extension period, if any, shall exceed the Annual Rent payable by Lessee to the County during such annual extension period.

The above sums shall continue to be payable throughout each extension period.

All other sums in addition to the Annual Rent and the "adjusted" percentage rent and the "regular" percentage rent referred to above that are payable by Lessee under this Lease shall continue to be payable as and when and in the amounts elsewhere provided in this Lease and/or in the Fifty Year Lease, as applicable.

For avoidance of doubt, it is understood and agreed that there shall be no duplication of (x) the amounts required to be paid by Lessee under the foregoing provisions of this Article 5.8(B) and (y) the amounts required to be paid by Lessee under Article 5.6 above and therefore, so long as Lessee shall be paying the amounts referred to Article 5.6 above, Lessee shall not also be required to pay a duplicate sum in the amounts referred to in this Article 5.8(B).

- (C) Final Improvement Costs: For purposes of verifying that the Required Investment has been made, within ninety days following completion of construction of the infrastructure improvements for each Phase of the Project and within ninety days following completion of construction of each building or other major vertical component of the Project, the Lessee shall submit or cause to be submitted to the Finance Division of the Department for its approval, which shall not be unreasonably withheld or conditioned, an audited statement of costs from a CPA.

The Lessee shall be responsible for documenting or causing to be documented that the monies were expended and that they are true and correct. The Department's failure to disapprove the audit submitted or caused to have been submitted by Lessee as required in this Article 5.8 within ninety (90) days from the date of submission shall constitute an unconditional approval. In the event of any disputes between the Department and the Lessee as to whether certain costs are to be included in Approved Improvements Costs, said dispute(s) shall be submitted to the Consulting Engineers under the County's Trust Agreement, as defined in Article 20.1 (Incorporation of Trust Agreement by Reference) hereof. The decision of said Consulting Engineers shall be final and binding upon the parties hereto.

- (D) Anything in this Section 5.8 or in any other provision of this Lease to the contrary notwithstanding, it is expressly understood and agreed as follows:
  - (i) If Lessee and/or its sublessees shall fail to make the full Required Investment for either Phase (as the same may have been adjusted as noted below) on or prior to the Investment Deadline (as the same may be extended

as noted below) the same shall not be deemed to constitute a default by Lessee or any sublessee(s) under this Lease, but rather the County's resort shall be to provisions of Article 5.7 above (relating to failure to timely achieve substantial completion of construction of the required minimum portion of the Improvements in either Phase) if and to the extent that under the circumstances said Article 5.7 would otherwise be applicable in accordance with its terms (i.e., where substantial completion of construction of the required minimum portion of the Improvements in such Phase had not been achieved by the Construction Deadline), it being expressly understood and agreed that the County shall not have the right in such circumstances to exercise any other rights or remedies that are or may be available to the County under this Lease in the case of default by Lessee or any sublessee(s), including any termination rights under Article 14 below.

- (ii) the obligation to make the Required Investment for either Phase shall be deemed satisfied in the event that Lessee shall substantially complete construction of a minimum of seventy-five percent (75%) of the Improvements in such Phase as depicted on the Site Plan attached hereto as Exhibit "C", as the same may be modified from time to time in accordance with this Lease; and
- (iii) if Lessee and/or any sublessee(s) shall fail by the Construction Deadline (as same may be extended from time to time) to achieve substantial completion of construction of a minimum of seventy-five percent (75%) of the building[s] proposed to be constructed upon any Phase, as shown on the approved Site Plan of the Premises (as same may have been amended from time to time pursuant this Lease), and if, as a consequence thereof, the County shall exercise its take-back rights pursuant to Article 5.7 above as relates to such Phase, then the Lessee's Required Investment set forth in Article 5.8(A) above shall be reduced by a fraction:
  - (aa) whose numerator shall be the number of square feet of land area contained within the Phase upon which substantial completion of a minimum of seventy-five percent (75%) of the applicable building(s) shall not have been timely achieved; and
  - (bb) whose denominator shall be the aggregate number of square feet of land area contained within the entire Premises.

- (E) Anything in the foregoing to the contrary notwithstanding, it is understood and agreed that Lessor and/or MDAD shall also have the right, but not the obligation to extend the sixty (60) month outside Investment Deadline for a period of time that is commensurate with conditions that caused Lessee to fail to meet such outside Investment Deadline. Lessee understands that neither Lessor nor MDAD shall have any obligation to so extend such outside Investment Deadline, and may decline to do so for reasons solely within Lessor's and/or MDAD's discretion.



- 5.9 Certain Construction Contract Terms: All contracts entered into by the Lessee for the construction of the Improvements shall require completion of the Improvements within a specified time period following the execution of said contract(s). The Lessee agrees that it will use commercially reasonable efforts to take all necessary action available under such construction contract to enforce the timely completion of the work covered thereby. In no event shall delays on the part of any contractor or subcontractor engaged by Lessee or any sublessee(s) entitle Lessee to an extension of the Construction Deadline, except to the extent that such delays were caused by force majeure or a Lessor-caused delay or any other circumstance(s) for which extension(s) of the Construction Deadline may be available pursuant to the express provisions of this Agreement. Further, as a standard construction practice, all such contracts shall contain provisions requiring the retention of 10% of contractor billings, subject to possible partial reductions of the amount of such retainage upon full completion of constituent components of the work covered by particular contracts. All contracts shall provide that the County is a conditional assignee thereof.
- 5.10 Construction Bonds and Insurance Required: Lessee shall maintain, or cause to be maintained, the following construction bonding and insurance during the construction of the Phase I infrastructure Improvements:
- (A) As and if required by Section 255.05 of the Florida Statutes, separate completion, performance and payment bonds, reasonably satisfactory to the County and in the form set forth in Section 255.05, Florida Statutes, as amended from time to time, in the full amount of the Phase I infrastructure Improvements, to assure completion of contract work and payment of the costs thereof, free and clear of all claims, liens and encumbrances of subcontractors, laborers, mechanics, suppliers and material men. The required bonds shall be written by or through, and shall be countersigned by, a licensed Florida agent of the surety insurer in accordance with Florida Statutes.
  - (B) A contract completion bond or documentation from the Lessee's lenders that demonstrate Lessee will have access to sufficient funds to complete the Project.
  - (C) Completed Value Builders Risk and/or Installation Floater, issued in the name of the Lessee's contractor, the Lessee, and the County as their interest may appear, in amount(s) not less than 100% of the insurable value of the structural Improvements, covering perils on an "All Risks" basis including windstorm.
  - (D) Commercial General Liability Insurance as specified in Article 11 (Indemnification) and Article 12 (Insurance) herein.
  - (E) Workers Compensation as required by Florida Statutes.
  - (F) Automobile Liability Insurance as specified in Article 12 (Insurance) herein.
  - (G) All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and rated no less than "A-" as to management and no less than Class "VIII" as to strength, in accordance with the A.M. Best Company

Insurance Guide, or its equivalent as approved by the County Risk Management Division.

(H) Environmental contamination insurance as may be required under Article 8 below, if applicable, provided, however, that such insurance shall be required only in connection with uses that involve the regular storage or use of Hazardous Materials, such as gasoline filling stations and similar operations that pose a significant risk of environmental contamination of the Premises.

(I) The Lessee shall furnish certificates to the Department all required insurance certificates to the County for approval as may be required by the County Risk Management Division (such approval not to be unreasonably withheld, delayed or conditioned). These certificates shall clearly indicate that the Lessee or its contractors have obtained insurance of the types, amounts and classifications required by these provisions and that County is an additional insured thereon. No material change or cancellation of the insurance shall be effective without a 30-day prior written notice to and approval by the County Risk Management Division.

5.11 Demolition Bonds. Lessor and Lessee agree that, in lieu of providing the completion bond and/or other documentation required by Section 5.10(B) above, Lessee, during the course of Lessee's construction of any building within the Premises, may instead maintain in full force and effect a demolition bond in the County's favor in order to ensure that, if Lessee shall abandon the construction of such building prior to substantial completion of same, adequate funds shall be available to demolish and remove such partially completed building, if so elected by the County. Upon substantial completion of each such building undertaken by Lessee, such bond shall be cancelled, terminated and returned to Lessee and/or the bonding company that issued same. In lieu of such bond, Lessee may, at its option, provide the County with a letter of credit, or a cash deposit, or some other form of security, in an amount equal to the reasonably estimated costs of such demolition and removal. The provisions of this Article 5.11 shall not apply to any sublessee(s) or to any construction projects undertaken by any such sublessee(s).

5.12 Assignment of Contract Documents. The Lessee shall provide the County with conditional assignments of its contracts with its architects and general contractors, which condition shall be removed (i.e., the assignment shall be deemed unconditional) upon the failure of Lessee to complete construction hereunder in the time periods provided (including cure periods). Notwithstanding the foregoing, these assignments shall be subordinate to the rights of Lessee's lenders (including Leasehold Mortgagees); provided, however, such assignments shall not be subordinate to the extent the County takes actions thereunder to remedy contract matters affecting life, safety or public health not being remedied by Lessee or Lessee's lenders (including Leasehold Mortgagees) following written notice and reasonable opportunity to cure.

5.13 Moratorium. If, prior to completion of any portion of the Project, a moratorium (or any other delay or freeze of such portion of the Project occurs, including those due to Force Majeure or wrongful delays caused by the County, but not routine delays in permitting and inspections on the part of the County or other governmental agencies ) is applicable to such portion of the Project and such moratorium or other occurrence causing a delay or

freeze either delays or stops the construction of the Project or any portion thereof, or prevents sublessees from occupying and utilizing all or any portion of the Project, then, the Construction Deadline shall be correspondingly extended and during the existence of any such moratorium or other occurrence resulting in a delay or freeze, no rent of any type shall be due except Annual Rent at the applicable rate set forth in Section 4.1(A)(I) above. In the event a moratorium or other occurrence resulting in a delay or freeze arises during any period when no rent is due from Lessee pending the passage of time, such time then remaining to pass prior to the inception of such rent shall automatically be deemed extended by the time period during which such moratorium or other occurrence causing a delay or freeze remain in effect or applicable. Should a moratorium or other occurrence causing a delay or freeze be imposed or arise following the time that all contemplated Improvements hereunder have been fully completed and the moratorium or other occurrence does not affect the ability of Lessee to lease the Project nor prevent any sublessees from occupying its subleased portion of the Premises and from operating same for the purposes intended, then such moratorium shall have no effect on the rentals due Lessor hereunder.

5.14 Intentionally Deleted.

5.15 Ad Valorem Real Property Taxes: Lessor has advised Lessee that current law provides that land owned by Lessor, specifically Miami-Dade County, a political subdivision of the State of Florida, is immune from ad valorem taxes and that consequently neither Lessee nor any of its sub-lessees will be responsible for the payment of any ad valorem real property taxes ("Taxes") on the land leased by the County to Lessee under this Lease, nor on the land subleased by Lessee to any of its sublessee, nor in respect of any Improvements constructed from time to time on such land if title to such Improvements has been transferred to and vested in the County. However, the parties acknowledge that Lessee could be subjected to certain taxes in the event that Lessee is hereafter determined to be the "equitable owner" of the Premises. In this connection, and for avoidance of doubt, it is the intent and agreement of Lessee and the County that this Agreement constitutes a true lease of the land leased by the County to Lessee under this Lease and that this Agreement does not convey, and is not intended to convey, equitable ownership of such land to Lessee.

5.16 Co-Operation and Assistance: In connection with the contemplated Improvements, but subject to the limitations of Lessor's involvement and rights as set forth in Article 21.14, Lessor agrees to join in and/or execute any plat or other applications, restrictive covenants, easement vacations or modifications and other documents, including but not limited to estoppels and non-disturbance and attornment agreements as provided in this Agreement, as may be necessary for Lessee (or any sub-lessee[s]) to develop and construct Improvements and to use the Premises and Improvements in accordance with this Lease; provided that such joinders by Lessor shall be at no cost to Lessor other than its costs of review, and also provided that the location and terms of any such restrictive covenants, and related documents, shall be reasonably acceptable to Lessor, which acceptance shall not be unreasonably withheld, conditioned or delayed. In addition, Lessor agrees reasonably to cooperate with Lessee with respect to and in support of applications and procedures dealing with governmental or other financing sources, and possible grants, benefits or incentives to which Lessee may be entitled in connection with the Improvements.

5.17 License for Lessee to Construct Roadway; Other Infrastructure Construction and Connection Rights:

(A) Lessor hereby grants to Lessee and its sublessees the right and license (at Lessee's option) during the term of this Lease, in accordance with Section 13.1 below, to construct (or cause to be constructed) a 4-lane roadway commencing at the intersection of S.W. 124<sup>th</sup> Street and S.W. 137<sup>th</sup> Avenue for the purpose of permitting users of Lessee's Premises (which term shall be deemed to include, without limitation, Lessee, its sublessees, all of their respective contractors, subcontractors, materialmen, suppliers, customers, invitees, licensees, concessionaires and others having business at the Premises) to access such Premises from such intersection. Such roadway shall not be nor be deemed to be an extension of S.W. 124<sup>th</sup> Street. Lessor shall have no obligation to compensate Lessee at any time during the term of this Agreement for such roadway, and Lessee shall at all times during the term of this Agreement shall have the obligation to maintain and repair such roadway (or cause same to be done) to the condition reasonably required by the County for all other similarly situated roadways. Lessee shall have no obligation to compensate Lessor for its use of the roadway other than through the costs incurred by Lessee (or its sublessee[s] or designee[s]) during this Agreement to provide all required maintenance and repair of the roadway. Such roadway shall be designed, and constructed by Lessee in accordance with Lessor's reasonable requirements and standards (including compliance with Lessor's requirements as to the connection of such roadway to the S.W. 124<sup>th</sup> Street intersection). The roadway shall extend in a westerly direction to a point (the "Turn Point") which shall be located not less than 250 feet and not more than 500 feet to the west of the westerly right of way line of S.W. 137<sup>th</sup> Avenue, and then turn south until it connects with Lessee's roadways or parking areas on Lessee's Premises. The precise location of the Turn Point within the 250-500 foot zone referred to in the preceding sentence shall be mutually agreed upon by Lessor and the County prior to the commencement of construction of the Phase I infrastructure Improvements (each party to negotiate in good faith with respect to the location of the Turn Point and neither party shall unreasonably withhold, delay or condition its agreement with respect thereto), it being the intent of the parties that the Turn Point shall be sited, designed, and constructed so as not to materially compromise Lessor's ability to make use of or develop Lessor's adjoining property, as Lessor reasonably determines.

(B) Lessor shall have a right and license to make use of the entire roadway, including that portion of the southern leg of the roadway that extends over Lessee's Premises, in order for Lessor and its agents and contractors to access the Premises and the main road leading into the Airport. Such right and license shall be at no cost to Lessor but Lessor shall comply at all time with reasonable requirements of Lessee for Lessor's use of the portion of the roadway that is on Lessee's Premises.

(C) Lessor grants to Lessee and its sublessees the right and license (at Lessee's option) to construct all infrastructure required for the development and/or use of the Project, including new infrastructure and utility connections serving the Premises, and to run new utility lines across the Premises and the lands to the north and south of the Premises that are located outside of the operational areas of the Airport. Lessee's siting, design, and construction of any such utility lines on either Lessee's Premises or Lessor's

land shall be in compliance with all applicable code requirements and reasonable requirements of Lessor.

(D) The County further grants to Lessee and its sublessees (1) the non-exclusive right and license to connect to all existing and/or new utility lines within the adjacent portions of the Airport, including electric, sewer, water and natural gas lines and (2) the right to provide sanitary sewage, including the right to construct lift stations as needed, the right to construct facilities for the discharge and collection of storm water drainage, and the right to run utility lines and drainage lines through and across the adjacent portions of the Airport to the boundaries of the Premises. Lessor shall have the right to identify the conditions under which any utility lines may be installed on or under any adjacent portion of the Airport, including the right to require Lessee to install such utilities along boundary lines or roadways, or rights of way, and shall have the right to deny installation of any such utility lines placed on Airport parcels if Lessor reasonably determines that such lines are detrimental to or inconsistent with Lessor's current or future operations of the Airport.

(E) As reasonably requested by Lessor or Lessee or any of its sublessees, the County and Lessee or its sublessees shall provide each other with appropriate documentation to confirm and memorialize the rights granted by the County as aforesaid. Such documentation may be in recordable form if requested and paid for by the requesting party.

- 5.18 Temporary Structures: Trailers or temporary structures used for construction purposes but not for business purposes shall be allowed on the Premises during the period of construction of the Improvements subject to all required permitting. All trailers or temporary structures must comply with the Florida Building Code and must be removed prior to or upon the ending of construction. Copies of the building permits shall be submitted to the Department's Facilities Project Manager within ten (10) calendar days of issuance to Lessee.
- 5.19 Tenant Airport Construction Contracts: From time to time, the Lessee and the County through its County Manager shall be entitled, but not obligated, to enter into separate Tenant Airport Construction, reimbursable ("TAC-R") or non-reimbursable contracts ("TAC-N") for the purpose of enabling Lessee to construct facilities or Improvements on the Premises or on the Airport deemed necessary or appropriate either for Lessee's construction and use of its Improvements on the Premises or for Lessor's reasonable needs. Such contracts, if ever entered into by Lessee and the County, shall comply with the Department's TAC-R or TAC-N contract requirements, as such requirements may be amended by the Department from time to time.
- 5.20 Compliance with Responsible Wages and Benefits for County Construction Contracts (AO#3-24 dated July 25, 2000): Lessee is aware that Section 2-11.16 of the Miami-Dade Code (the "Responsible Wage Ordinance") requires privately funded construction on County-owned land to comply with the Responsible Wages requirements of the County, as they may be amended from time to time. Accordingly, to the extent applicable to the Premises and unless exempted or otherwise conditioned by the County's Responsible Wages ordinance, Lessee shall comply with such Responsible Wages Ordinance.

5.21 Other Programs:

- (A) To the extent required by the terms of the County's Community Business Enterprise (CBE) Program applicable to architects and engineers under Section 2-10.4.01 of Miami-Dade County's Code, the Community Small Business Enterprise (CSBE) Program for construction activities under Section 10-33.02, the Living Wage Ordinance under Section 2-8.9, the Art in Public Places (AIPP) Program under Section 2-11.15, the Residents First Training and Employment Program under Section 2-11.17, and the Employ Miami-Dade Program under Implementing Order No. 3-63, Lessee agrees to comply with such applicable programs and provisions as well as any applicable Administrative Orders and other directives issued by the County relating to such programs to the extent such programs, provisions, ordinances, Administrative Orders, and other directives apply as of the date of this Agreement.
- (B) To the extent any other program, provision, ordinance, Administrative Order, or other directive may apply to the Lessee's activities hereunder, either currently or in the future, that are not related to the programs, provisions, ordinances, Administrative Orders, or other directives identified in Article 5.21(A), then, subject to Lessee's contest rights with respect thereto, all of which contest rights Lessee hereby reserves and retains, Lessee shall agree to comply therewith, as they may be amended, enacted, or promulgated from time to time, if and to the extent that Lessee is legally required to do so.

**ARTICLE 6**

**MAINTENANCE AND REPAIR BY LESSEE**

- 6.1 Cleaning: The Lessee shall, as its sole cost and expense or at the sole cost and expense of its sublessees, perform or cause to be performed, services which will at all times keep the Premises and Improvements clean, neat, orderly, sanitary and presentable.
- 6.2 Removal of Trash: The Lessee shall, at its sole cost and expense or at the sole cost and expense of its sublessees, remove or cause to be removed from the Premises and Improvements all trash and refuse which might accumulate and arise from its use hereunder and the business operations of the Lessee under this Agreement. Such trash and refuse shall be stored temporarily and disposed of in a manner reasonably approved by the Department.
- 6.3 Maintenance and Repairs:

(A) The Lessee shall repair and maintain or cause to be repaired and maintained in good condition the Premises and all Improvements or alterations thereto, except for those items for which the County is responsible pursuant to Article 7 (Maintenance by County). Such repair and maintenance shall include, but not be limited to, all shrubbery, grass, and

trees on the Premises, roof, exterior walls, exterior painting, exterior doors, windows, pavement, exterior equipment, exterior appurtenances, replacement of light bulbs, ballasts and tubes in exterior lighting fixtures and the replacement of all broken glass in exterior windows, and shall at all times be based on a standard of care reflecting prudent property management. Maintenance and repairs shall be in quality and class equal to or better than the original work to preserve the Premises and Improvements in good order and condition. The Lessee shall repair or cause to be repaired all damage caused by the Lessee and its employees, agents, independent contractors, patrons, servants or invitees. If Lessee delegates its maintenance and repair obligations to a Property Owners Association or the like, Lessee shall provide Lessor with a copy of the documents relating to such delegation and the standards of performance to be followed.

(B) Prior to or at termination of this Agreement, injury done by the installation or removal of furniture and personal property of the Lessee shall be repaired so as to restore the Premises and Improvements to their original state, subject to normal wear and tear and damage by casualty and Lessee shall be required to quit and surrender up the Premises and Improvements in such good order and condition except for reasonable wear and tear and damage by casualty provided however that such return of the Premises and Improvements under this Article 6.3 shall not relieve the Lessee of its obligations under Article 21.21 below.

(C) Lessee shall be responsible for complying at its cost with any applicable federal, state, or local requirement relating to construction re-certification of any Improvement on the Premises, including, but not limited to, the "40-year recertification" requirement under the current building code, i.e., to the extent then applicable to such Improvements. Even if Lessee chooses not to extend this Agreement beyond its initial Term, Lessee shall be obligated to comply with and complete the 40-year recertification requirement for each Improvement on the Premises at the end of the 39<sup>th</sup> year following DBO.

(D) Lessee shall be responsible for maintaining the Improvements throughout the Term of this Agreement in good condition and repair and in a condition that is consistent with ordinary and prudent commercial practices.

6.4 Annual Maintenance Inspection: In addition to other inspections agreed to herein the Lessee agrees that the Consulting Engineer of the Department shall perform an annual survey of the condition of the Improvements to verify compliance with the obligations set forth in Section 6.3 above. The Lessee agrees to perform any maintenance of the Improvements reasonably identified as necessary to keep the Improvements in good order and condition consistent with the obligations set forth in Section 6.3 above.

6.5 Excavation of Land: Except in connection with the development and/or redevelopment of the Premises by Lessee and/or its sublessees, no excavation of any of the land shall be made, no soil or earth shall be removed from the Premises, and no well of any nature shall be dug, constructed or drilled on the Premises, except as may be required in connection with the construction of the Improvements, as described in the approved Plans and Specifications, pursuant to Article 5.3 (Design of Improvements) and for environmental

monitoring purposes pursuant to Article 8.2 (Environmental Protection) and for irrigation, if permitted by applicable regulations.

- 6.6 Water and Sewerage System: The Lessee shall, at its sole cost and expense and/or at the expense of any or all of its sublessees, and in accordance with the requirements of the Miami-Dade Water and Sewer Authority Department ("MDWSAD", operate and maintain or cause to be operated and maintained all the components of the water, sanitary sewerage and storm drainage facilities within the boundaries of the Premises and constructed as part of the Improvements. Once constructed, the Lessee shall not make any material alterations or modifications to such facilities without the advance written approval of MDAD AND MDWSAD (such approval not to be unreasonably withheld, delayed or conditioned).
- 6.7 Industrial Waste Facilities: The Lessee shall be fully responsible for all industrial wastes that exit the Premises and Improvements and that Lessee's activities on the Premises generate and in response thereto shall provide, operate and maintain adequate facilities on the Premises for separating, neutralizing and treating industrial waste and foreign materials and the proper disposal thereof, in accordance with applicable laws, rules and regulations.
- 6.8 Inspections: The Department and/or its designated representatives, shall have the right, during normal working hours, to inspect the Premises and Improvements to identify those items of maintenance, repair, replacement, modification and refurbishment reasonably required (a) of the Lessee, pursuant to Section 6.2 above, or (b) of the County, pursuant to Article 7 (Maintenance by County), to keep the Premises and Improvements in good order and condition. The Lessee shall perform all corrective work required of it, identified in such inspection(s) within 30 days of receipt of written notice from the Department or within such longer period of time following that notice as may be reasonable required to complete the corrective work approved in writing by the Department following that notice through the exercise of prompt, diligent and continuous effort. Trash and debris problems shall be corrected within 24 hours following receipt by Lessee's hub manager or representative at the Premises of either oral or written notice from the Department.
- 6.9 Failure to Maintain: If it is reasonably determined by the Department that the Lessee has failed to properly clean, remove trash and refuse, maintain, repair, replace and refurbish the Premises and Improvements as required by this Article 6 (Maintenance and Repair by Lessee), the Department shall provide to the Lessee a written list of deficiencies, and if that failure continues for more than 30 days after the date of Lessee's receipt of written notice of the failure or for more than such longer period of time reasonably approved in writing by the Department following that notice, and provided that Lessee has not registered a good faith objection as to its obligation to do so, the Department following fifteen (15) days further written notice to the Lessee, may enter upon the Premises and Improvements and perform all work, which, in the reasonable judgment of the Department, may be necessary and Lessee shall pay the County for the cost of such work, plus fifteen percent (15%) for administrative costs, and such cost shall be and constitute a part of the rent. Subsequent to receipt of the further notice of intent to perform repairs or cleanup from the Department, the Lessee shall not undertake performance of such repairs or cleanup without specific prior written authorization from the Department.



- 6.10 Lessee Maintenance Subject to Certain Conditions: Such maintenance, repair, refurbishment and replacement by the Lessee may be subject to interruption caused by strikes, lockouts, labor controversies, inability to obtain fuel, power or parts, accidents, breakdowns, catastrophes, national or local emergencies, acts of God, and other conditions beyond the control of the Lessee. Upon any such happening, the Lessor shall have no claim for damages for the Lessee's failure to furnish or to furnish in a timely manner any such maintenance repair, refurbishment and replacement, provided however that the Lessee shall exercise reasonable diligence to remedy and/or cure any such interruptions, to the extent such interruptions are within the Lessee's control.

## ARTICLE 7

### MAINTENANCE BY COUNTY

- 7.1 County Maintenance: The County shall operate and maintain, or cause to be operated and maintained, in good condition all components of the water, sanitary sewerage and storm water drainage facilities that lie outside the boundaries of the Premises. The County shall have no maintenance responsibility within the Premises, except to the extent that such maintenance shall be required due to the negligence or misconduct on the part of the County or its employees, agents or contractors.
- 7.2 County Maintenance Subject to Certain Conditions: Such maintenance by the County may be subject to interruption caused by repairs, strikes, lockouts, labor controversies, inability to obtain, fuel, power or parts, accidents, breakdowns, catastrophes, national or local emergencies, acts of God, and other conditions beyond the control of the County. Upon any such happening, the Lessee shall have no claim for damages for the County's failure to furnish or to furnish in a timely manner any such maintenance; provided, however, that the Department shall provide a rent abatement for that portion of the Premises whose normal use is materially disrupted or that is otherwise rendered unusable for the period of time that the County is unable to make the repairs required by Article 7.1 (County Maintenance). The County shall exercise reasonable diligence to remedy and/or cure any such interruptions, to the extent such interruptions are within the County's control.

## ARTICLE 8

### REGULATIONS, LICENSES AND PERMITS

- 8.1 Rules and Regulations - General:
- (A) Subject to the provisions of this Lease that confirm that Lessee has no liability for any Environmental Condition(s) existing at the Premises as of the Effective Date of this Lease except for any conditions caused by Lessee, Lessee shall comply with all applicable Ordinances of the County, and all applicable laws, statutes, ordinances, regulations and rules of the Federal, State and County Governments. If however after the execution of this Agreement and before the date on which Lessee commences the construction of the Phase I Improvements, the County enacts or adopts any ordinance, resolution, or regulation that will have the effect of materially increasing the cost of constructing the Improvements, Lessee may terminate this

Agreement by the delivery of written notice to the County within 90 days after the date of newly enacted ordinance, resolution or regulation becomes effective. Lessee shall have no right to monetary compensation of any type resulting from Lessee's termination of the Agreement.

- (B) The Lessee agrees to permit the entry, at all reasonable times, of inspectors of the Department and any other County Department having jurisdiction over the Premises, or any Federal, State, or County agency having jurisdiction over any law or requirement referenced in Article 8.1(A) (Rules and Regulations - General) above, to make inspections of the Premises and Improvements to determine the Lessee's compliance therewith.
- (C) Permits and Licenses:
- (1) The Lessee, at its sole cost and expense, shall be liable and responsible for obtaining, paying for, maintaining on a current basis, and complying in all material respects with, any and all permits, licenses and other governmental authorizations, however designated, as may be required, at any time throughout the entire term of this Agreement, by any Federal, State, or County governmental entity or any judicial body having jurisdiction over the Lessee, the Premises, and any and all operations conducted by the Lessee on the Premises, including ensuring that all legal requirements, permits and licenses necessary for or resulting, directly or indirectly, from Lessee's operations and activities on the Premises have been obtained and are being complied with.
- (2) Such permits and licenses shall include, but not be limited to, any required Certificate of Use and/or Certificate of Occupancy, and, to the extent required pursuant to Section 6.7 above, any Industrial Waste or Operating Permits from the County's pertinent regulatory agencies. Prior to use of any facility or Improvement on the Premises, the Lessee shall provide to the Department evidence that it has obtained the Certificate of Use and/or a Certificate of Occupancy and, to the extent required pursuant to Section 6.7 above, Industrial Waste or Operating Permits. Upon written request of the Department, the Lessee shall provide to the Department copies of any permits and licenses, and applications therefor, which the Department may request.
- (D) Violations of Rules and Regulations: Lessee agrees to pay on behalf of the County any penalty, assessment or fine issued against the County, or to defend in the name of the County any claim, assessment or civil action, which may be presented or initiated by any agency or officer of the Federal, State or County governments, based in whole or substantial part upon a claim or allegation that the Lessee, its agents, employees, sub-lessees, contractors, invitees, trespassers or any other party for whom Lessee is responsible at law have, while on the Premises, violated any law, ordinance, regulation, rule or directive described in Article 8.1 (Rules and Regulations - General) above.

## 8.2 Environmental Protection

(A) [Intentionally Omitted]

(B) County's Disclosure of Soil and Ground Water Contamination

To the extent that they may exist, County has furnished Lessee with copies of Environmental Records Review documents ("ERR") regarding soil and groundwater contamination at the Premises, which ERR documents are contained in Exhibit "J" to this Agreement. Lessee and the County acknowledge that Environmental Conditions may be present on the Premises as of the Effective Date, and that such conditions may be known or unknown. The County agrees that the remediation of all existing Environmental Conditions, whether or not disclosed in the ERR's, or the "Initial Baseline Audit" (defined below) and whether or not discovered as of the Effective Date, are the sole responsibility of the County. Nothing herein shall be construed to shift to the Lessee any portion of the responsibility for any Environmental Condition present on the Premises as of the Effective Date. The parties recognize the possibility that not all Environmental Conditions existing as of the Effective Date may be set forth in the ERR's, or Initial Baseline Audit, and such existing Environmental Conditions are the sole responsibility of the County notwithstanding any failure to list an existing Environmental Condition in the ERR's, Initial Baseline Audit, or any other environmental report. County has installed and is operating remediation systems to clean up the contamination described in such ERR's. Lessee agrees that during the Term County's authorized representatives shall have the right to enter the Premises in order to operate, maintain, relocate and replace such systems, but not in buildings constructed on the Premises. The County must, however, coordinate with Lessee any entry made on the Premises on the authority of this Article 8.2(B) in order to minimize interference with either the construction of the Improvements or Lessee's conduct of its business activities on the Premises. In particular, if the County has any discretion under Environmental Law as to the location of wells required in connection with the remediation of the Premises, or the method of remediation the County uses, the County shall consult with lessee regarding the locations at which the County's representatives place remediation equipment or install monitoring or other types of wells and the method of remediation the County uses. Without limiting the generality of the foregoing, the County shall have the right, subject to the limitations set forth in this Article 8.2(B) to: (a) install, use, monitor, remove (or, in connection with monitoring wells, abandon in place in accordance with applicable governmental regulations) soil borings, treatment systems, pumps, monitoring wells, and associated equipment; (b) construct, maintain, and ultimately remove various mechanical devices designed to aid in the monitoring and remediating effort, and (c) undertake such related activities as the County or other governmental authorities may require or recommend, utilizing such methods as County or the applicable governmental authorities may elect in order to remediate the contamination described in the ERR's, the baseline audits, and the tenant audits described below (collectively the "Remedial Action"). County shall utilize reasonable efforts to minimize any disturbance or interference with the Lessee's or any sublessee's use of the Premises caused by the Remedial Action, and Lessee

shall use reasonable efforts not to interfere with or obstruct the Remedial Action so long as Lessee's use, development, operations and/or quiet enjoyment of the Premises is not materially affected. County and Lessee each agree to take such action as may be reasonable to coordinate their operations so as to minimize any interference with the other party. If vehicles, equipment, or materials belonging to the Lessee have to be temporarily relocated to permit the Remedial Action to be performed, the Lessee will cause such relocation to occur. If Lessee can accomplish the relocation without materially increasing the cost of conducting its activities on the Premises by using other portions of the Premises not directly affected by the Remedial Action, Lessee may not seek reimbursement from the County for costs Lessee incurs in connection with the relocation. If however Lessee must relocate equipment or materials off the Premises or reconfigure the improvements or the equipment Lessee installs within the improvements as a result of Remedial Action that differs significantly from that described in Exhibit "J" or that County conducts at locations other than those depicted on the sketch attached as part of Exhibit "J", the County shall be responsible for the costs reasonably associated with the relocation and the design and implementation of the reconfiguration. If, at any time, there is discovered the need for Remedial Action for which the County bears responsibility under this Section 8.2, the County shall promptly undertake such Remedial Action. If Remedial Action equipment or materials need to be temporarily stored in a secure location on the Premises, the parties will cooperate in identifying reasonable storage locations at no cost to Lessee. The Lessee will provide the County with water and electrical service in connection with the Remedial Action. Within 30 days after the County's receipt of Lessee's invoices, the County shall reimburse Lessee for the cost of the water and electrical power consumed during the Remedial Action as calculated on the basis of the rates the local utility service providers charge Lessee. Lessee may install submeters at the County's expense for the purpose of measuring the County's water and electrical power consumption. The Lessee acknowledges that, subject to the limitations set forth in this Article 8.2(B), the Remedial Action may be conducted at the locations depicted on the site sketch attached to Exhibit "J" at any time during the Term and may continue until such time as a no-further-action letter or the equivalent is obtained from the appropriate regulatory authorities. Lessee expressly waives any right to recover from the County any damages, including direct, indirect, economic or consequential damages, which it may sustain or incur as a result of the County's performance of the Remedial Action. The foregoing waiver does not apply to actual damages that Lessee sustains as a direct result of the County's breach of this Article 8.2(B), if County fails to rectify the breach within a reasonable time following Lessee's delivery of written notice of the breach to the County. To the extent the County's or its agents', employees' or contractors' actions required or provided under this Article, interfere with Lessee's construction or operation hereunder, at Lessee's election, this Agreement and all Lessee's obligations hereunder, including, but not limited to payment of Rent and other charges, shall be equitably abated to the extent of such interference during the period of such interference, and the Term shall be extended for the number of days that such abatement shall remain in effect. Lessee shall use reasonable efforts to conduct its construction activities to minimize the number of days to be abated.

Should the County fail to timely take the Remedial Action required under this Section 8.2, Lessee may do so, at Lessee's option. In such event Lessee shall be entitled to be fully reimbursed by the County for the full cost of such Remedial Action and Lessor shall promptly reimburse Lessee for same. Should the County fail to reimburse Lessee promptly following demand for same, Lessee may take a credit in the amount due it against the amounts next due Lessor under this Lease until fully reimbursed for the full cost of the Remedial Action.

(C) Baseline and Tenant Audits

County has engaged or will engage, at its sole cost and expense, a consultant to conduct an environmental audit of the Premises, which audit conforms to the standards set forth in ASTM E 1527-05 and may also include analyses of representative soil and groundwater samples that are not the subject of the CARs and RAPs (the initial Baseline Audit). The County has furnished (or will furnish within 60 days following the date of this Lease) Lessee with a copy of the initial Baseline Audit. Lessee may terminate this Lease in its entirety or as to the affected portion of the Premises within thirty (30) days of receipt of the initial Baseline Audit if Lessee, in its sole discretion, determines that the Environmental Conditions disclosed are unacceptable. In the event of a partial termination, there shall be an equitable reduction in the rent payable hereunder. The County shall promptly remove any underground storage tanks disclosed by the Baseline Audits and promptly remediate to the extent required by law Hazardous Materials associated with any such underground storage tanks. At the County's option, Lessee shall perform such removal and remediation work and the County shall promptly reimburse Lessee for all reasonable costs and expenses incurred in so doing. The County shall be responsible for the prompt remediation of any other Recognized Environmental Conditions disclosed by the Baseline Audit; however, the Baseline Audit in no way limits the County's responsibility for undisclosed and/or undiscovered Environmental Conditions existing as of the Effective Date of this Lease. If a failure or delay in remediating any Recognized Environmental Condition will preclude Lessee from obtaining a Certificate of Occupancy or any other permit or license that Lessee must obtain in order to be able to undertake the construction of the improvements or to lawfully occupy the improvements, the County shall conduct and complete Remedial Action with respect to that Recognized Environmental Condition to the greatest extent practicable within a time that is sufficient to enable Lessee to proceed with its construction of the Improvements in accordance with the construction schedule Lessee furnishes to the County in accordance with Article 5.5.

- (1) Lessee shall have the right, at its sole cost and expense, to conduct at any time during the Term of this Lease an environmental inspection of the Premises (the initial "Tenant Audit") through an independent environmental consultant approved in writing by County, such approval not to be unreasonably withheld or delayed. Lessee shall furnish County a copy of the initial Tenant Audit immediately following its completion. The purpose of the Tenant Audit is to determine whether there are present on the Premises any Recognized Environmental Conditions within the meaning of

ASTM E 1527-05, and to delineate the vertical and horizontal extent of any soil or ground water contamination not identified in the ERR's or the Baseline Audits. Within 30 days of receipt of a Tenant Audit, County shall notify Lessee if it disputes the Recognized Environmental Conditions or the delineation of subsurface conditions delineated in the Tenant Audit. Any such dispute shall be resolved by the Airports Section of the Miami-Dade County PERA, which resolution shall be binding on the parties. If the Tenant Audit reveals any Recognized Environmental Conditions or delineates any subsurface contamination not disclosed in the ERR's or Baseline Audits, then the County shall be responsible for the Recognized Environmental Conditions and subsurface contamination to the same extent as the County is responsible for the Recognized Environmental Conditions and subsurface contamination disclosed in the ERR's and the Baseline Audits. Lessee may terminate this Agreement in whole or as to only designated portion(s) of the Premises within 30 days of the delivery of the Tenant Audit to the County if the Tenant Audit discloses Recognized Environmental Conditions or delineates subsurface contamination not previously disclosed in the ERR's, or Baseline Audits. Lessee's failure to give such termination notice within the specified time period shall constitute a waiver of Lessee's rights to terminate its obligations under this Agreement and a waiver of any claim it may have against the County with respect to Recognized Environmental Conditions and subsurface contamination disclosed in such Tenant Audit, except as otherwise provided in this Article or disclosed in the Tenant Audit. For avoidance of doubt, it is understood and agreed that Lessee's failure (or election not) to so terminate shall not absolve the County of its remediation obligations as otherwise required under this Article 8.2.

- (2) If, at any time during the Term of this Lease, whether during the construction or rehabilitation of the Improvements on the Premises, or otherwise, Lessee encounters contaminated media containing Hazardous Materials, Lessee shall make commercially reasonable efforts to segregate such contaminated media so that construction may proceed without delay. Lessee shall promptly provide the County with (i) statement of the facts that have caused Lessee to suspect that the material is contaminated, (ii) information regarding its location and the manner in which is being stored, and (iii) the volume of material thought to be contaminated. Within a reasonable time following the receipt of such notice, the County shall arrange for characterization of the contaminated media so identified. If the County determines that such materials may not be lawfully re-used on site, the County shall arrange for the disposal of such contaminated media as its sole cost and expense within a reasonable time following receipt of its characterization analysis. The County shall not be responsible for the characterization, storage, transportation or disposal costs of any materials that may lawfully be left on the Premises. If, within a reasonable time following notice from the Lessee of the discovery of suspected contaminated media, County fails to notify Lessee that it has arranged for the characterization of the contaminated soils and any subsequent storage,

transportation and disposal that may be required, County shall reimburse Lessee for its Costs in segregating, characterizing, storing, transporting and disposing of those suspected contaminated media determined not to be appropriate for re-use on site. Lessee must obtain two bids from qualified contractors approved by the County for such work. The County shall reimburse Lessee within 45 days of receipt of paid invoices from such approved contractors. County's liability to Lessee hereunder is subject to the cap on liability to Lessee as set forth in Article 8.2(L).

(D) Acceptance of Property and Covenant to Surrender

Except as provided in Article 2 and in this Article 8.2 the County makes no covenant, representation, or warranty as to the suitability of the Premises for any purpose whatsoever or as to the physical condition thereof. Except as provided in Article 2 and in this Article 8.2, Lessee accepts the Premises as being in satisfactory condition and repair and accepts all buildings and other improvements in their present condition. Lessee agrees to surrender the Premises to County on the last day of the Term in good and sanitary order, condition and repair, except for: (a) such wear and tear as would be normal for the period of the Lessee's occupancy and damage by fire or other casualty, subject to Lessee's obligations to remove damaged Improvements pursuant to Article 21.21 below; (b) the Environmental Conditions that are the subject of the Remedial Action described in Article 8.2; (c) the Recognized Environmental Conditions that are disclosed either by any CARs, or by the Baseline Audit, or by any Tenant Audits conducted under this Article 8.2 or by the construction of the Improvements, (d) any Environmental Condition that originated from an off-site discharge, disposal, or release by a party other than Lessee or any of its employees, agents, or contractors, and (e) any Environmental Condition that resulted from a discharge, disposal, or release by the County or any of its employees, agents or contractors, or that existed on the Premises on the Effective Date. Lessee shall be responsible for all Tenant Contamination, as defined in Article 14.5.

- (E) Maintenance of the Premises: Except for obligations of the County under this Section 8.2, Lessee shall, at its sole cost and expense and/or at the cost and expense of any or all of its sublessees, keep, maintain, use and operate (or cause same to be done) the Premises at all times in material compliance with all applicable Environmental Laws. The Lessee warrants that it will secure or cause to be secured at the required time or times all permits or approvals that are required, and shall maintain or cause to be maintained the Premises in good and sanitary order, condition and repair. As part of this maintenance obligation, Lessee shall promptly respond to and clean up or cause its sublessee(s) to respond to and clean up any release or threatened release of any Hazardous Material into the drainage systems, soil, surface water, groundwater, or atmosphere, (i.e., other than those required to be remediated by the County as otherwise provided by this Section 8.2) in a safe manner, in accordance with Environmental Law, and as authorized or approved by all federal, state and/or local agencies having authority to regulate the permitting, handling, and clean up of Hazardous Materials. In making the foregoing covenants, Lessee specifically acknowledges its agreement to be liable for or to cause any or

all of its sublessees to be liable for, and its and/or its sublessee(s)' responsibility to take such actions as may be required by Environmental Laws (including assessment and remediation) for, any Recognized Environmental Condition(s) and Hazardous Materials on the Premises (i) not revealed by the Remedial Action, as defined in section 8.2(B), any CARs, any Baseline Audit, or any Tenant Audit; (ii) intentionally deleted; (iii) not resulting from an off-site discharge, disposal, or release by a party other than Lessee, its employees, agents, or contractors; (iv) not resulting from a discharge, disposal, or release by the County or any of its employees, agents, or contractors, and (v) not existing on the Premises as of the Effective Date. Except as expressly provided below, Lessee, however, will not be liable for, and will have no responsibility to take any action with respect to, any of the matters or conditions referred to in Clauses (a) through (e) of Article 8.2(D) above, including but not limited to any Environmental Condition or Hazardous Materials that originated from an off-site discharge, disposal or release by a party other than Lessee or any of its employees, agents or contractors, notwithstanding the fact that the presence of that Environmental Condition or those Hazardous Materials on, about, or beneath the surface of the Premises was accelerated by virtue of, or resulted from, the construction of the Improvements. The limitation set forth in the preceding sentence will not apply to the extent that the presence of the Environmental Condition or the Hazardous Materials on, about, or beneath the surface of the Premises is attributable to Lessee's failure to comply with all requirements of any de-watering permit that an appropriate regulatory authority issues in connection with the construction of the Improvements. In making the foregoing covenant and the covenants set forth in Article 14.5, Lessee agrees to take or cause to be taken all actions at its sole cost and expense and/or at the expense of one or more of its sublessees as are necessary to return the Premises and any other affected soil or groundwater to their condition existing immediately prior to the commencement of this Agreement, subject, however, to the provisions of Section 8.2(D) above.

- (F) Use of Hazardous Materials Shall be in Compliance With All Applicable Law: Except for those Hazardous Materials that Lessee or its sublessees may lawfully use during the regular course of its/their business, Lessee shall not use, store, generate, treat, transport, or dispose of any Hazardous Material on the Premises without first obtaining County's written approval it being expressly understood and agreed (x) that such approval shall not be unreasonably withheld or conditioned and shall be deemed granted unless written notice to the contrary setting forth the County's reasonable grounds for disapproval shall be delivered to Lessee within ten (10) days of Lessee's request for approval, and (y) that such approval shall not be required as relates to typical building materials, paints, cleaning supplies, insecticides in small quantities and other items carried in inventory of Lessee's sublessee in accordance with applicable Environmental Laws. Lessee shall notify County and seek such approval in writing at least thirty (30) days prior to bringing any previously unapproved Hazardous Material onto the Premises (provided, however, that this notice requirement shall not apply to items referred to in clause [y] of the immediately preceding sentence (the "Permissible Items"). County may withdraw approval of any such Hazardous Material (other than the Permissible Items) at any time, for reasonable cause related to the threat of site



contamination or damage or injury to persons, property or resources on or near the Premises. Upon withdrawal of such approval, Lessee shall immediately remove the proscribed Hazardous Material from the Premises. County's written approval of, or failure to approve the use of a Hazardous Material under this Agreement shall not limit or affect Lessee's obligations under this Lease, including Lessee's duty: (i) to remedy or remove releases or threatened releases caused by Lessee or its agents or employees; (ii) to comply with Agreement relating to the use, storage, generation, treatment, transportation, and/or disposal of any such Hazardous Materials; and (iii) to indemnify County against any harm or damage caused thereby.

- (G) Environmental Audits: If County shall have reason to believe that Hazardous Materials (other than the Permissible Items) have been discharged on the Property by Lessee or its agents or employees or sublessees, by reason of the occurrence of a release of Hazardous Materials or receipt by Lessee or County of any Environmental claim (as defined in Article 8.2(N)(1)), then County shall have the right, in its sole discretion, to require Lessee to perform to County's reasonable satisfaction, an environmental audit and, if deemed necessary by County, a contamination assessment of any areas of suspected disposal or release of Hazardous Material. Such audit and/or risk assessment must be by an environmental consultant reasonably satisfactory to County. Should Lessee fail to perform any such environmental audit or assessment within thirty (30) days after County's request subject to delays resulting from Force Majeure events, County shall have the right to retain an environmental consultant to perform such environmental audit or assessment. Subject to the limitation set forth below, all costs and expenses incurred by County in the exercise of such rights shall be payable by Lessee within 30 days after the County's demand. Lessee will not be responsible for the cost of such audit or assessment unless the audit or assessment reveals that a breach of any of Lessee's obligations under the terms of this Article 8 that was not revealed by a prior audit or assessment has occurred, in which case Lessee shall pay the full cost of the audit or assessment. The County shall pay any costs associated with an audit or assessment that Lessee is not required to pay in accordance with the foregoing.
- (H) Reports to County: For any year in which any Hazardous Materials (other than the Permissible Items) have been used, generated, treated, stored, transported or otherwise been present on or in the Premises pursuant to the provisions and subject to the limitations of this Article 8, Lessee shall provide County with a written report listing (i) the Hazardous Materials that were present on the Premises other than Hazardous Materials that Lessee has lawfully used during the regular course of its business; (ii) all releases of Hazardous Materials that occurred or were discovered on the Premises; (iii) all compliance activities related to such Hazardous Materials, including all contacts with government agencies or private parties of any kind concerning Hazardous Materials; and (iv) all manifests, business plans, consent agreements or other documents relating to Hazardous Materials executed or requested during that time period. The report shall include copies of all documents and correspondence between Lessee and any governmental authority or any party making an Environmental claim that relate to such activities and a written summary

of the terms of oral contracts relating thereto. The report need not list documents relating to Hazardous Materials that Lessee or any sublessee(s) lawfully uses in the ordinary course of its business. The provisions of this Section 8.2(H) shall not apply to any hazardous materials for which the County is responsible as set forth in Section 8.2 of this Lease.

- (I) Entry by County: Lessee shall permit County and its agents to enter into and upon the Premises upon reasonable prior notice to Lessee, at all reasonable times for the purpose of inspecting the Premises and all activities thereon, including activities involving Hazardous Materials, to determine the extent of Lessee's compliance with the requirements set forth in this Article 8. Such right of entry and inspection shall not constitute managerial or operation control by County over activities or operations conducted on the Premises by Lessee.
- (J) Notice of Discharge to County: In the event that Lessee shall become aware of or receive any notice of (a) the happening of any material event involving the spill, release, leak, seepage, discharge, or clean-up of any Hazardous Material on the premises in connection with Lessee's operation thereon and in violation of applicable Environmental Laws; or (b) any Environmental Claim resulting from Lessee's use of the Premises, then Lessee shall immediately notify County orally within twenty-four (24) hours and in writing within three (3) business days of said notice. If the County, acting reasonably, determines that Lessee is not promptly commencing the response to either of such events, then County shall have the right but not the obligation after reasonable notice to Lessee and, if applicable, to sublessees to enter onto the Premises or to take such other actions as it shall deem reasonably necessary or advisable to clean up, remove, resolve or minimize the impact of or otherwise deal with any such Hazardous Material or Environmental Claim following receipt of any notice from any person or any entity having jurisdiction asserting the existence of any Hazardous Material or an Environmental Claim pertaining to the Premises or any part thereof, which if true, could result in an order, suit or other action against the county; provided, however, that Lessee shall first be given a reasonable opportunity (i) to take or cause to be taken such actions as Lessee shall deem necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with any such Hazardous Material or Environmental Claim to the satisfaction of the applicable environmental agency or complainant, or (ii) to protest such notice or proposed action required thereunder in accordance with such procedures established by applicable Environmental Laws, provided such procedures allow for suspension of such proposed action pending determination of such protest. If Lessee is unable to resolve such action in a manner that results in no liability on the part of County, all reasonable costs and expenses incurred by County in the exercise of any such rights shall be secured by this Lease and shall be payable by Lessee within 30 days after County's demand. Notwithstanding anything in this Section 8.2(J) to the contrary, it is the clear and absolute understanding of the parties that any Hazardous Material Release not caused by the acts of Lessee, its sub-lessees, agents, employees, contractors or invitees, including without limitation any Hazardous Materials Release attributable in whole or in part to the actions of third parties, shall be deemed to be, as between Lessee and Lessor, the responsibility of the County. Lessee's responsibility for

remediation under this Section 8.2(J) shall be limited to the actions necessary for compliance with existing Environmental Requirements not related to contamination for which the County is responsible under Section 8.2 of this Lease. If Lessee is permitted to leave any Hazardous Material in place under existing Environmental Requirements, or to employ other alternative response actions, Lessee shall have the option of so doing.

- (K) Agency or Third Party Action: Without limiting its obligations under any other paragraph of this Agreement, Lessee shall be solely and completely responsible (subject to any rights to reimbursement which Lessee may have under any of its subleases or otherwise) for responding to and complying with (or causing to be responding to and complying with) any administrative notice, order, request or demand, or any third party claim or demand relating to potential or actual contamination of the Premises alleged to arise out of Lessee's operations. The responsibility conferred under this Article 8.2(K) includes but is not limited to responding to such orders on behalf of County and defending against any assertion of County's financial responsibility or individual duty to perform under such orders relating to contamination on the Premises alleged to arise out of Lessee's or its sublessee(s)' operations. In accordance with, and subject to the limitations set forth in, the Indemnity provisions set forth in Article 8.2(L), Lessee shall assume or cause to be assumed, any liabilities or responsibilities that are assessed against County in any action described under this Article 8.2(K). The provisions of this Section 8.2(K) shall not apply to any Hazardous Materials for which the County is responsible under Section 8.2 of this Lease.

(L) Indemnity:

- (1) Lessee hereby indemnifies, defends and holds harmless County from and against any suits, actions, legal or administrative proceedings, demands, claims, liabilities, fines, penalties, losses (including diminution of the value of the Premises), injuries, damages, expenses or costs, including, without limitation, interest and reasonable attorneys' and paralegals' fees for attorneys of County's choice, costs of investigation and/or remediation, costs of defense (direct and on appeal), settlement or judgment (a) that may be paid, incurred or suffered by, or claimed or asserted under any Environmental Law by any person or entity or governmental department or agency against, County for, with respect to, or as a direct or indirect result of, the presence on or under the Premises, or the transportation, handling, management, storage, spill, escape, seepage, leakage, spillage, discharge, emission, or release to or from the Premises of, any Hazardous Material, that is in any way connected with any death or injury to any person, any destruction or damage to any property, or any potential or actual impacts on, contamination of, or adverse effects in, the environment, and (ii) that is occasioned by (1) Lessee's breach of any term or provisions of this Agreement, or (b) Lessee's negligent or intentional activities before, during or after Lessee's occupancy of the Premises or (c) Lessee's violation of any Environmental Law. County hereby indemnifies, defends and holds Lessee harmless from and against any suits, actions, legal or administrative

proceedings, demands, claims, liabilities, fines, penalties, losses (including diminution of the value of the Premises), injuries, damages, expenses or costs, including without limitation, interest and reasonable attorneys' and paralegals' fees for attorneys of Lessee's choice, costs of investigation and/or remediation, costs of defense (direct and on appeal), settlement or judgment, that may be paid, incurred or suffered by, or claimed or asserted under any Environmental Law by any person or entity (excluding Lessee, Lessee's agents, employees, assigns, and successors) or governmental department or agency against Lessee for, with respect to, or as a direct or indirect result of, the presence on or under the Premises of, or the transportation, handling, management, storage, spill, escape, seepage, leakage, spillage, discharge, emission or release to or from the Premises of, any Hazardous Material that is in any way connected with any death or injury to any person, any destruction or damage to any property, or any potential or actual impacts on, contamination of, or adverse effects on, the environment, that the County or any of its employees, authorized representatives or contractors spilled, discharged or released after the Effective Date of this Lease Agreement, or that existed on the Premises on the Effective Date of this Lease Agreement, or that migrates onto the Premises from an off-site source.

- (2) The foregoing indemnity specifically includes the direct obligation of the indemnifying party to perform, at its sole cost and expense, any remedial or other activities required, ordered, recommended or requested by any agency or government official, or otherwise necessary to avoid or minimize injury or liability to any person, or to prevent the spread or pollution, however it came to be located thereon (hereinafter, the "Remedial Work"). The indemnifying party shall perform all such work in its own name in accordance with Environmental Law.
- (3) Without waiving its rights hereunder, the indemnified party may, at its option, perform remedial work as described in Article 8.2(L)(2) above if the indemnifying party fails (i) to perform the Remedial Work and that failure continues for more than 30 days after the receipt of written notice of the default or for more than such longer period of time as may be reasonably required to rectify the default through the exercise of prompt, diligent and continuous effort, and (ii) to contest such remedial work. After performing Remedial Work, the indemnified party is entitled to reimbursement for the costs thereof from the indemnifying party. Lessee shall permit County access to the Premises to perform such remedial activities.
- (4) Whenever the indemnified party has incurred costs described in this Article 8.2(L) on account of the other party's failure to perform hereunder, the indemnifying party shall, within sixty (60) days of receipt of notice thereof, reimburse the indemnified party for all such reasonable expenses together with interest from the date of expenditure at the "applicable federal rate" established by the Internal Revenue Service.

- (5) If a failure or delay in remediating (i) any Recognized Environmental Condition disclosed in the CARs, the RAPs, or the Baseline Audit, or (ii) any Recognized Environmental Condition or subsurface contamination disclosed in the Tenant Audit following the resolution in accordance with the procedure set forth in Article 8.2(C)(1) of any dispute regarding the Recognized Environmental Conditions and subsurface contamination delineated in the Tenant Audit, or in characterizing any suspected contaminated media that Lessee encounters at any time or in storing, transporting or disposing of that media, once characterized as contaminated, will preclude Lessee from obtaining a Certificate of Occupancy or any other permit or license that Lessee must obtain in order to be able to undertake the construction of the Phase I Improvements and Phase II Improvements, if applicable, or to lawfully occupy the Improvements, if applicable, the County shall conduct and complete Remedial Action with respect to those Recognized Environmental Conditions, subsurface contamination or contaminated media to the greatest extent practicable within a time that is sufficient to enable Lessee to proceed with its construction of the Improvements in accordance with the construction schedule Lessee furnishes to the County in accordance with Article 5.5.

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

(N) Definitions

- (1) "Environmental Claim" means (i) any investigative, enforcement, cleanup, removal, containment, remedial or other private or governmental or regulatory action at any time threatened, instituted or completed pursuant to any applicable Environmental Law against Lessee or against or with respect to the Premises or any condition, use or activity on the Premises (including any such action against the County); and (ii) any claim that any person threatens or makes at any time against Lessee or against the Premises (including any such claim against the County), and that relates to damage, contribution, cost recovery, compensation, loss or injury resulting from or in any way arising in connection with any Hazardous Material on the Premises or the application of any Environmental Law to activities on the Premises.
- (2) "Hazardous Material" means any substance, whether solid, liquid or gaseous, that is listed, defined or regulated as a "hazardous substance," "hazardous waste," "solid waste," or pesticide, or is otherwise classified as hazardous or toxic, in or pursuant to any Environmental Law; or that is or contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or motor fuel or any petroleum hydrocarbons; or that causes or poses a threat to cause a contamination or nuisance on the Premises or any adjacent property or a hazard to the environment or to the health or safety of persons on the

Premises. Hazardous Materials shall not be deemed to include building materials, paints, insecticides in small amounts, or other inventory items carried by Lessee or its sublessee, provided same are stored and handled in accordance with Environmental Laws.

- (3) "Environmental Condition" means (a) any violations of any Environmental Law with respect to any Hazardous Material present, or any environmental activity conducted or permitted, at the Premises; (b) any liability that may attach to an owner or operator of the Premises in connection with any Hazardous Material or environmental activity; or (c) any imminent and substantial endangerment to the health or safety of occupants of the Premises arising from any Hazardous Material present or environmental condition described in (a) or (b) above.
- (4) "Environmental Law" federal, state or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree, or rule of common law, and any judicial or agency interpretation of any of the foregoing, that pertains to any Hazardous Material, or the environment (including, but not limited to, ground or air or water or noise pollution or contamination, and underground or above ground tanks) and shall include, without limitation, the Solid Waste Disposal Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq. ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act, 41 U.S.C. § 300f et seq.; the Florida Resource Recovery and Management Act, the Water Control Assurance Act of 1983, the Florida Resource Conservation and Recovery Act, the Florida Air and Water Pollution Control Act, the Florida Safe Drinking Water Act, the Pollution Spill Prevention and Control Act as any of the foregoing now exist or may be changed or amended to come into effect in the future.
- (5) "On" or "on", when used with respect to the Premises or any property adjacent to the Premises, means "on, in, under, above or about."
- (6) "Recognized Environmental Conditions" shall have the same meaning as set forth in ASTM E 1527-05, as may be updated from time-to-time.
- (7) "Discovery Period" means any of the six-month periods that begin on the dates on which Tenant causes construction of Improvements to be commenced.

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

- (1) Disposal of Wastes: The Lessee shall dispose or cause its sublessees to dispose all industrial, domestic, hazardous, and solid wastes that are generated in connection with Lessee's activities on the Premises in accordance with applicable Federal, State and County laws, rules and regulations, it being the responsibility of the Lessee to determine the approved method of disposal of its wastes and take action accordingly.
- (2) Intentionally Deleted.
- (3) Records: The Lessee shall maintain such records as are reasonably necessary to adequately assess environmental compliance in accordance with Federal, State and County laws, rules and Regulations.

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

each of the foregoing eligible project costs from the date expended through the date on which performance of the Lessee Remedial Actions is completed at a rate equal to the greater of (a) the rate of interest then in effect under Lessee's leasehold mortgage loan(s), if any or (b) the rate of seven percent (7%) per annum.

Beginning on the next date on which land rent is payable under the terms of Article 4 of the Agreement and that is at least 30 days after the date of the delivery to the County of the Auditor's cost certification report and on each of the ensuing monthly rent payment dates, Lessee will be entitled to a credit against the land rent payable on each such date in an amount equal to the amount that would be required to fully amortize in equal monthly installments the aggregate amount of the eligible project costs reflected in the Auditor's audit report, together with interest accruing on a declining balance basis at a rate equal to the greater of (a) the rate of interest then in effect under Lessee's leasehold mortgage loan(s), if any or (b) the rate of nine percent (9%) per annum, provided, however, that any balance then remaining as of the expiration or termination of this Lease shall be promptly remitted to Lessee in cash and in full.

- Q. For avoidance of doubt, it is expressly understood and agreed, anything in this Agreement to the contrary notwithstanding, that the County shall be responsible for all environmental remediation and site cleanup of Environmental Conditions existing on the Premises now or in the future unless same can be shown to have been caused by Lessee or its sub-lessees, as contemplated in this Section 8.2. Further, in the event that the County shall delay the development and construction activities of Lessee by virtue of delays in its remediation activities, any damages suffered by Lessee shall be paid to Lessee by the County and Lessee shall be entitled to a credit against the Rent due hereunder in respect of same if not promptly paid by the County.
- R. Anything in this Article 8.2 to the contrary notwithstanding, it is understood and agreed as follows:
- (i) the County shall not be required to remediate any Environmental Condition to the extent that same is not required to be remediated under Federal, state, or local law; and
  - (ii) routine "de-watering" of the kind typically undertaken as a part of the normal construction of commercial buildings similar to those proposed to be constructed on the Premises as contemplated in this Lease shall not be deemed an Environmental Condition as to which the County shall be required to take Remedial Action; and
  - (ii) prior approval of the County (such approval not to be unreasonably withheld, delayed or conditioned) shall be required with respect to any Remedial Actions and/or other actions undertaken by Lessee for which the County shall be required to reimburse Lessee pursuant to the provisions of this Article 8.2; and



- (iii) should any Remedial Actions have the effect of delaying substantial completion of any of the Improvements, the Construction Deadline for such delayed Improvement(s) shall be correspondingly extended.

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

## ARTICLE 9

### ALTERATION OF PREMISES AND ERECTION OF SIGNS

- 9.1 Alteration: After construction of the Improvements pursuant to Article 5 hereof, neither the Lessee nor any sublessee shall substantially alter the exterior of the Improvements in any material manner whatsoever without the prior written approval of the Department, such approval not to be unreasonably withheld or conditioned, and such approval shall be deemed granted unless written notice to the contrary is provided by MDAD setting forth MDAD's reasonable grounds for disapproval and delivered to Lessee within fifteen (15) business days of Lessee's request for approval. In the event the Lessee or any sublessee is given approval to make alterations to the Premises and Improvements, the Lessee or such sublessee shall comply in all material respects with the terms and conditions of such approval, as contained in the Department's approval letter, and a failure to do so following applicable notice and grace periods shall constitute a default pursuant to Article 14.3 (Other Defaults) hereof.
- 9.2 Signage: The design and installing of all identifying signs (including monument, pylon and entry feature signage) or any advertising matter, of any type or kind which is visible to the public on the exterior of the Premises and Improvements shall be the responsibility of the Lessee subject to the County's prior written approval, such approval not to be unreasonably withheld or conditioned and shall be deemed granted unless written notice to the contrary setting forth the County's reasonable grounds for disapproval shall be delivered to Lessee within fifteen (15) business days of Lessee's request for approval.

The County, in its capacity as Lessor hereunder, may only object to standard signs, logos, trade dress and the like of any and all national retailers with whom Lessee shall enter into

any sublease agreements and all other customary signage commonly allowed in other first class shopping centers in Miami-Dade County, Florida, on the grounds that the height, lighting, or visual features of such signage presents a reasonable danger to aircraft or is in support of or is reference to a use of the Premises that is prohibited herein. Nothing contained in the foregoing shall preclude the FAA from denying Lessee's requests for signage installations that conflict with FAA's determinations on grounds of safety or other grounds within the FAA's jurisdiction, nor be deemed to divest or limit the authority of the County's building department to enforce the requirements of the County's sign codes as relates to the matters referred to in the preceding sentence.

- 9.3 Removal: Any alterations pursuant to Section 9.1 above constructed or installed by the Lessee or its sublessees at its and/or their sole expense, including signage, and telecommunications equipment, that can be removed from the Premises and Improvements without materially damaging, altering, or altering the use of the Premises and Improvements and is not otherwise expressly required hereunder to remain on the Premises shall be considered the personal property of the Lessee or such sublessee(s) and may be removed by the Lessee or such sublessee(s) at any time during the Term. All other such improvements shall become a part of the Premises and Improvements and shall become the property of the County upon expiration of the Term or the earlier termination of this Agreement.

## ARTICLE 10

### ASSIGNMENT AND SUBLETTING

#### 10.1 Right to Assign and Sublet:

(A) Reserved.

(B) County Consent Required; Exceptions:

(1) Except as otherwise expressly provided in this Article 10, including as provided in Article 10.1 (C) below and Article 10.2, Lessee may not assign, transfer, mortgage, hypothecate, encumber or otherwise convey an interest in this Lease (each of the foregoing being hereinafter sometimes referred to as an "Assignment"), or sublet any portion of the Premises and Improvements, or permit their use by others, without the County's prior written consent, which consent shall not be unreasonably withheld or conditioned. The Lessee, however, may make Permitted Subleases and Permitted Assignments without County consent in the manner set forth in this Article 10.1. The conditions under which a Permitted Assignment may be made may require Lessee's payment of a Transfer Fee are provided in Article 10.1(B)(2). The County's failure either to consent to the proposed Assignment or sublease or to furnish Lessee with written notice setting forth the grounds for the County's denial of such consent (which grounds may not be unreasonable, arbitrary or capricious) within fifteen (15) business days after the County's receipt of Lessee's written request for such consent will constitute the County's consent to the proposed Assignment or sublease. Additionally, the County may not withhold or delay that consent if the proposed assignee or sublessee satisfies the criteria set forth in Article 10.2(C)(4).

(2) Transfer Fee:

(a) Statement of Intent: It is the desire of Lessor to participate monetarily to a reasonable degree by receiving a fee calculated as noted below (a "Transfer Fee") in connection with any transfer of Lessee's interests in this Agreement (other than those transfers as to which Lessor has agreed [as set forth below] that no Transfer Fee, or only a partial or reduced Transfer Fee shall be payable) or in connection with any transaction (other than those transactions as to which Lessor has agreed [as set forth below] that no Transfer Fee, or only a partial or reduced Transfer Fee shall be payable) of Lessee or a member or owner of Lessee resulting in a financial gain to Lessee or to such member or owner in which the value of the leasehold interest is a significant component of the transaction. Accordingly, except as otherwise provided herein:

(1) Where Lessee itself or any member or owner transfers in whole or in part any interest they may have in the Lease or in Lessee to another party for a monetary or non-monetary consideration of determinable value; or

(2) Where Lessee or a member or owner of Lessee engages in a transaction (other than an "Exempt Transaction" [defined below]) wherein a monetary or non-monetary consideration of determinable value is received by the transferring party or its principals because of the value of their interest in this Agreement; or

(3) Where Lessee engages in a transaction under which Lessee as a limited liability company transfers its interest to an existing or newly-formed corporation, partnership, joint venture, or other form of company which holds the leasehold rights hereunder in whole or in part and in which a monetary or non-monetary consideration of determinable value is received; or

(4) Where Lessee engages in a transaction that results in a change in ownership of Lessee or a change in the company form of Lessee, and Lessee or the resulting company retains the leasehold interests herein in whole or in part and in connection with such change, a monetary or non-monetary consideration of determinable value is received,

then, except as otherwise provided herein, Lessor shall be entitled to receive a Transfer Fee equal to at least five percent (5%) of the "Net Profit" (as defined below) resulting from any such transactions, except where a higher amount is stated below.

The term "Lessee's interests in this Agreement" (or words of similar import) as used in this Section 10, shall be deemed to include Lessee's interests in the Premises.

A "transfer" may include an "assignment" but is not limited to just an assignment but rather refers to any form of transaction by which Lessee, or a member or owner of Lessee, exchanges something of determinable value and receives something of determinable value from another, with the transaction being based in part on the underlying value of the leasehold interest herein. If any transaction does not involve the exchange of consideration of determinable value, then Lessor shall not receive a Transfer Fee. Where the consideration is monetary, then the Transfer Fee shall be based on the total amount of monetary consideration that is exchanged. If the consideration is non-monetary or partially non-monetary, then the non-monetary portion shall be reduced to a monetary amount by use of any then-current generally

accepted accounting principles and the Transfer Fee shall be based on the total of the monetarized amounts.

For avoidance of doubt, and anything in the foregoing to the contrary notwithstanding, it is understood and agreed that a transfer of this Agreement or of equity interests within Lessee to affiliated parties that is effectuated *solely for convenience* and that does *not* result in the direct or indirect receipt of any consideration of determinable value shall not be deemed to be a "transfer" within the meaning of this Article 10.

For example, if, in connection with a financing transaction, the lender requires that the Lessee or the Lessee's sole member must be a newly formed Delaware limited liability company, then the assignment of this Agreement to such Delaware company or the assignment of the membership interests in Lessee to such Delaware company, in exchange for the issuance to the transferring party of membership interests in such new Delaware company shall not be deemed a "transfer" within the meaning of this paragraph provided that such transaction does not result in any net additional consideration of determinable value to the transferring party or to any of the direct or indirect principals of Lessee.

(b) The following examples of a transaction subject to a Transfer Fee are not all-inclusive and are merely illustrative of the type of transaction that could trigger a Transfer Fee. A transaction will be subject to the Transfer Fee if the transaction is of a type set forth in the Statement of Intent above. However, in the case of the specific examples below, the respective Transfer Fees identified for the transactions referred to in such examples shall be the applicable Transfer Fee rather than the Transfer Fee of five percent (5%) of the Net Profit resulting from the transaction, and notwithstanding anything to the contrary set forth above:

(1) If Lessee makes an assignment to a third party of Lessee's entire interest in this Agreement, Lessee shall pay Lessor a Transfer fee equal to the greater of (x) 5% of the Net Profit received by Lessee in that transaction, or (y) \$2,500,000;

(2) If Lessee makes an assignment to a third party of only a portion of Lessee's interest in this Agreement, Lessee shall pay Lessor a Transfer Fee equal to the greater of (x) 5% of the Net Profit received by Lessee or (y) a proportionate share of \$2,500,000, such share to be the fraction whose numerator shall be the square footage of the portion of the Premises covered by the partial assignment, and whose denominator shall be the square footage of the Premises as a whole.

(3) For any assignment by Lessee of Lessee's interest hereunder to a subsidiary of Lessee or a member of Lessee or an affiliate of Lessee, Lessee shall pay Lessor a Transfer Fee equal to 5% of the Lessee's Net Profit on the assignment, but no Transfer Fee shall be due if there is no monetary consideration of determinable value exchanged between the parties, but a Transfer Fee shall be due on the non-monetary consideration when and if Lessee sells such non-monetary consideration, at which time Lessee shall pay Lessor a Transfer Fee equal to 5% of the Lessee's Net Profit on such sale.

(4) If, prior to the third anniversary of the Effective Date of this Agreement, Lessee itself engages in a public offering of its securities, no Transfer Fee shall be due or payable to Lessor. However, if any such public offering shall occur on or after the third

anniversary of the Effective Date of this Agreement, whether or not it involves an assignment of any interest in this Agreement in connection with the public offering, Lessee shall pay Lessor a Transfer Fee equal to 5% of the Net Profit resulting to Lessee from the public offering; provided, however, anything in this Agreement to the contrary notwithstanding, it is expressly understood and agreed that no Transfer Fee shall be due from Lessee or any other party upon the subsequent sale or transfer between individuals or companies of any of the securities resulting from the public offering.

(5) No Transfer Fee shall be due from Lessee upon the assignment by Lessee of any portion of its interest in this Agreement to a national retailer, as such term is defined herein, provided that no monetary consideration or other consideration of determinable value is exchanged between the parties. To the extent any such monetary or non-monetary consideration is involved or exchanged, Lessee shall pay a Transfer Fee equal to 5% of Lessee's Net Profit on the transaction.

"Consideration" for purposes of this Article 10.1 shall not include a release, assumption or exchange of liabilities or obligations arising out of the agreements between the parties or a reimbursement to Lessee of amounts comprising part of "Lessee's Basis" (defined below), or the ratable portion thereof allocable to the portion of the Premises assigned.

(6) No Transfer Fee shall be due from Lessee upon the assignment by Lessee of any portion of this Agreement to a national retailer that agrees to become the tenant or sub-tenant of not less than ten (10) contiguous acres of the Premises, or not less than 75,000 contiguous square feet of gross leasable floor space in any building constructed within the Premise, provided that no monetary consideration or consideration of determinable value is exchanged between the parties. If any such consideration is involved or exchanged in the transaction, Lessee shall pay Transfer Fee equal to the greater of (x) 5% of Lessee's Net Profit in the transaction, or (y) a proportionate share of \$2,500,000, such share to be the fraction whose numerator shall be the square footage of the portion of the Premises covered by the assignment to such retailer, and whose denominator shall be the square footage of the Premises as a whole.

(7) Notwithstanding the foregoing, no Transfer Fee shall be payable in connection with any of the following transactions occurring prior to the third anniversary of the Effective Date of this Agreement: (a) the assignment by Lessee of any portions of its interest in this Agreement to lenders, investors, equity providers and/or mortgagees for the purpose of and/or in connection with obtaining financing and/or capitalization for the project to be developed on the Premises; (b) the admission of investors or other so-called "financial partners" as member or members of Lessee; or (c) any other increase in the participating owners or members of Lessee, provided, however, that if any of the above transactions shall occur from and after the third anniversary of the Effective Date of this Agreement, for monetary or non-monetary consideration of determinable value, then a Lessor shall be entitled to a Transfer Fee equal to 5% of the Net Profit received by Lessee or its principals in such transaction.

(c) Exempt Transactions.

(1) No Transfer Fee shall be payable on any assignment by Lessee of all or a portion of its interest in this Agreement to a lender or Leasehold Mortgagee under Article 10.2 or to a nominee affiliated with such Leasehold Mortgagee, or to a purchaser at

a foreclosure sale that occurs by virtue of the foreclosure of a Leasehold Mortgage affecting the Premises or any portion thereof, or in connection with a Leasehold Mortgagee's (or its designee's) acceptance of a deed in lieu of foreclosure or in connection with the exercise of any remedy available to it under the terms of the Leasehold Mortgage.

(2) No Transfer Fee shall be payable in connection with any lease, sublease, sub-sublease, license, sub-license, concession, sub-concession or other like transaction(s) relating to the Premises or any part thereof or interest therein which may be entered into by Lessee or any of its sublessees, licensees, concessionaires or other like parties at any time during the term of this Lease, where the only consideration paid to Lessee consists of market rate rentals, license payments, or concession payments;

(3) No Transfer Fee shall be payable in connection with any sale, transfer or other disposition of (i) all of the membership interests or other equity interests in [Woolbright Holdings LLC] or (ii) any individual membership or equity interests of Woolbright Holdings LLC other than a transfer of the interests of Woolbright Holdings LLC in Lessee.

(4) No Transfer Fee shall be payable in connection with any public offering of the entirety of the membership interests, equity interests or other securities in or of Woolbright Holdings LLC.

(5) No Transfer Fee shall be payable in connection with any direct or indirect merger or acquisition transaction involving Woolbright Holdings LLC or its principals, provided that the ownership or equity interests of Lessee in the Premises are not the sole interest involved in the merger or acquisition.

(6) No Transfer Fee shall be payable in connection with any transaction involving any subsidiary of Woolbright Holdings LLC (or involving any assets of any subsidiary of Woolbright Holdings LLC) that does not directly or indirectly own any interests in Lessee.

(7) No Transfer Fee shall be payable in connection with any transfer of any membership interest in Lessee or in Lessee's member(s) for estate planning purposes.

(8) No Transfer Fee shall be payable in connection with any "Exempt Post-Stabilization Transaction" referred to in Section 10.1(B)(2)(f) below.

(d) Definitions.

(1) "Net Profit":

(A) In the case of a transfer or assignment by Lessee of all or any part of Lessee's interest in this Agreement, the Lessee's "Net Profit" shall be defined as the gross proceeds received by Lessee in the transaction (the "Lessee's Gross Proceeds"), minus the "Lessee's Basis" (defined below), and minus also all ordinary and customary "costs of sale" (up to but not exceeding five percent [5%] of the Lessee's Gross Proceeds) incurred by Lessee in

connection with such transaction, e.g., brokerage, transfer taxes, if applicable, title and survey expenses, attorney and other professional fees, etc.

(B) As used herein, the term "Equity Transfer" shall be defined as (i) any transfer or assignment of all or any part of the membership interests, capital stock, partnership interests or other equity interests in Lessee which are owned by Lessee's member(s) or other principals, or (ii) any public offering involving Lessee.

In the case of an Equity Transfer, the Equity Transferor's "Net Profit" shall be defined as the gross proceeds received by the transferor or assignor in such transfer or assignment transaction or the gross proceeds received by the issuer in such public offering, as the case may be, (the "Equity Transfer Gross Proceeds"), minus the "Equity Transferor's Basis" (defined below), and minus also all ordinary, reasonable, and customary "costs of sale" (up to but not exceeding five percent (5%) of the Equity Transfer Gross Proceeds) incurred in connection with such transaction, e.g., brokerage, transfer taxes, if applicable, title and survey expenses, attorney and other professional fees.

(2) The "Lessee's Basis" for the purpose of determining Lessee's Net Profit shall be defined as all hard costs and soft costs paid and/or incurred by the Lessee in connection with the acquisition of this Lease, the permitting, design, development, construction of infrastructure and other improvements upon, and financing of the Premises, and the leasing and subleasing of the Premises and/or the improvements on the Premises, including leasing commissions, tenant inducements and allowances and other similar costs, as such costs are determined in accordance with Article 5.8 herein and, to the extent not inconsistent with Article 5.8, in accordance with GAAP.

(3) The Equity Transferor's Basis for the purpose of determining the Equity Transferor's Net Profit shall be defined as the aggregate amount of (x) all costs paid and/or incurred by the Equity Transferor in connection with the acquisition of its membership interests, capital stock, partnership interests or other equity interests in Lessee, and (y) all loans and capital contributions theretofore made by the Equity Transferor to the Lessee, but less any loan repayments and/or profit distributions theretofore made by the Lessee to such Equity Transferor which have the effect of reducing such Equity Transferor's cost, with all such costs being determined in accordance with GAAP.

(e) Reporting of Transactions.

(1) Lessee shall submit to Lessor in connection with each transaction subject to a Transfer Fee a notarized statement setting forth the Lessee's Net Profit, the Lessee's Gross Proceeds and the Lessee's Basis.

(2) Lessee shall direct each Equity Transferor to submit to Lessor in connection with each Equity Transfer subject to a Transfer Fee a notarized statement setting forth the Equity Transferor's Net Profit, the Equity Transfer Gross Proceeds and the Equity Transferor's Basis.

(3) Within thirty (30) days following the closing or consummation of each transaction, assignment or Equity Transfer as to which a Transfer Fee shall

be due pursuant to this Article 10, Lessee shall pay, or cause to be paid, to Lessor the applicable Transfer Fee due in connection with such transaction. Lessor will accept payment directly from an Equity Transferor in satisfaction of Lessee's obligation to make such payment (with Lessee remaining liable for any non-payment or under-payment of the Transfer Fee due from the Equity Transferor).

(f) Exempt Post-Stabilization Transactions.

Anything in this Section 10.1(B)(2) or in any other provision of this Lease to the contrary notwithstanding, it is expressly understood and agreed, that *no Transfer Fee that might otherwise be payable under this Section 10.1(B)(2) shall be due or payable in connection with any transfer or other transaction that relates to any Phase of the Project that has achieved "Stabilization"*.

For purposes hereof, a Phase of the Project shall be deemed to have achieved "Stabilization" on the **second anniversary** of the date upon which not less than **eighty percent (80%)** of the leasable space in such Phase, as generally depicted on the Site Plan attached hereto as **Exhibit C** (as such Site Plan may be modified from time to time in accordance with this Lease), has **first** been occupied by sublessees or other occupants.

For avoidance of doubt, and without limiting the generality of the foregoing, it is expressly understood and agreed that the exemption from Transfer Fees which has been granted pursuant to this Section 10.1(B)(2)(f) shall apply to all of the transfers and transactions referred to in Sections 10.1(B)(2)(a) and (b) above and specifically including, without limitation, the following:

(x) any transfers of Lessee's interest in this Agreement as relates to such stabilized Phase (e.g., a partial assignment of this Lease as relates to such stabilized Phase);

(y) any mergers, transfers and/or other transactions relating to the capital stock, membership interests and/or other equity interests in the entity that shall then be the "Lessee" of such stabilized Phase; and

(z) any and all other sales, transfers, dispositions or other transactions of every kind, nature or description that directly or indirectly relates to or involves such **stabilized Phase** and/or the entity that is the "Lessee" of such **stabilized Phase**.

(C) (1) Permitted Subleases.

Notwithstanding any provision herein to the contrary, Lessee shall have the right to sublease without the consent of the County all or portions of the Premises to any other party provided such subletting is on a form of sublease approved by the County, which approval shall not be unreasonably withheld. The County's failure either to approve the form of such sublease or to furnish Lessee with written notice setting forth the grounds for the County's disapproval thereof (which grounds may not be unreasonable, arbitrary or capricious) within ten (10) business days after the County's



receipt of Lessee's written request for such approval will constitute the County's approval of the proposed form of sublease.

In this connection, it is understood and agreed that the County's consent shall not be required with respect to a particular form of sublease, if the same shall include the following provisions:

- (a) that such sublease is subject and subordinate to this Lease;
- (b) that the term of such sublease, assuming that all possible options to renew or extend same shall be exercised, shall not extend beyond the term of this Lease;
- (c) that the County shall in no event be:
  - (i) liable for any act or omission of Lessee arising prior to the date this Lease shall be terminated by the County pursuant to Article 14 (or any other provision) hereof, except to the extent such act or omission is of a continuing nature, such as, for example, a repair obligation;
  - (ii) liable for any offsets or defenses which the sublessee might be entitled to assert against Lessee;
  - (iii) bound by any payment of rent or any other sum made by the sublessee to Lessee for more than two (2) months in advance (except for security deposits), which payment was not required under the terms of the sublease;
  - (iv) bound by any amendment or modification of such sublease executed without the County's prior written consent (such consent not to be unreasonably withheld, delayed or conditioned) if such amendment or modification would materially increase the County's obligations or materially reduce the sublessee's obligations under such sublease following a termination of this Lease (except to the extent that the sublease may specifically contemplate any amendment or modification thereof [for example, a sublease may provide for a reduction of rent if a remeasurement of subleased premises reveals same to be smaller than originally set forth in the sublease, etc.] );
- (d) that on termination of this Lease by the County pursuant to Article 14 (or any other provision) hereof, the sublessee will attorn to the County, and on request by the County, enter into a direct lease with the County on terms identical to those set forth in the sublease;

- (e) that the County's fee interest in the Premises shall not be subject to any mortgage or other financing procured by any sublessee;
- (f) that, in accordance with Section 713.10 of the Florida Statutes, the County's fee interest in the Premises shall not be subject to liens filed by lienors engaged by such sublessee;
- (g) that the sublessee under such sublease shall be required to carry customary property, casualty and liability insurance (with all such liability insurance to name the County as an additional insured), which insurance shall be in such amounts, shall be issued by such Florida-licensed carriers, and shall provide for such coverages, exclusions and deductibles, as are then customarily required of comparable tenants by other prudent landlords of comparable shopping centers in Miami-Dade County, Florida.

Further, if requested by Lessee or any sublessee, the County, Lessee and such sublessee shall enter into a Subordination, Nondisturbance and Attornment Agreement substantially in the form annexed hereto as Exhibit "K", or in such other form as may be mutually agreed upon by such parties, each such party to act reasonably in this regard.

(2) Permitted Assignments.

Notwithstanding any provision herein to the contrary, Lessee shall have the right, without need of the County's consent, to enter into the following assignment transactions, each of which shall be deemed a "Permitted Assignment":

- (a)
  - (i) any assignment of this Lease in whole or in part (or any issuance and/or transfer of equity or other interests or securities in Lessee or in its parent company[ies]) to companies related to or affiliated with Lessee or its principal(s), and/or
  - (ii) any assignment of this Lease in whole or in part (or any issuance and/or transfer of equity or other interests or securities in Lessee or in its parent company[ies]) in connection with any public offering, merger, or acquisition transaction (including equity investment and/or equity interest transfers) occurring on or prior to the third (3<sup>rd</sup>) anniversary of the Effective Date of this Lease,
  - (iii) any assignment of this Lease in whole or in part (or any issuance and/or transfer of equity or other interests or securities in Lessee or in its parent company[ies]) in connection with any public offering, merger, or acquisition transaction (including equity investment and/or equity interest transfers) occurring subsequent to the third (3<sup>rd</sup>) anniversary of the Effective Date of this Lease,

- (b) any assignment or other transfer of equity or other interests or securities in Lessee or its parent company(ies) which such equity or other interests or securities are traded on any national securities exchange or in the over-the-counter securities market, as to which no Transfer Fee shall be payable; or
- (c) any assignment or transfer of equity or other interests in Lessee between or among the then owners of equity or other interests in Lessee,
- (d) any partial assignment of this Lease (i.e., as to a portion of the Premises and/or Improvements thereon) to any affiliate of Lessee, or to any lender providing financing to Lessee in connection with the Premises, or to any the party who shall sublease any parcel within the Premises.

Without limiting the generality of the foregoing provisions of this Article 10.1(C)(2), the admission of one or more investors or other so-called "financial partners" as a member or members of the Lessee shall also be deemed to constitute a "Permitted Assignment" and if the admission of such party shall occur **on or prior** to the third (3<sup>rd</sup>) anniversary of the Effective Date of this Lease, then no Transfer Fee shall be due or payable under this Article 10.1(C)(2); however, if the admission of such party shall occur **subsequent to the third (3<sup>rd</sup>) anniversary** of the Effective Date of this Lease, then, a Transfer Fee calculated in accordance with Article 10.1(B)(2) above shall be payable.

(2) No Release of Liability on Assignment; Exceptions.

Except as otherwise provided in Article 10.2 below, and except for an assignment to a Qualified Assignee, no assignment of this Lease, either as to the entirety of the Premises or as to any portion thereof, shall affect or reduce any of the obligations of the Lessee hereunder, and all such obligations shall continue in full force and effect as joint and several obligations of the Lessee and its assignee. However, in the event of an assignment of this Lease to a "Qualified Assignee" (as defined below) either as to the entirety of the Premises or as to any portion thereof, then in such event, the Lessee shall be released from liability under this Lease as follows:

- (a) In the event of the assignment of this Lease to a Qualified Assignee **as to the entirety of the Premises**, the Lessee shall be released from all further liability under this Lease as to all duties and obligations first arising or accruing from and after the effective date of such assignment; and

- (b) In the event of the assignment of this Lease to a Qualified Assignee *as to only a portion of the Leased Premises*, the Lessee shall be partially released from liability under this Lease as to all duties and obligations first arising or accruing from and after the effective date of such assignment, as follows:
- (i) As relates to the obligation to pay rent under this Lease, the Lessee shall be released from liability as to the ratable portion of the rent allocable to the portion of the Premises which is the subject of the assignment in question (such ratable portion to be calculated in the same ratio as the land area of such portion of the Premises bears to the total land area of the Premises as a whole); and
  - (ii) As relates to the obligation to perform all other duties and obligations of the Lessee under this Lease (i.e., other than the payment of rent), the Lessee shall be released from liability as to those duties and obligations (or the portion thereof) applicable to the portion of the Premises which is the subject of the assignment in question.
- (3) For avoidance of doubt and anything in this Lease to the contrary notwithstanding, it is expressly understood and agreed that in the event of any partial assignment of this Lease, the following shall apply:
- (aa) on the effective date of any partial assignment of this Lease, this Lease shall be deemed for all purposes to have been bifurcated into two (2) separate "new" leases which shall be deemed, in effect, to supersede and replace this "original" Lease, with one of such "new" leases relating to the portion of the Premises as to which this "original" Lease had been assigned (the "Assigned Portion") and with the other of such "new" leases relating to the portion of the Premises as to which this "original" Lease had not been so assigned (the "Unassigned Portion");
  - (bb) all terms and provisions of this "original" Lease shall be deemed to have been incorporated into each of the two (2) "new" leases created by means of the bifurcation referred to in clause (aa) above, i.e., all as if the respective lessees under each of such separate "new" leases had simultaneously executed an identical "new" lease with the County, with the only differences between such two (2) "new" leases being:
    - (1) that the names of the respective lessees thereunder shall be the names of the assignor and the assignee, respectively, under the partial assignment; and

(2) the descriptions and sizes of the respective portions of the Premises demised under each such "new" lease shall be the descriptions and sizes of the Assigned Portion and the Unassigned Portion, respectively; and

(3) that any covenants, requirements and obligations contained in the "original" Lease relating to matters such as (to the extent applicable):

(i) the amount of any security deposit required to be posted;

(ii) the amounts and/or percentages of areas and/or Improvements required to be constructed;

(iii) the amounts of any applicable "Required Investment" required to be made; and

(iv) any other such requirements or conditions,

shall be allocated divided between the two (2) "new" leases on a pro rata basis in accordance with the gross leasable floor area of the buildings proposed to be constructed in Assigned Portion and the Unassigned Portion, as set forth on the Site Plan attached as Exhibit "C" to the "original" Lease, as the same may theretofore have been amended or on such other basis as may be equitable and appropriate under the circumstances;

(cc) both the Assigned Portion and the Unassigned Portion, and the respective owners, lessees, sublessees, licensees and invitees thereof, shall each have and retain the continuing benefit of, and rights to use and enjoy, all utility, drainage, access, parking and other easements and licenses that were theretofore in existence and/or that may theretofore have been established by Lessee for the benefit of its sublessees as of the date of the partial assignment; and

(dd) if the lessee under either such "new" lease (such lessee being referred to herein as a "defaulting lessee") shall at any time default in the payment of any sum or in the performance of any other duty or obligation required to be paid or performed under the "new" lease to which such defaulting lessee is bound, and if such defaulting lessee shall fail to timely cure such default, or if any other act, omission, condition or circumstance shall occur, arise or come into existence which would have entitled the County to exercise any right(s) and/or pursue any remedy(ies) granted to the County under this "original" Lease had such uncured default, act, omission, condition or circumstance occurred, arisen or come into existence in

the absence of any such partial assignment of this Lease, then, in any such event:

the County shall be entitled to exercise and/or pursue its aforementioned rights and remedies **only as relates** to the defaulting lessee and the portion of the Premises demised pursuant to the "new" lease with such defaulting lessee, and not as relates to the other lessee (the "non-defaulting lessee") or the portion of the Premises demised pursuant to the "new" lease with such non-defaulting lessee; and

- (1) the non-defaulting lessee shall **not** be deemed to be in default under the "new" lease between the County and such non-defaulting lessee; and
  - (2) neither the non-defaulting lessee, nor any of its successors or assigns, nor any other party(ies) claiming by, through or under such non-defaulting lessee, including, Leasehold Mortgagees and sublessees (such non-defaulting lessee and such successors, assigns and other parties being hereinafter sometimes collectively referred to as the "non-defaulting parties") shall be deemed, in any way, to be responsible for (or subject to any enforcement action, liability, obligation, loss or cost on account of or in connection with) any uncured default, act, omission, condition or circumstance on the part of the defaulting lessee (or its successors, assigns and/or any other parties claiming by, through or under such defaulting lessee); and
  - (3) in no event shall the "new" lease between the County and the non-defaulting lessee be subject to termination, cancellation, forfeiture or other adverse action by the County on account of or in connection with any uncured default, act, omission, condition or circumstance on the part of the defaulting lessee (or its successors, assigns and/or any other parties claiming by, through or under such defaulting lessee); and
  - (4) the County shall not disturb the leasehold estate or any of the rights, privileges and/or benefits afforded to the non-defaulting parties.
- (5) As used herein, the term "Qualified Assignee" shall mean and refer to:
- (aa) the sublessee of any portion of the Premises containing not less than ten (10) contiguous acres, or not less than 75,000 contiguous square feet of gross leasable floor space in any building(s) constructed within such portion of the Premises; or

- (bb) any pension fund, pension manager, institutional investor or any other entity whose tangible net worth (determined in accordance with generally accepted accounting principles) shall be equal to or greater than the tangible net worth of the Lessee as of the date of the assignment; or
- (cc) any Leasehold Mortgagee or assignee thereof, or a nominee affiliated with any Leasehold Mortgagee or its assignee, or any designee of any Leasehold Mortgagee or its assignee(s) or nominee(s).

## 10.2 Leasehold Mortgage Provisions.

- (A) Lessee may secure financing or re-financing and, in conjunction with that financing or re-financing, may mortgage or encumber Lessee's interest in all or any portion of the Premises and the Improvements and/or assign this Lease in whole or in part in favor of one or more lenders entitled to make secured loans affecting real property in Miami-Dade County, Florida, as long as, at the time of the closing of the financing or re-financing, the aggregate amount of the principal indebtedness secured by mortgages or like instrument (each, a "Leasehold Mortgage") encumbering Lessee's interest in the portion of the Premises encumbered by such Leasehold Mortgage does not exceed the sum of (i) the then appraised value of Lessee's interest in the portion of the Premises encumbered by such Leasehold Mortgage and any improvements previously constructed on such portion of the Premises, (ii) the value of any improvements to be constructed on such portion of the Premises in the near term future with the proceeds of such financing or re-financing, and (iii) all costs incurred, and all reserves required, in connection with such financing or re-financing. No Leasehold Mortgage or other encumbrance the Lessee executes in connection with that financing will extend to or be a lien upon or encumbrance upon County's interest in any part of the Premises or in any right appurtenant to that interest. Moreover, the County has no obligation to subordinate the County's interest in the Premises to the lien or security interest of any mortgage or other encumbrance that Lessee may execute on the authority of this Article 10.2(A).
- (B) The Department reserves the right to approve the section(s) of each proposed Leasehold Mortgage which grants to the "Leasehold Mortgagee" (defined below) remedies as relates to Lessee's leasehold interest in any portion of the Premises encumbered by such Leasehold Mortgage to ensure that the remedies granted to such Leasehold Mortgagee do not purport to (i) impair Lessor's fee interest in the Premises, or (ii) reduce to any material extent any of the rights granted to Lessor under this Lease, or (iii) increase to any material extent any of the obligations imposed on Lessor under this Lease. The Department may not unreasonably withhold its approval of such remedies section(s). Lessee must submit drafts of such remedies section(s) to the Department for review and approval in advance of Lessee's execution of the Leasehold Mortgage in question. The Department shall be deemed to have approved such remedies section(s) unless, the Department shall either (aa) approve such remedies section(s) or (bb) furnish Lessee with the

Department's written objections thereto (which objections must be reasonable) in either case within fifteen (15) business days after the later of the date on which Lessee personally delivers a copy of the draft remedies section(s) to the Department's Chief of Properties and the date on which Lessee delivers a copy of such draft remedies section(s) to the County Attorney's Office.

If any "Leasehold Mortgage" (defined below) or prospective Leasehold Mortgagee shall request any amendment(s) and/or modification(s) to this Lease which do(es) not materially increase the obligations or liabilities of the County hereunder, the County and Lessee shall promptly execute, acknowledge and deliver the requested amendment(s) and/or modification(s) to this Lease, in form reasonably acceptable to such Leasehold Mortgagee or prospective Leasehold Mortgagee.

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

- (1) At the time that the County gives Lessee written notice of the occurrence of any default in respect of the performance of the Lessee's obligations under this agreement, the County shall simultaneously give the Leasehold Mortgagee(s) a copy of that notice in a manner established for the delivery of notices in Article 21.9 at the respective address(es) for the Leasehold Mortgagee(s) provided to the County. No notice of default to the Lessee will be effective until the County delivers the notice(s) required by this Article 10.2(C)(1). Further, in the event that this Lease shall not require the County to give notice to Lessee with respect to any particular default, the County shall nevertheless give written notice of such default to the Leasehold Mortgagee(s). Additionally, upon request by any Leasehold Mortgagee(s), the County shall notify such Leasehold Mortgagee(s) as to whether or not Lessee has cured any default with respect to which any notice had theretofore been given by the County to Lessee or to any Leasehold Mortgagee(s).
- (2) The Leasehold Mortgagee may rectify a default on Lessee's part, but has no obligation to do so, and further, if the Leasehold Mortgagee has commenced efforts to rectify a default on Lessee's part, nothing contained herein shall prevent such Leasehold Mortgagee from thereafter discontinuing such efforts. The County will accept the Leasehold Mortgagee's performance of any of the Lessee's obligations of the same extent as though the Lessee has performed. The County may exercise a remedy available to it by the reason of a default on Lessee's part only if



the Leasehold Mortgagee fails to rectify the default within (a) 30 days following expiration of the time period specifically set forth in Article 14 of the Lease for a cure of a particular default, or (b) if no such time period is set forth, then within 30 days after the date of the delivery of the notice required by virtue of Article 10.2(C)(1) above, or if a cure is not reasonably possible within such 30 day period, then within a period of time reasonably required to cure the default through the exercise of prompt, diligent and continuous effort. In this regard, it is expressly understood and agreed that if the rectification of any default on Lessee's part shall require such Leasehold Mortgagee to have possession of the portion of the Premises encumbered by any Leasehold Mortgage, the diligent efforts by such Leasehold Mortgagee to obtain such possession of such portion of the Premises shall satisfy the above requirements for diligently pursuing a cure, so long as the cure shall be completed as expeditiously as reasonably practicable once possession of such portion of the Premises shall be so obtained. Provided, however, that notwithstanding the foregoing, if the default under this Lease involves a failure to pay the required rent to Lessor or involves a condition created in violation of this Lease that is adversely affecting the safety and operations of the Airport, then, unless the Leasehold Mortgagee shall have (a) promptly cured, following written notice, the failure to pay the required rent, or (b) promptly commenced, following written notice, and be carrying out the cure of such default relating to Airport safety or operations, Lessor may resort to its remedies for such defaults (i) at any time following a 30-day cure period for non-payment of rents and charges due hereunder or (ii) at any time following the day that Lessor has declared that an emergency condition affecting the safety and operation of the Airport must be discontinued or corrected.

- (3) If a termination of this Agreement as to any portion of the Premises occurs prior to the stated date of the expiration of the term of this Agreement:
- (a) by virtue of a default in the performance of any Lessee's obligations as to such portion of the Premises that cannot be rectified by the mere payment of money to the County and either:
    - (i) such default is not reasonably susceptible to cure by the Leasehold Mortgagee of that portion of the Premises due to the personal (i.e., to Lessee) nature of the particular nature of the obligation of the Lessee that is in default, e.g., insolvency, bankruptcy, corporate dissolution, etc. (such defaults being hereinafter sometimes referred to as "personal covenant defaults"); or
    - (ii) the Leasehold Mortgagee was diligently seeking to rectify at the time of the termination, or

- (b) by virtue of Lessee's rejection or disaffirmance of this Agreement in bankruptcy,

then, in either of such events, the County will execute and deliver a new Lease for the portion of the Premises encumbered by such Leasehold Mortgage at the Leasehold Mortgagee's request in favor of a successor lessee that satisfies the criteria set forth in Article 10.2(C)(4) (a "Successor Lessee"). For purposes of the preceding sentence and for purposes of Article 10.2(C)(2) above, and those provision only, prompt, diligent and continuous efforts to gain possession of the portion of the Premises encumbered by such Leasehold Mortgage and to succeed to Lessee's interest in such portion of the Premises by means of a foreclosure or the exercise of any other remedy available to the Leasehold Mortgagee by virtue of the Lessee's default in respect of any of its obligations under the terms of the Leasehold Mortgage, together with the payment to the County of all rent and charges then due hereunder (i.e., without acceleration) as relates to the portion of the Premises encumbered by such Leasehold Mortgage and with respect to which Lessee becomes delinquent and good faith efforts made to rectify other defaults contemporaneously with the efforts to gain possession of the portion of the Premises encumbered by such Leasehold Mortgage, will constitute diligent efforts on the Leasehold Mortgagee's part to rectify the default that has occurred in respect to the performance of the Lessee's obligations under the terms of this Agreement. In the event that a new lease shall be entered into in accordance with the foregoing provisions of this Article 10.2(C)(3), that new lease will have a term that coincides with what would have been the remainder of the Term had termination of this Agreement not occurred and will otherwise be on the same terms and conditions as those set forth in this Agreement. The new lease will also have the same priority as this Agreement with respect to any lien or other encumbrance affecting the portion of the Premises demised thereby, including any fee mortgage, provided, however, that this Lease shall not be subordinate (nor shall any such new lease be subordinate) to any such fee mortgage(s) unless the holder(s) thereof shall agree not to disturb the leasehold interest or other rights of the Lessee under this Lease or the rights of a Successor Lessee under any new lease (or the rights of any sublessees under subleases with Lessee or any Successor Lessee) for so long as no default under this Lease by the Lessee or Successor Lessee of such portion of the Premises shall continue uncured following the giving of any and all required notices and the expiration of any and all applicable grace periods. In order for the County to be obligated to execute and deliver the new lease, the Leasehold Mortgagee must request the execution and delivery of such new lease within one year after the effective date of the termination of this Agreement with respect to the portion of the Premises encumbered by such Leasehold Mortgage, and must acknowledge and return the new lease to the County for execution on the County's party within 20 days after the date on which the County tenders the new lease to it for signature. Simultaneously with the delivery of the new lease, the Successor Lessee must also execute and deliver to the County a written plan

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

- (4) A transfer of Lessee's interest in all or any portion of the Premises to the Leasehold Mortgagee, or a nominee affiliated with the Leasehold Mortgagee (herein a nominee"), or a purchaser at a foreclosure sale that occurs by virtue of the foreclosure of the Leasehold Mortgage or the Leasehold Mortgagee's (or its designee's) acceptance of a deed in lieu of foreclosure or in connection with the exercise of any remedy available to it under the terms of the Leasehold Mortgage will not constitute an assignment requiring the County's consent under the terms of Article 10.1 above. The provisions of Article 3 will govern any use of the Premises that occurs prior to and after a transfer to the Leasehold Mortgagee or the purchaser at the foreclosure sale. The Leasehold Mortgagee, or its nominee, or the purchaser at the foreclosure sale may make a subsequent transfer of Lessee's interest in the portion of the Premises that had been encumbered by such Leasehold Mortgage only with the County's prior written consent as provided in Article 10.1(C). The County will, however, consent to the subsequent transfer if the proposed successor to the Lessee's interest would have been an acceptable lessee for the portion of the Premises that had been

encumbered by such Leasehold Mortgage in the reasonable exercise of the County's judgment considering the successor's experience, financial strength, history of meeting contractual obligations and the then state of development of the Premises. For example, if at the time of such transfer, Lessee shall have completed development of the portion of the Premises encumbered by such Leasehold Mortgage (or of the parts of such portions of the Premises that are not subject to ground subleases which contemplate that the sublessee[s] thereunder, and not Lessee, shall construct improvements thereon), then the proposed successor need not have development expertise in order to be deemed an acceptable "Replacement Lessee", so long as such successor has adequate financial strength and/or financing to meet the reasonably anticipated financial obligations of the Lessee under this Lease as relates to such portion of the Premises, and so long as such proposed successor has the capability to provide (and/or has contracted for) competent management of the project developed on such portion of the Premises. After succeeding to the Lessee's interest in the portion of the Premises encumbered by any Leasehold Mortgage, the Leasehold Mortgagee, its nominee, or a purchaser at the foreclosure sale that does not satisfy the requirements of this Lease (to the extent applicable) and that is not otherwise acceptable to the County as a Successor Lessee in the reasonable exercise of the County's judgment must use reasonably diligent efforts either to become or to find a Successor Lessee satisfying the criteria set forth above in Article 10.2(C)(4) in the County's reasonable judgment.

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

- (6) Without the Leasehold Mortgagee's prior written consent, the Lessee bound by the Leasehold Mortgage held by such Leasehold Mortgagee may not amend this Agreement, exercise any right available to it under the terms of this Agreement or at Law to cancel this Agreement, or to voluntarily surrender possession of the portion of the Premises encumbered by such Leasehold Mortgage to the County. Without the Leasehold Mortgagee's prior written consent, the County may not amend this Agreement. The foregoing restrictions will not apply, however, to amendments for which express provision is made elsewhere in this Agreement. Without the Leasehold Mortgagee's prior written consent, the County may not cancel this Agreement as relates to any portion of the Premises encumbered by the Leasehold Mortgage held by such Leasehold Mortgagee and accept a surrender of the possession of such portion of the Premises except in the instances where the cancellation and acceptance of a surrender of possession of such portion of the Premises occurs in connection with the County's exercise of its remedies following an occurrence of a default in the performance or any of Lessee's obligations as relates to such portion of the Premises. The Leasehold Mortgagee will not be bound by any amendment, cancellation or surrender that occurs in contravention of the foregoing provisions of this Article 10.2(C)(6). No failure on the part of Lessee to exercise any renewal option, and no election by Lessee to waive any renewal option shall be binding upon any Leasehold Mortgagee without such Leasehold Mortgagee's prior written consent.
- (7) The Leasehold Mortgagee will have the right to participate in the adjustment of any insured losses that becomes necessary by reason of damage or destruction occurring to the Improvements constructed on any portion of the Premises encumbered by the Leasehold Mortgage held by such Leasehold Mortgagee, and the right to supervise and control the receipt and disbursement of insurance proceeds applicable thereto to the extent provided in agreements among Lessee, the Leasehold Mortgagee and any sublessee holding an interest with respect to such portion of the Premises; provided, however, that any distribution of insurance proceeds must comply with the requirements of Article 12 of this Agreement.
- (8) If a taking of any part of the Premises encumbered by a Leasehold Mortgage occurs, the Leasehold Mortgagee thereunder will have the right to participate in any condemnation proceedings or settlement discussions pertaining to the Lessee's interests hereunder as relates to such part of the Premises and the right to supervise and control the receipt and disbursement of all condemnation awards arising from such interest hereunder and the right to supervise and control the receipt and disbursement of all condemnation awards arising from such interests to the extent provided in agreements among Lessee, the Leasehold Mortgagee, and any sublessee holding an interest with respect to such portion of the Premises. The Leasehold Mortgagee is entitled to receive and apply to the reduction of the indebtedness, the payment of which is secured by the lien of the Leasehold Mortgage, any portion of a condemnation award arising from a taking of

Lessee's interests in any portion of the Premises encumbered by the Leasehold Mortgage held by such Leasehold Mortgagee that is not applied to the restoration of that portion of the premises that remains following the taking to a complete architectural unit. After payment to the County by the condemning authority of whatever compensation and damages are determined to be owing to the County for County's property interests in such portion of the Premises (i.e., as unimproved land and without regard to the Improvements thereon and/or thereto which may have been constructed by Lessee or any sublessee[s]), and after the indebtedness secured by the lien of any Leasehold Mortgagee(s) applicable thereto is discharged in full by an application of a condemnation award in accordance with the terms of the preceding sentence and after payment to the Lessee by the condemning authority of whatever compensation and damages are determined to be owing Lessee for Lessee's property interests in the Premises, the County is entitled to receive any remaining portion of the condemnation award. If a partial taking of any portion of the Premises encumbered by a Leasehold Mortgage occurs, this Agreement will continue in effect with respect to the balance of that encumbered portion of the Premises not taken and, effective as of the earlier of the dates on which the condemning authority takes title to or possession of the part taken, the rent payable under the terms of this Agreement as relates to the portion of the Premises encumbered by such Leasehold Mortgage will be equitably reduced as contemplated in Article 2.12(A) above. If, however, the remaining part of such encumbered portion of the Premises not taken cannot be adequately restored, repaired or reconstructed so as to constitute a complete architectural unit of substantially the same usefulness, design, construction and commercial feasibility as immediately before the taking as reasonably determined by Lessee or its sublessees, then Lessee may terminate this Agreement as to the entire portion of the Premises encumbered by such Leasehold Mortgage by delivering written notice to the County by the date that is one hundred twenty (120) days after the day of the taking. Lessee's notice must specify the date the termination will become effective, which date will not be earlier than the date of such taking. If a termination occurs in accordance with the foregoing, Lessee shall pay and shall satisfy all rents and charges due and accrued hereunder as relates to the portion of the Premises as to which such termination shall apply up to such date of such termination and shall perform all of the obligations of the Lessee hereunder as relates to such portion of the Premises to such date, and thereupon this Lease and the Term shall cease and terminate as relates to such portion of the Premises, but not as relates to any other portion of the Premises. If a taking for a temporary period occurs, this Lease will continue in full force and effect and the entire award payable in respect of that taking will be payable to the Lessee(s) of the affected portion(s) of the Premises, except for any portion sought by and attributable solely to County's interest in the Premises, provided, however, that Lessee shall be entitled to an abatement of rent to the extent of any such portion of the award so payable to the County, subject to the provisions of any agreements among Lessee,

the Leasehold Mortgagee and any sublessee holding an interest with respect of applicable portion of the Premises.

- (9) During the entire term hereof, County will have no right, and expressly waives any right arising under applicable law, in and to the rentals that will become due to Lessee under the terms of any sublease of any part of the Improvements; Lessee may assign those rentals to the Leasehold Mortgagee without any consent or approval of the County. Nothing in this Article 10.2(C)(9) shall (a) alter County's ownership of the Improvements at the conclusion of the Term of this Agreement, (b) alter Lessee's obligations to commence paying County rentals on the Improvements as provided in Article 4.1, or (c) provide Lessee with any ownership claim to the Improvements or the rentals therefrom after the conclusion of the Term.
  - (10) Under no circumstances will the fee estate of the County and the leasehold estate created by this Agreement merge, even though owned by the same party, without the Leasehold Mortgagee's written consent.
  - (11) Without need of any notice to or consent from the County, any Leasehold Mortgagee shall be entitled to assign its Leasehold Mortgage to any other party or to sell or convey participation interests in its Leasehold Mortgage.
- (D) Upon written request from time to time made by Lessee, a Leasehold Mortgagee, a prospective Leasehold Mortgagee, or a prospective assignee of all or any portion of Lessee's interest in the Premises, the County shall execute and deliver to the requesting party an estoppel certificate in the form reasonably requested by the requesting party. In each such certificate, the County shall certify, to the extent that it then has knowledge, (i) the amounts of the monthly rent that Lessee is then obligated to pay under the terms of this Agreement and the date through which Lessee has paid that rent, (ii) that this Agreement is in full force and effect, (iii) the specific nature of any default that the County knows to exist in the respect of either party's performance of its respective obligations under the terms of this Agreement and (iv) the specific nature of any defense or offset that the County may assert in connection with any effort on Lessee's party to enforce any of the obligations the County undertakes under the terms of this Agreement.
- (E) The provisions of this Article 10.2 will survive in the termination, rejection or disaffirmance of this Agreement and will continue in full force and effect thereafter to the same extent as if this Article 10.2 were a separate and independent contract made by the County, Lessee, and the Leasehold Mortgagee. The County's agreement set forth in this Article 10.2 to enter into a new lease with the Leasehold Mortgagee as relates to any portion of the Premises constitutes a separate agreement with the County and the Leasehold Mortgagee, a new lease with the Leasehold Mortgagee separate and apart from this Agreement, as well as a part of this Agreement. The county agrees that each Leasehold Mortgagee shall be a third party beneficiary to the terms of this Agreement, and that such third party beneficiary status shall be unaffected by the rejection or disaffirmance of this Agreement in any bankruptcy proceeding by any party.

- (F) Nothing contained herein shall be deemed to prohibit Lessee from entering into more than one Leasehold Mortgage transaction at any time or times. Accordingly, if at any time, there shall be more than one Leasehold Mortgagee, then the rights and privileges conferred by this Article 10.2 shall be deemed to extend to, and inure to the benefit of, each such Leasehold Mortgagee, provided, however, that no subordinate Leasehold Mortgagee shall be entitled to take curative action in response to a default by Lessee hereunder if or to the extent that the same shall interfere with any such curative action then in the process of being taken by any senior Leasehold Mortgagee.
- (G) The County agrees that Lessee shall be entitled to grant to one or more of its sublessees the right to mortgage the subleasehold interest(s) of such sublessees in the Premises under conditions and subject to requirements equivalent to those set forth above in this Section 10.2.

## ARTICLE 11

### INDEMNIFICATION AND HOLD HARMLESS

- 11.1 Lessee shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including reasonable attorneys' fees and costs of defense, that the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of action or proceedings of any kind or nature first arising after the Effective Date and arising out of, relating to, or resulting from the use of the Premises and the performance of this Agreement by the Lessee or its employees, agents, servants, partners, principals, contractors, subcontractors, sublessees or invitees, as well as acts of trespassers while on the Premises. Lessee shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or action of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay costs, judgments and reasonable attorney's fees which may issue thereon. Lessee expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Lessee shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents, and instrumentalities as herein provided. The indemnity provided herein is in addition to and does not limit the other indemnities of the parties provided in Article 8.2. The obligation of the Lessee hereunder shall survive the termination of this Agreement.

Nothing herein shall preclude Lessee and its sublessees from pursuing any claim or cause of action against the County which is then available at law, in equity, or otherwise. For so long as the Trust Agreement remains in effect, Lessor shall, as required by Section 706 thereof, maintain a practical insurance program, with reasonable terms, conditions, provisions and costs which the Director determines, with the approval of an independent risk management consultant, will afford adequate protection against property loss as described in Section 706 and such comprehensive public liability insurance on such Properties for bodily injury and property damage and in such amounts as may be approved by such risk management consultant.



## ARTICLE 12

### INSURANCE

- 12.1 Liability Insurance Required: In addition to such insurances as may be required pursuant to Section 12.4 below, Lessee shall maintain or cause to be maintained, without lapse or material chance, for so long as it occupies the Premises and Improvements, the following insurance:
- (A) Commercial General Liability Insurance, including Contractual Liability, to cover the Lessee's Premises and Improvements and operations, in an amount not less than \$5,000,000 combined single limit per occurrence for bodily injury and property damage. The County must be shown as an additional insured with respect to this coverage. Coverages shall be for each occurrence, with either no aggregate or an annual policy aggregate of no less than twice the amount of coverage required for each occurrence. In the event that the Lessee's available coverage falls below the per occurrence amount shown above, the Lessee shall secure a new certificate of insurance evidencing the required coverage. Lessee acknowledges that the County reserves the right not to accept policies with aggregate limits or with deductibles in excess of \$1,000,000.00.
  - (B) Automobile Liability Insurance covering all owned, non-owned and hired vehicles (including ground or mobile equipment) used by the Lessee in connection with its operations under this Agreement in an amount not less than:
    - (1) \$5,000,000 combined single limit per occurrence for bodily injury and property damage covering all vehicles and ground and mobile equipment used by the Lessee in connection with its business operation, if any, within the AOA.
    - (2) \$1,000,000 combined single limit per occurrence for bodily injury and property damage covering such vehicles when being used by the Lessee on the Premises.
  - (C) The insurance coverages required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the Lessee under this Agreement. All insurance policies required pursuant to the terms of this Agreement shall be issued in companies approved to do business under the laws of the State of Florida. Such companies must be rated no less than "B" as to management, and no less than "V" as to strength in accordance with the latest edition of "Best's Insurance Guide", published by A.M. Best Company, Inc., or its equivalent, subject to approval of the County's risk Management Division.
- 12.2 Property Insurance Required:

- (A) Builders Risk and Hazard Insurance;

- (1) The Lessee and/or its sublessee(s), at its (and/or their) sole cost and expense, throughout the term of this Agreement, shall keep the Improvements insured on a "Special Form" basis in an amount not less than 100% of the full replacement value of the Improvements against loss or damage (in excess of a reasonable per occurrence deductible amount, which shall be the responsibility of the Lessee or its sublessees) by fire, lightning, tornado, hurricane, windstorm, hail, flood, explosion, riot, riot attending strike, civil commotion, vandalism and malicious mischief, sprinklers and sprinkler leakage, aircraft, vehicles and smoke, or any other casualty in an amount not less than 100% of the full replacement value of the Improvements to the extent such coverage is commercially available at commercially reasonable rates.
- (2) The full replacement value of the Improvements shall be established as of the date each Improvement is constructed and a certificate of completion (or certificate of occupancy) for same is issued by the appropriate governing authority with jurisdiction over same and shall be re-established at intervals of not more than three (3) years thereafter by Lessee's (or its sublessee[s]') insurance agent to ensure reasonable adequacy of coverage. Subject to the further provisions of this article and the provisions of Article 21.21 below, any deficiency in the amount of the proceeds from such property insurance resulting from a failure by the Lessee or any sublessee(s) to re-establish the full replacement value of the Improvements shall be the sole responsibility of the Lessee.
- (3) Intentionally Deleted.
- (4) Damage or Destruction and Restoration of the Improvements:
  - (a) In case of damage to or loss of all or a portion of the Improvements, the Lessee shall give prompt notice thereof to the Department and, unless Lessee or the applicable sublessee(s) shall elect to exercise the right granted in Section 12.2(A)(4)(c) below, Lessee or the applicable sublessee(s) shall promptly commence and complete with due diligence (subject only to delays beyond its or their reasonable control), the restoration of the damaged or destroyed portion of the Improvements as nearly as reasonably practicable to the value and condition thereof immediately prior to such damage or destruction. In the event of such damage or destruction, the proceeds of all property insurance policies shall be used to restore the facility to make it functional for the uses permitted under Article 3. The Lessee and/or sublessees shall receive reimbursement from the proceeds of all property insurance policies for the Improvements and shall be obligated to provide any additional monies necessary for such restoration.
  - (b) Anything in the foregoing to the contrary notwithstanding, in the event that any such damage or loss to any Improvement(s) shall occur during the last ten (10) years of the term of this Lease, then, subject to the provisions of Article 21.21 below, Lessee (and/or the applicable

sublessee[s]) shall have the right to exercise one of the following three options: (1) proceed with the repair or restoration of the affected Improvement(s), (2) remove the damaged facilities from the Premises, restore the land to a scraped and seeded or paved condition, and perform all actions necessary to leave the premises and any utilities thereon in a safe condition, or (3) terminate this Lease either as to the entirety of the Premises in the case of a casualty affecting all or substantially all of the Improvements located on the Premises, or as to the portions thereof upon which such affected Improvements shall be located, following Lessee's removal of the damaged facilities and restoring the land to a seeded or paved condition as Lessor may direct. If Lessee or any sublessee exercises option #1 or #2 as to any portion of the Premises, Lessee shall continue to pay rent on such portion of the Premises. If Lessee exercises option #3 as to any portion of the Premises, Lessee shall no longer be obligated to pay rent on such portion and Lessee shall have no further obligations as to such portion except for any obligations or liabilities that arose prior to the effective date of Lessee's exercise of the option.

(c) For avoidance of doubt, it is understood and agreed that if, in connection with damage or destruction occurring at any time during the Term of this Lease, Lessee or any sublessee(s) shall elect not to rebuild any damaged or destroyed Improvement(s), then Lessee or such sublessee(s) shall be required to promptly remove the damaged or destroyed Improvements and clear, grade and seed or pave over the area formerly occupied by such Improvement(s) and perform all actions necessary to leave the premises and any utilities thereon in a safe condition.

(d) If any damage or destruction to the Improvements shall occur prior to the Construction Deadline (as the same may have been extended from time to time) and prior to the date upon which substantial completion thereof shall have first been achieved, then such restoration/rebuilding of such partially completed Improvements in all instances must occur if necessary to satisfy the requirements of Article 5.8 above, relating to the Required Investment.

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

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

(A) The Lessee or its sublessee(s) has/have obtained insurance in the types, amounts and classifications as required for strict compliance with this Article;

- (B) The policy cancellation notification provisions specify at least 30 days advance written notice of cancellation to the County;
- (C) The County is named as an additional insured with respect to the Lessee's commercial general liability policies; and
- (D) Intentionally Deleted.
- (E) On said insurance certificates, liability coverage shall include contractual liability and notification of cancellation.

12.4 Additional Insurance: In addition to the types and levels of coverage provided in Article 12.1 or as may be required by applicable law, the County reserves the right to require the Lessee to (i) provide additional types of insurance coverages or (ii) increase (or cause its sublessees to increase) the policy limits of its various insurance coverages from time to time during this Agreement as the County through approval by the Board of County Commissioners reasonably requires of all other tenants similarly situated to Lessee (and if there shall be no similarly situated tenants at airports operated by the County, then the County may require Lessee to increase the policy limits of its various insurance coverages to amounts that other government-operated airports then customarily require of retail or commercial tenants at such airports whose facilities are located outside the AOA's at such other airports) upon issuance of notice in writing to the Lessee, which notice shall automatically amend this Agreement effective 90 days after such notice. The County further reserves the right, from time to time, to require Lessee to increase (or cause its sublessees to increase) such policy limits in the event that the businesses or activities of Lessee or any sublessee(s) at the Premises shall result in a significantly higher claims history that would otherwise be the case in the absence of such business or activity, provided, however, that the foregoing shall not apply to typical retail, restaurant, service and entertainment businesses and activities. If Lessee claims that such coverage is not commercially available, reasonable documentation with respect thereto shall be provided by Lessee to the County, and if the parties cannot mutually agree to the coverage level that is reasonably available, the parties shall refer the matter to an unrelated local insurance broker of at least ten (10) years' experience in commercial insurance to determine the type and coverage level of the insurance that is reasonably available in South Florida and that Lessee must obtain. An insurance broker shall not be deemed unrelated if, among other things, such broker is then acting for either party hereto, or such broker has acted for either party hereto during the immediately preceding five (5) years, or such broker is then soliciting an engagement or other business arrangement with either party hereto.

12.5 Compliance: Compliance with the requirements of this Article 12 (Insurance) shall not relieve the Lessee of its liability under any other portion of this Agreement or any other agreement between the County and the Lessee.

12.6 Right to Examine: The Department reserves the right, upon reasonable notice, to examine true copies of applicable portions of policies of insurance (including but not limited to binders, amendments, exclusions, riders and applications) to determine the true extent of coverage. The Lessee agrees to permit such inspection of such policies at the offices of Lessee or at the office of the Department, at the Department's option.

- 12.7 Personal Property: Any personal property of the Lessee or of others placed in the Premises and Improvements and Airport shall be at the sole risk of the Lessee or the owners thereof, and the County shall not be liable for any loss or damage, except to the extent such loss or damage was caused by the negligence or willful misconduct of the County, as limited by Section 768.28, Florida Statutes.
- 12.8 Blanket Policies: Lessee may carry all or a portion of the insurance coverage mandated under this Lease under a blanket policy covering the Improvements and Premises under this Lease and other properties of affiliates of Lessee, so long as the coverage provided is consistent with the requirements of this Article 12.
- 12.9 Intentionally Deleted.
- 12.10 Intentionally Deleted.

## ARTICLE 13

### USE OF PUBLIC FACILITIES

- 13.1 (A) In addition to the other rights and privileges granted to Lessee and its sublessees as elsewhere provided in this Lease, the County also grants to the Lessee, in common with all others desiring to use the Airport, and only to the extent necessary or reasonably desirable, so long as such use does not conflict with the County's operation of the Airport, to carry out the rights granted the Lessee hereunder, the nonexclusive privilege to use the roads of egress and ingress, service roads and such other facilities and improvements as may be now in existence of hereafter constructed for the use of persons lawfully using the Airport; provided, however, that such usage shall be subject to the payment of nondiscriminatory fees and other charges established by the County. For avoidance of doubt, it is expressly understood and agreed that no charge or fee shall be imposed upon Lessee for ingress to or egress from the Premises via any public road, including, but not limited to SW 137<sup>th</sup> Avenue, SW 128<sup>th</sup> Street and the Roadway constructed by Lessee in the vicinity of the S.W. 124<sup>th</sup> Street intersection at S.W. 137<sup>th</sup> Avenue as provided below. Nothing herein contained shall grant to the Lessee the right to use any leaseable space or area improved or unimproved which is leased to a third party, or which the County has not leased herein.

The County hereby grants Lessee the right and license, at Lessee's option and sole cost, to construct a 4-lane paved roadway (the "Roadway") commencing in the vicinity of the S.W. 124<sup>th</sup> Street intersection at S.W. 137<sup>th</sup> Avenue and extending westerly to a point (the "Turn Point") which shall be located not less than two hundred fifty feet (250') and not more than five hundred feet (500') from the westerly right of way line of S.W. 137<sup>th</sup> Avenue and then turning south and extending to Lessee's Premises. The location of the Roadway and the location of such Turn Point within said 250' - 500' zone shall be mutually agreed upon by Lessor and the County prior to the commencement of construction of the Phase I infrastructure Improvements (each party to negotiate in good faith with respect to the location of the Turn Point and neither party to unreasonably withhold, delay or condition its agreement with respect thereto), it being the intent of the parties that the precise location of the Turn Point within said 250' - 500' zone shall be determined so as

not to materially compromise Lessor's ability to make use of or develop Lessor's adjoining property, as Lessor reasonably determines. Such Roadway shall not be and shall not be deemed to be an extension of S.W. 124<sup>th</sup> Street, and Lessee shall take no actions in regard to such Roadway or its use that constitute a dedication of such Roadway as a public road. Lessor, Lessee, and Lessee's sublessees and their respective employees, agents, contractors, suppliers, invitees, licensees, customers and patrons shall have the right and license to use such Roadway for ingress and egress to and from the Premises from SW 137<sup>th</sup> Avenue without charges. The rights and licenses granted by the County pursuant to this Section 13.1 and/or other provisions of this Lease shall be irrevocable during the term of this Lease, and the provisions of Article 5.17 shall also apply to Lessee's construction and use of the Roadway.

(B) The County further grants the right, without additional charge to Lessee or its sublessees, of ingress to and egress from the Premises over and across public roadways serving the Airport for the Lessee, its sublessees, agents and employees, patrons and invitees, suppliers of service and furnishers of materials. Said right shall be subject to such laws, rules, regulations and orders as now or may hereafter have application at the Airport.

- 13.2 To the extent that Lessee intends to connect to utility services located within the Airport, such connections will be performed in accordance with County's specifications, so that they will not conflict with the County's operation of the Airport.

## ARTICLE 14

### TERMINATION

- 14.1 Payment Defaults: Subject to the provisions of Article 14.4 below, failure of the Lessee to make all payments of rentals, fees, and charges required to be paid to the County herein when due shall constitute a default, and the County may, as its option, terminate this Agreement after ten (10) business days' notice in writing to the Lessee unless the default is cured within the notice period.

- 14.2 Insurance Defaults: The County shall have the right, upon thirty (30) business days written notice to the Lessee, to procure any insurance required herein if the Lessee fails to provide evidence of insurance coverage in strict compliance with Article 12 hereof prior to commencement of operations, or fails to provide a renewal of said evidence upon its expiration; provided, however, that such right to procure such insurance shall not be effective if the Lessee provides the required evidence of insurance coverage within the notice period. In the event that the County shall exercise such right to procure required insurance not timely procured by Lessee, Lessee shall be required, within ten (10) business days following written demand by the County, to reimburse the County for all reasonable costs and expenses incurred by the County in procuring such required insurance for Lessee, failing which Lessee shall be deemed to have committed a Payment Default, within the meaning of Article 14.1 above.

- 14.3 Other Defaults: Subject to the provisions of Article 14.4 below, the County shall have the right, upon 30 calendar days written notice to the Lessee, to terminate this Agreement upon the failure of the Lessee to comply with any of its material covenants of this Agreement,

including but not limited to Lessee's obligations under Article 2, Article 3.5 (relating to Unauthorized Purposes) and Exhibit "G" (relating to Prohibited Uses), other than the covenants to pay rentals, fees and charges when due, unless the same shall have been corrected within such period, or, if correction cannot reasonably be completed within such 30-day period, the Lessee has commenced good faith corrective steps within such 30-day period or within such other longer period if so directed by MDAD and diligently pursues same to completion.

14.4 (A) Except to the extent that Lessee has made an Assignment of this Lease either in whole or in part to a Qualified Assignee and as a result thereof, Lessee has been released from all further obligations hereunder, then Lessee shall comply (and/or cause compliance) with the terms of this Agreement as to the entirety of the Premises or as to the portion of the Premises that was not affected by any partial Assignment(s) of this Lease to Qualified Assignee(s) and Lessor shall look to such Qualified Assignee(s) as relates to the portion(s) of the Premises that were affected by such partial Assignment(s) to such Qualified Assignee(s). Upon a breach by Lessee of its obligations hereunder as to any portion of the Premises, Lessor shall have the remedies set forth in Articles 14.1, 14.2, and 14.3 hereof as to the entirety of the Premises, subject however to the provisions of Article 14.4(B) below.

(B) The County specifically agrees that in the event of a Lessee default hereunder which shall not have been timely cured, the default shall apply only to the portion of the Premises to which the default relates, and the County will not disturb the Lessee's right hereunder or any sub-lessee's rights to occupy space subleased to it for which no default hereunder exists either as to Lessee or such sublessee, so long as Lessee is remitting applicable Rent to the County in respect of Lessee's or sublessee's non-defaulting portions of the Premises. Additionally, the County shall not disturb or evict Lessee from, or declare Lessee in default of this Lease in respect of, any portion of the Premises upon which Lessee continues to timely pay applicable Rent and comply with other Lease provisions in respect of such portion of the Premises, notwithstanding that the Lessee may otherwise be in default of this Lease in respect of other portions of the Premises, inclusive of the failure to pay all rentals due in respect of such other portions of the Premises, and regardless of whether the Lease has been terminated as to any other portion of the Premises as a result of a default by Lessee; provided, however, that nothing herein shall preclude Lessor from exercising its available remedies as to any portion of the Premises that is in default hereunder. Lessee may provide notice to Lessor at the time of the remittance of its Rent payments due under this Lease, for the portion(s) of the Premises as to which such Rent is being paid (or conversely the portion of the Premises for which Rent is not then being paid if the Rent remitted is not the full Rent then due, and the County agrees that such notice shall be binding on the County in respect of this Article 14. The remedies provided to Lessor in this Article 14 shall be limited as provided herein.

(C) All of the foregoing defaults specified in this Article 14 and the remedy of termination of this Lease as a result of any default that is not timely cured, or any other right of termination in this Agreement, shall relate only to the specific portion of the Premises, or, if a sublease exists, then only to the portion of the Premises that is the subject of that sublease, to which the alleged default applies, so that a default with regard to one portion of the Premises or one subleased portion, as the case may be, shall have no effect on this

Lease as it relates to other portions of the Premises or other subleased portions thereof, nor shall any such default affect the remaining tenancy of Lessee or any other sublessee; provided, however, that nothing herein shall preclude the Lessor from exercising its available remedies as to any portion of the Premises that is in default hereunder.

(D) In the event of any notice of default given by the County to Lessee for the default of any sublessee, such sublessee shall have the right to cure said default, or Lessee may cure same. Further, any sublessee(s) or assignee(s) shall have the right to cure any default by Lessee hereunder that relates either (x) to the portion(s) of the Premises subleased to such sublessee(s) or (y) to the entire Premises. Any cure by Lessee shall be deemed to be a cure by the sublessee(s) in respect of the portion(s) of the Premises subleased to such sublessee(s) or in respect of the entire Premises, as the case may be. Any cure by a sublessee shall be deemed to be a cure by Lessee in respect of the portion of the Premises then in default and occupied by the sublessee or in respect of the entire Premises, as the case may be.

(E) The County's remedies under this Lease in the event of a default by Lessee shall be strictly limited and governed by the terms, conditions and rights afforded Lessee as contemplated by this Article 14.4, and the County shall have no right to terminate this Lease in its entirety unless Lessee's default extends to the entirety of the Premises or the entirety of the Rent due in respect of the entire Premises.

#### 14.5 Actions at Termination:

(A) Upon a default as to a portion of the Premises, or upon a default as to the whole of the Premises, or upon the expiration of the term of this Agreement, Lessee shall vacate, quit, surrender up and deliver to the County the portion of the Premises (in the case of a default as to a portion of the Premises) or the entirety of the Premises (in the case of a default as to the whole of the Premises or in the case of the expiration of the term of this Agreement) and the Improvements thereon, respectively, on or before the termination date of this Agreement, whether by lapse of time or otherwise. The Lessee shall surrender the portion or the entirety of the Premises and Improvements, as appropriate, in the condition required under Article 6 (Maintenance and Repairs) herein. All repairs for which the Lessee is responsible shall be completed prior to surrender. The Lessee shall deliver to the Department all keys to the portion or the entirety of the Premises and Improvements upon surrender. On or before the termination date of this Agreement, the Lessee shall remove all of its personal property from the portion or entirety of the Premises and Improvements, but excluding the vaults of any bank or financial facility. Any personal property of the Lessee not removed in accordance with this Article may be removed by the Department for storage at the cost of the Lessee. Failure on the part of the Lessee to reclaim its personal property within 30 days from the date of termination shall constitute a gratuitous transfer of title thereof to the County for whatever disposition is deemed to be in the best interest of the County.

(B) The Lessee of any portion of the Premises shall, at its expense, take all actions required by Federal, State and local laws, regulations or codes to remove from such portion of the Premises and Improvements any Hazardous Material thereon,



whether stored in drums, or found in vats, containers, distribution pipe lines, or the like, to the extent of Lessee's responsibility under Article 8.2. All such Hazardous Material shall be removed by the Lessee in a manner approved and authorized by such Federal, State or local laws, regulations or codes.

- (C) If within ninety (90) days prior to the termination of this Agreement as to all or any portion of the Premises, the County advises the Lessee thereof in writing that the County has reasonable grounds to believe that, during the term of this Agreement, any Hazardous Materials have been released by such Lessee or any sublessee within the Premises or such portion thereof or into the ground under the Premises or such portion thereof, then promptly following such written notice from the County, the Lessee of such portion of the Premises at its sole cost and expense shall retain an approved environmental consultant to perform an environmental investigation of such portion of the Premises to determine whether any Hazardous Material has been released within the Premises and Improvements or into the ground under such portion of the Premises and Improvements during the Term or if a Recognized Environmental Condition exists which was not otherwise identified in (i) the Remedial Action, (ii) the Baseline Audit, (iii) any Tenant Audit, or (iv) the construction of Improvements during the first six months of this Agreement (all other Recognized Environmental Conditions and Hazardous Materials on the Premises that were not released by the County or its agents, employees or contractors and that were not in existence at the Premises on the Effective Date and that did not migrate from other properties onto the Premises referred to throughout this Agreement as the "Tenant Contamination"). If the assessment reveals any Tenant Contamination, the Lessee shall comply with the recommendations and conclusions of the County or its consultant regarding environmental clean-up efforts that may be required to comply with applicable clean up requirements imposed on the Lessee by Federal, State or local law, regulations or codes. Lessee shall not be responsible for (i) any Hazardous Material that originated from an off-site discharge, disposal or release by a party other than Lessee, its employees, agents or contractors and that has migrated onto the Premises, or (ii) any Hazardous Material that originates from a discharge, disposal or release by the County or any of its employees, agents or contractors, or (iii) any Hazardous Materials that existed at the Premises on or prior to the Effective Date, or (iv) any Hazardous Materials that were released by any third party for whom Lessee is not otherwise responsible at law, and the existence of any such Hazardous Materials shall not constitute a default by Lessee under this Lease. Except as expressly provided below, any Environmental Condition or Hazardous Material that existed at the Premises on or prior to the Effective Date and/or that originated from an off-site discharge, disposal or release by a party other than Lessee or any of its employees, agents or contractors and the presence of which on, about, or beneath the surface of the Premises has been accelerated by virtue of, or resulted from, the construction of the Improvements will nevertheless be deemed to have migrated onto the Premises, rather than being brought on the Premises through intentional acts of Lessee or any of its employees, agents or contractors, and will not constitute Tenant Contamination. The limitation set forth in the preceding sentence will not apply to the extent that the presence of the Environmental Condition or the Hazardous

Materials on, about, or beneath the surface of the Premises is attributable to Lessee's failure to comply with all requirements of any de-watering permit that an appropriate regulatory authority issues in connection with the construction of the Improvements.

- (C) Nothing in this Article or Agreement shall affect the Lessee's liability for environmental violations as separately provided for in any Federal, State, or local law, except to the extent that the County has agreed to assume liability for contamination existing as of the commencement of this Agreement under Article 8.2.

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

14.7 County Defaults: This Agreement shall be subject to termination (and/or an action to recover damages and/or other relief) by the Lessee in the event of a default by the County in the performance of any material covenant or agreement herein required to be performed by the County and the failure of the County to remedy same within a reasonable period of time following receipt of written notice from the Lessee of such default. This right of termination is not an exclusive remedy and Lessee may, upon the County's default, exercise any other rights available to it at law or in equity, including, but not limited to, self-help and use of monies otherwise due the County by Lessee hereunder in application of the cure of said Lessor default.

14.8 [Intentionally Omitted].

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

- (A) The permanent abandonment of the Airport which prevents or materially interferes with the continued operation of the Premises as then being operated.
- (B) The lawful assumption by the United States Government or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part or parts thereof which encompasses all or any material portion of the Premises or which in any other manner substantially restricts the Lessee from operating therefrom for a period in excess of 90 consecutive days, including pursuant to the exercise of any rights pursuant to Article 21.8 hereof, provided that nothing contained herein shall be deemed to constitute a waiver by the Lessee of any right it may have against the United States to just compensation in the event of any such assumption.
- (C) The issuance by any court of competent jurisdiction of any injunction or similar order in any way substantially preventing or restraining the use of the Airport, and

the remaining in force of such injunction for a period in excess of 90 days; provided, however, that if such injunction does not preclude or materially and adversely affect the continued use of the Premises or any portion thereof, then termination of this Lease shall not occur as to the Premises or such portion thereof on account of such injunction or order.

(D) The termination of this Agreement pursuant to Section 20.3 below.

Upon the occurrence of any of the events described in Section 14.9(A) or (C) above, Lessee may send a notice of termination to the County whereupon this Agreement shall terminate sixty (60) days from the date of receipt of such notice by the County, the Lessee shall have no further obligations hereunder and the County shall pay to the Lessee the "Termination Fee" (defined below) in order to compensate the Lessee for its economic loss of the use of the Premises, Improvements and related amenities established and operated by Lessee as elsewhere set forth in this Agreement. The Termination Fee shall be paid to Lessee in full within one hundred and twenty (120) days of the receipt of the notice of termination of this Agreement and shall consist of the sum of (x) the unamortized balance of the costs incurred by Lessee and its sublessees in constructing the Improvements calculated in accordance with GAAP on a forty (40) year straight line basis from the DBO of each Improvement, at an interest rate of one percent (1%) above the one-year LIBO Rate that was in effect on the DBO for such improvement, plus (y) an amount equal to all other sums that would be payable to Lessee had this Lease been terminated in connection with a taking of Premises under power of eminent domain as contemplated in Article 2.12 above, but without duplication of any sums paid to Lessee pursuant to Clause (x) immediately above.

14.10 Anything in this Article 14 or elsewhere in this Lease to the contrary notwithstanding, it is expressly understood and agreed that all provisions of this Article 14 (including all rights and remedies granted to the County pursuant to this Article 14) are and shall be subject to, and qualified by, the provisions of Section 10.1(C)(4) above and in the event of any conflict between the terms of this Article 14 and the terms of Section 10.1(C)(4) above, the terms of said Section 10.1(C)(4) shall take precedence and shall control.

## ARTICLE 15

### SPECIAL CONDITIONS

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

15.2 Height Restrictions: The Lessee expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Premises to such a height so as to comply with Federal Aviation Regulations, Part 77 and with the Code of Miami-Dade County (including, but not limited to, the Airport Zoning Ordinance contained therein), whichever is more restrictive.

15.3 Compliance with FAA Requirements: To the extent the FAA has jurisdiction over the activities of Lessee, whether by law or by this Agreement, or to the extent the federal grant assurances or FAA regulations require Lessor to monitor the activities of the Lessee hereunder, the Lessee agrees to comply with such FAA or federal requirements or regulations if and to the extent that same shall be valid, legally enforceable and applicable to the Premises and/or the development, use and/or operation thereof. If compliance with such FAA requirements materially interferes with Lessee's abilities to develop and/or use the Premises or operate under this Agreement, Lessor and Lessee shall cooperate with each other in an attempt to effect reasonable alternative ways for Lessee to continue its operations without being in conflict with the FAA's requirements. Lessor shall provide reasonable assistance to Lessee in discussing such alternatives with the FAA. Nothing herein, however, shall preclude Lessee from contesting in good faith FAA's then existing regulations, requirements, or policies as they relate to construction or reconstruction of the Improvements and/or the use or operation thereof and Lessee shall reserve all rights to bring whatever actions against the FAA for legal or equitable remedies may then be available to Lessee. Further, Lessee shall have the right to maintain actions against the FAA under any available theories, including but not limited to inverse condemnation, violation of constitutional rights or otherwise, to the extent such right is or shall be available to Lessee as a matter of law.

15.4 Cooperation of the Lessor and Lessee: The Parties agree that MDAD shall have the authority to execute any and all ancillary documents necessary to fully implement the terms of this Agreement and to amend, with agreement of Lessee, from time to time, any non-material provision of the Agreement which may be reasonably requested by Lessee for the purposes of the Parties effectuating the intent of this Agreement.

15.5 Residents First Training and Employment Program: Lessee shall comply with the requirements of Section 2-11.17 of the Code of Miami-Dade County and the provisions of Implement Order No. IO 3-61 of Lessor, as both may be amended from time to time.

15.6 Employ Miami-Dade Program: Lessee shall comply with the requirements of Miami-Dade County Implementing Order No. 3-63, as same may be amended from time to time during the term of this Lease. The Lessee is hereby notified that the County will consider whether the Lessee made its best reasonable efforts to promote Employ Miami-Dade under this Lease, as defined in such Implementing Order, as a part of the County's evaluation and responsibility review of the Lessee for new County awards.

## ARTICLE 16

### EQUAL EMPLOYMENT OPPORTUNITY, NONDISCRIMINATION AND AFFIRMATIVE ACTION

16.01 Equal Employment Opportunity: In accordance with Title 14 Code of Federal Regulation (CFR) Part 152 (Affirmative Action Employment Program), the Lessee shall not discriminate against any employee or applicant for employment because of age, sex, race, color, religion, marital status, place of birth or national origin, ancestry, in accordance with the Americans with Disabilities Act, discriminate against any otherwise qualified employees or applicants for employment with disabilities who can perform the essential functions of the job with or without reasonable accommodation. The Lessee shall take affirmative actions to ensure that

applicants are employed and that employees are treated during their employment without regard to age, sex, race, color, religion, marital status, place of birth or national origin, ancestry, or disability. Such actions include, but not limited to, the following: Employment, upgrading, transfer or demotion, recruitment, recruitment advertising, layoff or termination, rates of pay or other forms of compensation, selection for training including apprenticeship.

The Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the County setting forth the provisions of this Equal Employment Opportunity clause.

The Lessee shall comply with all applicable provisions of the Civil Rights Act of 1964, including but not limited to Title VI thereof, Executive Order 11246 issued September 24, 1965, as amended by Executive Order 113155, revised order No. 4 issued December 1, 1951, as amended, the Americans with Disabilities Act, the Age Discrimination in Employment Act effective June 12, 1968, Executive Order 13166 issued August 11, 2000, Improving Access to Services for persons with Limited English Proficiency (LEP), the rules, regulations and relevant orders of the Secretary of Labor, Florida Statutes §112.041, §112.042, and §112.043 and Section 11A1 through 13A1, Articles 3 and 4 of the Code of Miami-Dade County, as the foregoing may be amended from time to time.

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

16.02 Nondiscriminatory Access to Premises: The Lessee, for itself, its sublessees, successors in interest, and assigns (herein collectively for this Section 16.02 the "Lessee"), as part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of the Premises and improvements hereunder, (2) that in the construction of any improvements on, over, or under the Premises hereunder, and the furnishing of services therein or thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee will use the Premises and improvements in compliance with all other requirements imposed by or pursuant to the List of Nondiscrimination Acts and Authorities attached hereto as **Exhibit "L"**.

16.03 Breach of Nondiscrimination Covenants: In the event it has been determined that the Lessee has breached any enforceable nondiscrimination covenants contained in Section 16.01 Equal Employment Opportunity and Section 16.02 Nondiscriminatory Access to Premises above, pursuant to the complaint procedures contained in the applicable Federal Regulations, and the Lessee fails to comply with the sanctions and/or remedies which have been prescribed, the County shall have the right to deliver written notice of such violation to Lessee, and if Lessee fails to commence to cure said violation within 120 days of receipt of the notice and thereafter in good faith continue to do so, the County may bring an action in a court of competent jurisdiction to enjoin Lessee from continuing such conduct, Lessee hereby agreeing that such conduct, if proven and not incidental or isolated, constitutes harm to the County and Lessee's compliance with Section 16.01 and 16.02 may be subject to a specific enforcement action.

16.04 Nondiscrimination: During the performance of this Agreement, the Lessee agrees as follows: The Lessee shall, in all solicitations or advertisements for employees placed by or on behalf of the Lessee, state that all qualified applicants will receive consideration for employment without regard to age, sex, race, color, religion, marital status, place of birth or national origin, ancestry, physical handicap or disability. The Lessee shall furnish all information and reports required by Executive Order 11246 issued September 24, 1965, as amended by Executive Order 113155, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to The Lessee books, records, accounts by the County and Compliance Review Agencies for purposes of investigation to ascertain by the compliance with such rules, regulations, and orders. In the event of the Lessee's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, and orders, MDAD shall be entitled to pursue its remedies as may be provided by such laws, including the remedy of specific performance and the remedy that the Lessee may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive Order 113155 and such sanctions as may be imposed and remedies invoked as provided in Executive Order 113155 and such sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 as amended or by rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

The Lessee will include Section 16.01 Equal Employment Opportunity and Section 16.02 Nondiscriminatory Access to Premises of this Article in the Lessee sub-contracts in excess of \$10,000.00, unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 issued September 24, 1965, as amended by Executive Order 113155, so that such provisions will be binding upon each sub-consultant. The Lessee shall take such action with respect to any sub-contract as the County may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Lessee becomes involved in, or is threatened with, litigation with a sub-consultant as the result of such direction by the County or by the United States, the Lessee may request the United States to enter into such litigation to protect the interests of the United States.

16.05 Disability Nondiscrimination Affidavit: By entering into this Agreement with the County and signing the Disability Nondiscrimination Affidavit, the Lessee attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. Subject to the provisions of Section 16.03 above, if the Lessee or any owner, subsidiary or other firm affiliated with or related to the Lessee is found by the responsible enforcement officer of the Courts or the County to be in violation of the Act or the Resolution and if Lessee or such owner, subsidiary or other firm affiliated with or related to Lessee shall fail to promptly cure such violation, then MDAD shall be entitled to pursue all remedies provided by such law and Resolution.

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

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

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

## **ARTICLE 17**

### **SECURITY AND SPECIAL PROVISIONS**

- 17.1 **Security:** The Lessee acknowledges and accepts full responsibility for the security and protection of the Premises and Improvements, its equipment and property on the Airport, and control of access to the Air Operations Area (AOA) through the Premises and Improvements by persons and vehicles. The Lessee fully understands and acknowledges that any security measures deemed necessary by the Lessee for the protection of said Premises and Improvements, equipment and property and access to the AOA through the Premises and Improvements shall be the sole responsibility of the Lessee and shall involve no cost to the County. All such security measures by the Lessee shall be in accordance with FAR 107 and the Airport Security Plan. The provisions of this Article 17.1 shall be applicable to Lessee and the Premises only if and to the extent that the Premises shall be located within the AOA or that Lessee desires access to the AOA (it being expressly understood and agreed that the portion of Southwest 128<sup>th</sup> Street located between Southwest 137<sup>th</sup> Avenue to the east and the rear property line of the Premises, to the west, shall not be deemed to be located within the AOA, and that by utilizing such portion of Southwest 128<sup>th</sup> Street, neither Lessee nor any of its sublessees, nor any of its, or their respective, employees, agents, contractors, invitees and customers shall be deemed to be having access to the AOA).
- 17.2 **Security Identification Display Areas Access - Identification Badges:** The Lessee shall be responsible for requesting the Department to issue identification (ID) badges to all employees who are authorized access to Security Identification Display Areas (SIDA) on the Airport, designated in the Airport's security program and shall be further responsible for the immediate reporting of all lost or stolen ID badges and the immediate return of the ID badges of all personnel transferred from Airport assignment or terminated from the employ of the Lessee or upon termination of this Agreement. Each employee must complete the SIDA training program conducted by the Department, before any ID budget is issued. The Lessee shall pay, or cause to be paid, to the Department such nondiscriminatory charges as may be established from time to time for lost or stolen ID badges and those not returned to the Department in accordance with this Article. The Department shall have the right to require the Lessee to conduct background investigations and to furnish certain data on such employees before the issuance of such ID badges, which

data may include the fingerprinting of employee applicants for such badges. The provisions of this Article 17.2 shall be applicable to Lessee and the Premises only if and to the extent that the Premises shall be located within the SIDA or that Lessee operates within the SIDA (it being expressly understood and agreed that the portion of Southwest 128<sup>th</sup> Street located between Southwest 137<sup>th</sup> Avenue to the east and the rear property line of the Premises, to the west, shall not be deemed to be located within the SIDA, and that by utilizing such portion of Southwest 128<sup>th</sup> Street, neither Lessee nor any of its sublessees, nor any of its, or their respective, employees, agents, contractors, invitees and customers shall be deemed to be operating within the SIDA).

- 17.3 AOA - Driver Training: Before the Lessee shall permit any employee to operate a motor vehicle of any kind of type on the AOA, the Lessee shall require each employee to attend and successfully complete the AOA Driver Training Course conducted from time to time by the Department. The privilege of a person to operate a motor vehicle on the AOA may be withdrawn by the Department for any violation of AOA driving rules. Notwithstanding the above, the Lessee shall be responsible for ensuring that all such vehicle operators possess current, valid, appropriate Florida driver's licenses. The provisions of this Article 17.3 shall be applicable to Lessee and the Premises only if and to the extent that (i) the Premises shall be located within the AOA, or (ii) that any entrance to the AOA is accessible through the Premises, or (iii) Lessee operates within the AOA (it being expressly understood and agreed that the portion of Southwest 128<sup>th</sup> Street located between Southwest 137<sup>th</sup> Avenue to the east and the rear property line of the Premises, to the west, shall not be deemed to be located within the AOA, and that, although the AOA may be accessible by means of Southwest 128<sup>th</sup> Street, by utilizing such portion of Southwest 128<sup>th</sup> Street for ingress and egress to and/or within the Premises, neither Lessee nor any of its sublessees, nor any of its, or their respective, employees, agents, contractors, invitees and customers shall be deemed to be operating within the AOA or shall be required to comply with the requirements of this section).
- 17.4 Intentionally Deleted.
- 17.5 Special Programs: The Lessee shall ensure that all employees so required participate in such safety, security and other training and instructional programs, as the Department or appropriate Federal agencies may from time to time require. The provisions of this Article 17.5 shall be applicable to Lessee and the Premises only if and to the extent that the Premises shall be located within the AOA or the SIDA.
- 17.6 Vehicle Permit and Company Identification: The Lessee 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 Lessee in areas under the jurisdiction or control of such federal inspection agencies.

The provisions of this Article 17.6 shall be applicable only if and to the extent that any entrance to the AOA or SIDA is accessible through the Premises, such that Lessee or its employees will have access to international aircraft and/or facilities use by Federal Inspection Services agencies.



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

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

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

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

17.10 [Intentionally Deleted].

17.11 Nuisance. The Lessee shall use all commercially reasonable efforts that other prudent landlords of similar projects would use to control the actions of its employees, agents, invitees and those doing business with it, so as to not unreasonably annoy, disturb or be offensive to others and to provide the services permitted hereunder in a manner that does not unreasonably create a nuisance or event which may unreasonably disturb the quiet enjoyment of any other users of the Airport. Nothing in this Article 17.11 shall reduce Lessee's obligations under Article 3 above, or Exhibit "G" hereto.

## ARTICLE 18

### CONTROL OF EMPLOYEES

18.1 The Lessee shall use commercially reasonable efforts to properly control the actions of its employees at all times that said employees are working on the Airport, ensuring that they present a neat appearance and discharge their duties in a courteous and efficient manner

and that they maintain a high standard of service to the public.

## **ARTICLE 19**

### **CIVIL ACTIONS**

- 19.1 Governing law; Venue: This Agreement shall be governed and construed in accordance with the laws of the State of Florida. The venue of any action on this Agreement shall be laid in Miami-Dade County, Florida.
- 19.2 Registered Office/Agent: Jurisdiction: The Lessee, if a corporation, shall designate a registered office and a registered agent, as required by Section 48.091, Florida Statutes, such designations to be filed with the Florida Department of State in accordance with Section 607.034, Florida Statutes. If the Lessee is a natural person, he and his personal representative hereby submit themselves to the jurisdiction of the Courts of this State for any cause of action based in whole or in part on an alleged breach of this Agreement.
- 19.3 Attorneys Fees and Costs: In any action or proceeding between the parties hereto arising out of or under or relating to this Lease, the substantially prevailing party shall be entitled to recover from the other party the substantially prevailing party's reasonable costs and expenses in such action or proceeding, including reasonable attorneys' fees, costs and expenses.

## **ARTICLE 20**

### **TRUST AGREEMENT AND BOND RESOLUTION**

- 20.01 The parties acknowledge that the terms of the Lessor's 2002 Amended and Restated Trust Agreement shall not apply to Lessee's private development of the Premises with Lessee's private and non-public funds as the funding source for such development; provided, however, that to the extent any term herein is a defined term in the Trust Agreement, the definition of such term as set forth in the Trust Agreement shall apply.
- 20.2 Intentionally Deleted.
- 20.3 Lessee Right to Terminate: In the event the County within one year of the Effective Date does not make appropriate changes to its CDMP and any other land use document that may be required for Lessee's operations hereunder so that the development of the Premises as contemplated in this Agreement may go forward as set forth therein, or in the event that Lessee within one year of the Effective Date shall be unable to satisfy the DRI, Traffic Concurrency or Permitting requirements referred to above in this Lease or to secure any necessary rezoning, site plan approval or other approvals required for the development of the Premises as contemplated in this Agreement, then the Lessee, at any time within one year following the event giving rise to such right of termination may terminate this Agreement by giving ninety days written notice to the County, without liability by any party to any other party except as to any Lessee liabilities that may have arisen under Article 8.2. Nothing set forth above in this Section 20.3 shall be deemed to modify or diminish the rights of Lessee to exclude portions of the Premises from the Lease as

contemplated in Article 2.16, which right remains in full force or effect. The parties further agree that in any circumstances set forth in this Lease in which Lessee is entitled to exclude, and does so exclude, portions of the Premises from this Lease, the Lease will be amended to remove such excluded area from the Premises and this Lease will be modified to exclude such portion of the Premises from this Lease for all purposes, including, but not limited to, the payment of Rent in connection with same, and the obligations for Annual Rent shall likewise be reduced appropriately.

## ARTICLE 21

### OTHER PROVISIONS

- 21.1 Reasonableness and Good Faith: Whenever this Agreement grants the County or Lessee the right to take action, exercise discretion, establish rules and regulations, make allocations, or other determinations, or otherwise exercise rights or fulfill obligations, the County and Lessee shall act reasonably and in good faith and take no action that might result in the frustration of the reasonable expectations of a sophisticated landlord and sophisticated tenant concerning the benefits to be enjoyed under this Agreement.
- 21.2 No Representation: Except as may be provided for in this Lease, the County makes no representation, warranty, guarantee, or averment of any nature whatsoever concerning the physical condition of the Premises and Improvements, and it is agreed that, except as may be provided for in Articles 2.2, 2.3, 2.4 and 8.2, County will not be responsible for any such physical condition.
- 21.3 Force Majeure: Except as provided below, any prevention, delay or stoppage attributable to strikes, lockouts, labor disputes, acts of God, civil commotion, fire or other casualty, unreasonable permitting delays and/or delays in obtaining required governmental inspections, but only to the extent that such delays are not caused by Lessee (whether due to Lessee's failure or to submit proper applications, or to provide proper supporting documentation to such permitting agencies, or otherwise) and other causes beyond the reasonable control of the party obligated to perform (collectively, the Force Majeure) will excuse the performance of that party for a period equal to the duration of the prevention, delay or stoppage. If, therefore, this Agreement specifies a time period for performance of an obligation of either party, a delay that a Force Majeure causes will extend the period within which the party must complete its performance. The foregoing provisions of this Section 21.3 will not apply to (i) the obligations imposed with regard to rent and other charges Lessee must pay in accordance with the terms of this Agreement and (ii) the obligations imposed upon the County to pay any amount becoming due to Lessee under the terms of this Agreement.
- 21.4 Headings: Any headings preceding the text of any articles, paragraphs or sections of this Agreement shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.
- 21.5 Intentionally Deleted
- 21.6 Intentionally Deleted

- 21.7 Binding Effect: The terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns. This provision shall not constitute a waiver of any conditions prohibiting assignment or subletting. Any provision of this Lease which obligates Lessee or the County to pay an amount or perform an obligation before the Effective Date or after the expiration of the Term shall be binding and enforceable notwithstanding that payment or performance is not within the Term, and the same shall survive the expiration of the Term.
- 21.8 Federal Subordination: This Agreement shall be subordinate to the provisions of any existing or future agreements between the County and the United States of America relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the Airport. In this regard, however, Lessor represents and warrants to Lessee that all of the material provisions of this Lease including, but not limited to, the provisions hereof relating to the development and use of the Premises, the rents, and/or any other fees or charges, if any, required to be paid hereunder, etc. are in conformity and compliance with such agreements and that no future agreement will be entered into by the County that shall materially alter any of such provisions or any of the rights of Lessee and/or its sublessees to use and enjoy the Premises as contemplated in this Lease. All provisions of this Agreement shall be subordinate to the right of the United States of America to lease or otherwise assume control over the Airport, or any part thereof, during time of war or national emergency for military or naval use and any provisions of this Agreement inconsistent with the provisions of such lease to, or assumption of control by, the United State of American shall be suspended.
- 21.9 Notices: All notices required or permitted to be given under the terms and provisions of this Agreement by either party to the other shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested facsimile, or by FedEx Priority Overnight Service (or other nationally recognized overnight courier service) or via email with a follow up copy by one of the other approved methods set forth above, in each case to the parties as follows:

As to the County or Aviation Department:

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

With a copy to:

County Attorney's Office  
Aviation Department  
PO Box 025504  
Miami, Florida 33102-5504

As to the Lessee:

WMD Tamiami LLC  
3200 North Military Trail, Suite 400  
Boca Raton, Florida 33431  
Email: [dstiller@woolbright.net](mailto:dstiller@woolbright.net)

With a copy to

David J. Wiener, Esq.  
David J. Wiener, P.A.  
3200 North Military Trail, Suite 400  
Boca Raton, Florida 33431  
Email: [dwiener@woolbright.net](mailto:dwiener@woolbright.net)

As to the Mortgagee:  
To be advised

and/or to such other party(ies) and/or address(es) as may hereafter be provided by the parties in writing. For avoidance of doubt, it is understood and agreed that Lessee shall have the right from time to time to designate additional parties, including Leasehold Mortgagees and sublessees to whom notices or notices of alleged defaults under this Lease shall be provided by the County, and in such event, the County shall deliver a copy of each such default notice to such designated party(ies) simultaneously with the delivery of same to Lessee. Notices by registered or certified mail shall be deemed received on the delivery date indicated by the U.S. Postal Service on the return receipt. Hand delivered notices shall be deemed received by the Lessee when presented to the local management representatives of the Lessee.

21.10 Reserved,

- 21.11 Rights of County at Airport: Subject only to the limitations that may be set forth elsewhere in this Agreement, the County shall have the absolute right to make any repairs, alterations and additions to any structures and facilities at any portion of the Airport not contained within the Premises. Except as may be provided to the contrary elsewhere in this Agreement, the County shall, in the exercise of such right, be free from any and all liability to the lessee for business damages occasioned during the making of such repairs, alterations and additions, except for property damages caused by the negligence or misconduct of the County, its employees, or contractors. The County shall use its best efforts to minimize any interference with the operations of Lessee at the Premises.
- 21.12 Rights to be Exercised by Department: Wherever in this Agreement rights are reserved to the County, such rights may be exercised by the Department.
- 21.13 No Waiver: There shall be no waiver of the right of either party to demand strict performance of any of the provisions, terms and covenants of this Agreement nor shall there be any waiver of any breach, default or non-performance hereof by either party, unless such waiver is explicitly made in writing by the other party. Any previous waiver

or course of dealing shall not affect the right of either party to demand strict performance of the provisions, terms and covenants of this Agreement with respect to any subsequent event or occurrence of any subsequent breach, default or nonperformance hereof by the other party. Unless expressly provided to the contrary in this Lease, each and every one of the rights, remedies and benefits provided by this Lease shall be cumulative and shall not be exclusive of any other such rights, remedies and benefits including those allowed by applicable law.

- 21.14 Right to Regulate: Nothing in this Agreement shall be construed to waive or limit the governmental authority of the County, in its capacity as a political subdivision of the State of Florida, to regulate the Lessee or its operations. Notwithstanding any provision of this Agreement, nothing herein shall bind or obligate the County, the Zoning appeals Board, the Building and Zoning Department (as it may be renamed from time to time), the Planning Department, or any department, board or agency of the County, to agree to any specific request of Lessee that relates in any way to the regulatory or quasi-judicial power of the County; and the County shall be released and held harmless by Lessee from any liability, responsibility, claims, consequential damages or other damages, or losses resulting from the denial or withholding of such requests; provided, however, that this provision shall not preclude any appeal from County action wherein the sole remedy sought is reversal of the County's action or injunctive relief, nor shall it preclude any action based on the County's bad faith, capricious behavior or arbitrary action.
- 21.15 Severability: If any provision of this Agreement or the application thereof to either party to this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions of this Agreement which can be given effect without the invalid provision, and to this end, the provisions of this Agreement are severable.
- 21.16 Inspections: Subject to satisfying any conditions to entry established elsewhere in this Agreement, the authorized employees and representatives of the County and of any applicable Federal or State agency having jurisdiction hereof shall have the right of access to the Premises and Improvements at all reasonable times for the purposes of inspection and testing to determine compliance with the provisions of this Agreement. This right of inspection and testing shall impose no duty on the County to inspect and shall impart no liability upon the County should it not make any such inspections.
- 21.17 Taxes. If Lessee fails to pay any taxes lawfully imposed on Lessee, Lessee shall not be deemed to be in default hereunder if Lessee institutes legal proceedings to determine the validity of such taxes and complies with all requirements of law applicable to such legal proceedings.
- 21.18 Quiet Enjoyment of Others: The Lessee shall make commercially reasonable efforts to control the actions of its employees, agents, invitees and those doing business with it, so as not to annoy, disturb or be offensive to others and to provide the service hereunder so as to not unreasonably create a nuisance or thing which may disturb the quiet enjoyment of any other users of the Airport. Nothing in this Article 21.18, however, shall diminish Lessee's obligations under Article 3 and Exhibit "G".

- 21.19 Radon Disclosure: In accordance with Section 404.056, Florida Statutes, the following discloser is hereby made:

"Radon Gas: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department."

- 21.20 Quiet Enjoyment: Subject to the terms of this Agreement, specifically including but not limited to the environmental remediation steps to be taken under Article 8 (Regulations, License and Permits), the County's right and obligation to make certain repairs, alternations, and additions under Articles 7 (Maintenance by County) and 21.11 (Rights of County at Airport), which, for purposes of this clause includes any and all demolition, in whole or in part, of buildings and runways, and roadway systems outside of the Premises and whether on or off the Airport, and the reservation of easement rights to the airspace under Article 17.9 (Right of Flight), all of which provisions and others in the Agreement the Lessee acknowledges may cause disruption and disturbance to the Lessee, and upon the observance by the Lessee of all the terms, provisions, covenants and conditions imposed upon the Lessee hereunder, the Lessee and its sublessees shall peaceably and quietly hold and enjoy the Premises and Improvements for the term of this Agreement; provided, however, that the County shall not be liable for any violation of this clause or for any disturbance or disruption in or to the Lessee's business, for acts or omissions of tenants, users of the Airport, third parties, or when any department or agency of the County is acting in its governmental capacity, or by Acts of God.
- 21.21 Damaged Improvements Prior to Construction Deadline. If such damage or destruction to such Improvements shall occur prior to the Construction Deadline (as the same may have been extended from time to time) and prior to the date upon which substantial completion thereof shall have first been achieved, then such restoration/rebuilding of such partially completed Improvements in all instances must occur if necessary to satisfy the requirements of Article 5.8 above, relating to the Required Investment.
- 21.22 Interpretation of Agreement: This Agreement is the result of negotiation between the parties hereto and has been typed/printed by one party for the convenience of both parties, and this Agreement shall not be construed in favor of or against any of the parties hereto.
- 21.23 No Agency: Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship between the parties hereto. It is understood and agreed that neither the method of computation of rentals, fees and charges, nor any other provisions contained herein, nor any acts of the parties hereto creates a relationship other than the relationship of landlord and tenant.
- 21.24 Intentionally Deleted.
- 21.25 Entirety of Agreement: The parties hereto agree that this Agreement sets forth the entire agreement between the parties, and there are no promises or understandings other than

those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except as may be specifically authorized herein or by written instrument executed by the parties hereto.

- 21.26 Counterparts: This instrument may be executed in several counterparts, each of which shall be deemed an original. The signatures to this instrument may be executed and notarized on separate pages, and when attached to this instrument, shall constitute one complete document.
- 21.27 No Waiver of Contest Rights; Limitation on New Fees and Costs. Anything in this Lease to the contrary notwithstanding, it is expressly understood and agreed that any provisions of this Lease which purport to require compliance with requirements imposed after the date of this Lease whether by MDAD, the County or the FAA, shall not deprive (or be construed as a waiver by) Lessee or any of its sublessees of any right to challenge such new requirements, nor shall same obligate Lessee or any of its sublessees for the payment of any fees or costs for such compliance, except as required by law, but subject, also to Lessee's challenge rights as noted above.

[Signature Page Follow]



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

Signed, Sealed and Delivered  
in the Presence of:

BOARD OF COUNTY COMMISSIONERS  
OF MIAMI-DADE COUNTY, FLORIDA

By: \_\_\_\_\_  
Mayor or Mayor's Designee

ATTEST: Harvey Ruvin, Clerk

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

Approved for form and legal sufficiency:

\_\_\_\_\_  
Approved  
Legal Department

WMD TAMIAMI LLC, a Florida limited liability  
company

By: Woolbright Tamiami Member LLC, a Florida  
limited liability company, Managing Member

Joanne M. Parkison  
Mary Rosar

By: [Signature]  
Print Name: Saraya Tyriver  
Title: Vice President

STATE OF FLORIDA

COUNTY OF MIAMI DADE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, as Mayor of Miami-Dade County Florida. S/He is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification and who did not take an oath.

(SEAL)

NOTARY PUBLIC

Print Name:

My Commission Expires:

My Commission No.:

STATE OF FLORIDA

COUNTY OF MIAMI DADE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, as Deputy Clerk of Miami-Dade County Florida. S/He is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification and who did not take an oath.

(SEAL)

NOTARY PUBLIC

Print Name:

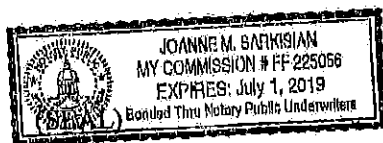
My Commission Expires:

My Commission No.:

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 19 day of June, 2019, by Soraya Tyriver, as Vice President of Woolbright Tamiami Member LLC, a Florida limited liability company, managing member in WMD Tamiami LLC, a Florida limited liability company. She/he is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification and who did not take an oath.



Joanne M. Sarkisian  
NOTARY PUBLIC  
Print Name:  
My Commission Expires:  
My Commission No.:

TENANT AIRPORT CONSTRUCTION NON-REIMBURSABLE (TAC-N) PROJECTSPURPOSE

To provide details for the initiation and management of the Tenant Airport Construction Program non-reimbursable project to be completed by the Lessee under the Ground Lease Agreement.

DEFINITIONS

FAA	Federal Aviation Administration
A/E	Tenant's State Registered Architect or Engineer responsible for the design of the project
BCC	Board of County Commissioners
GSA	General Services Administration
MARC	Miscellaneous Asbestos Recovery Contract
MCC	Miscellaneous Construction Contract / Tenant Airport construction
MDAD	Miami Dade Aviation Department
NTP	Notice to Proceed
PM	Project Manager
TAC-N	Tenant Airport Construction Non-reimbursable projects
Tenant	Lessee

GENERAL INFORMATIONSummary of Department Process for Design and Construction of TAC-N Projects

When an airport tenant wishes to improve or expand a leasehold area, the tenant must contact assigned MDAD Manager of Properties and Commercial Operations to discuss the proposed improvement or expansion (hereafter in this TAC-N document referred to as the "Project"). The Manager of Properties and Commercial Operations or designee determines whether the proposed design and construction will be a reimbursable or a non-reimbursable project.

If the determination is that the proposed design and construction are non-reimbursable, the Tenant must submit a letter to MDAD requesting approval to design and construct the Project, detailing the proposed construction.

The Manager of Properties and Commercial Operations or designee prepares a Quick Check Form and forwards it to MDAD's Manager of Planning, MDAD's TAC Project Manager, MDAD's Manager of Maintenance Engineering, and others as appropriate, for review and approval (which shall be based on Articles 1.05 (1) of the Ground Lease Agreement (hereafter in this TAC-N document referred to as "Lease")). The following documents, at a minimum, are attached to the Quick Check Form:

- Tenant's Letter to MDAD requesting MDAD to approve the Project shall include the following attachments:
- Conceptual drawings/sketches
- Completed Tenant Project Information Sheet providing the following information:
  - ✓ Project Name
  - ✓ Scope of Work (Project description)
  - ✓ Project Cost estimate broken down between design and construction (such information to be provided only at the ready-to-apply-for permit stages, in accordance with Article 4.02(C)(1) of the Lease).

- ✓ Tenant's Name and Contact Person's name, telephone numbers, and e-mail address.
- ✓ A/E of Record Name and Contact Person's name, telephone numbers, and e-mail address.
- ✓ Contractor's Name and Contact Person's name, telephone numbers, and e-mail address.
- ✓ Verification that the Tenant has been instructed on insurance responsibilities under the Ground Lease Agreement and MDAD TAC-N procedures herein

The Manager of Planning ensures that the Project is assigned a Project Number in accordance with Facilities Division Procedure FD1-020.E

If the listed Managers or designees approve the Quick Check Form, the Manager of Properties and Commercial Operations issues a Concept Approval Letter to the Tenant, advising the Tenant to proceed with the Project and addressing compliance with the Lease requirements and these TAC-N design and construction procedures. The Manager of Properties and Commercial Operations forwards copies of the letter to the Assistant Aviation Director for Facilities Development, the Manager of Planning, and the TAC-N Project Manager, with a copy of all attachments to the TAC-N Project Manager.

#### PROCEDURES for DESIGN and CONSTRUCTION

Upon receipt of the copy of the letter from Properties to the Tenant, the TAC-N Project Manager shall prepare a New Project Memorandum providing details and requirements of the Project and designating a TAC-N Project Manager.

1. The TAC-N Project Manager shall contact the Tenant to review the design and construction process.
2. It is the responsibility of the Tenant through its Architect/Engineer (A/E) and/or Contractor to:
  - Obtain copies of relevant as-built drawings from MDAD Technical Support Division (305-876-7057)
  - Verify field conditions, including but not limited to electrical, mechanical, HVAC, plumbing, water, sewer, structural, and connecting points for all utilities, HVAC, fire protection, and smoke evacuation systems.
  - Ensure that if the Project is in compliance with the terms of the Lease.
  - Obtain an MDAD Miscellaneous Asbestos Recovery Contract Status Report for the Project from MDAD Environmental Engineering Division (305-876-8328).
  - Coordinate schedules and locations for material deliveries to MIA with MDAD Landside Operations Division (305-876-7086).
  - Coordinate schedules and construction activities at MIA with MDAD Terminal Operations Division (305-876-7082).
  - Coordinate airside access at MIA with MDAD Airside Operations Division (305-876-7482).
  - Coordinate MIA identification badging and security orientation requirements with MDAD Safety and Security Operations Division (305-876-4028).
  - Coordinate utility information and issues, including shutdown procedures, with MDAD Maintenance Engineering (305-876-7477).
  - Coordinate requirements and specific procedures for obtaining Miami-Dade Department of Environmental Resources Management (DERM) and Florida Department of Environmental Protection (FDEP) permits and for dewatering, excavating, trenching, stockpiling, maintenance and disposal of contaminated material activities with the MDAD Environment and Airport Engineering Division (305-869-1063).
3. Each sheet of the construction plans shall be identified with a title box that includes the following information:

PROPERTY OWNER:	<u>MIAMI-DADE AVIATION DEPARTMENT</u>		
ADDRESS:	<u>P.O. BOX 025504, MIAMI, FLORIDA 33102-5504</u>		
TAC-N PROJECT MANAGER:	_____		
TAC-N PROJECT MANAGER PHONE:	_____	FAX No.	_____
PROJECT OWNER / LESSEE:	_____		
ADDRESS:	_____		
TENANT PROJECT MANAGER:	_____		
TENANT PROJECT MANAGER PHONE:	_____	FAX No.	_____

4. The TAC-N Project Manager shall determine at both the approximately 30% design phase and the ready-to-apply-for-permit phase, how many sets of Plans and Specifications ("Documents") shall be submitted for review, which shall in no event exceed (15) sets.
5. The Tenant or its A/E shall submit the number of sets of Documents determined by the TAC-N Project Manager to the TAC-N Project Manager.
6. The TAC-N Project Manager shall forward Documents to pre-determined reviewers. The Documents shall be attached to a TAC-N Design Review Memorandum (Facilities Division Form FDS-061). The memorandum shall identify at what percent completion the drawings are and by what date review comments must be returned.
7. Concurrently with sending the review package, the TAC-N Project Manager shall forward by email to the reviewers TAC Project Manager Review Transmittal (Facilities Division Form FDS-099), notifying them of the review process.
8. The TAC-N Project Manager shall submit the Documents to Consultants and MDAD staff for in-house Design Review. In accordance with Article 4.02 of the Lease, the Review process has a duration of ten (10) business days. The Reviewers will fax or e-mail any issues/comments directly to the Tenant and to the TAC-N Project Manager within ten (10) business days from the date Documents were submitted by Tenant to the TAC-N Project Manager. The Tenant shall confirm receipt of all Review Comments with the TAC-N Project Manager.
9. The TAC-N Project Manager shall ensure that comments and issues introduced by reviewers are discussed and resolved as set forth in Lease Articles 4.02 (C) and 4.02 (C) (2).
10. The Tenant must submit for back-check, three sets of ready-to-apply-for-permit Documents with all reviewer-required changes, as may have been discussed and resolved, incorporated. Two of these sets must have the A/E of Record's Signature and seal on every design sheet. If the Tenant requests reconsideration of the reviewer-required changes, the Tenant and MDAD shall proceed in accordance with Article 4.02(C)(2) of the Lease.
11. The Documents submitted for back-check must be accompanied with notarized letter to the TAC-N Project Manager on the A/E's company's letterhead requesting a TAC-N Letter of Concurrence to be provided to the Tenant (Facilities Division Form FDS-017). The A/E's letter must contain the following two paragraphs verbatim:

This letter will serve as our request for the issuance of your TAC-N Letter of Concurrence for the above referenced Project that will allow the Tenant to apply for a Building Permit.

As the Tenant's Architect/Engineer of Record, we have satisfied all comments and issues originating from the TAC-N Design Review process by means of revisions to the ready-to-apply-for-permit stage Documents. These revisions will produce a Project in compliance with all requirements of Lease Article 4.02 (A) and FAA requirements. Further, we realize that the final responsibility for the design and compliance with all applicable codes, standards, and ordinances rests solely with the Tenant's Architect/Engineer of Record.

12. The TAC-N Project Manager shall advise the Tenant of the Lessor's insurance requirements. Prior to commencing construction, Tenant shall provide copies of all of the contractor's certificates of

insurance to the TAC-N Project Manager who shall request MDAD Risk Management to review them.

13. The TAC-N Project Manager shall review the back-check Documents. The reviewers will be asked to sign a TAC-N Design Review Back-Check Form (Facilities Division Form FD3-082) indicating that their comments have been complied with and incorporated into the ready-to-apply-for-permit documents. It is the responsibility of the Tenant's consultants to obtain the reviewers' signatures on the Back-Check form.
14. Not Used
15. Should the Department fail to submit comments on the ready-to-apply-for permit Documents in accordance with the scope of the Department review and timing set forth in Lease Article 4.02 (C), the TAC-N Project Manager shall immediately issue a Letter of Concurrence (Facilities Division Form FD5-017) enabling the Tenant to apply for a building permit. In the event the Department does submit timely comments on the ready-to-apply-for permit Documents in accordance with the scope of the Department review and timing set forth in Lease Article 4.02 (C), once all reviewers have signed the TAC-N Design Review Back Check, the TAC-N Project Manager shall issue a Letter of Concurrence (Facilities Division Form FD5-017) enabling the Tenant to apply for a building permit. If the Tenant or Tenant's consultants have failed to secure the reviewers' signatures on the back check form indicating incorporation of the reviewers' comments in the back check drawings, the Letter of Concurrence shall not be issued. The Letter of Concurrence will be valid for sixty (60) calendar days from date of issue. If the tenant or A/E of Record has not applied for a building permit within sixty (60) calendar days, a new Letter of Concurrence will have to be issued. The Tenant must request the new Letter of Concurrence from the TAC-N Project Manager.
16. The Tenant shall complete a Building Permit Application and submit it to the appropriate Miami-Dade Building Department Office. The Letter of Concurrence, a copy of the Miscellaneous Asbestos Recovery Contract (MARC) report, if required, and two (2) signed and sealed permit sets of the ready-to-apply-for-permit documents (and thereafter, of the 100% design stage documents, for any Building Permit Application applicable to the 100% design stage documents) must be attached to the application.
17. If the Tenant has not already done so, the Tenant shall select a contractor to perform the work.
18. If applicable, the TAC-N Project Manager shall complete a Wrap-Up Insurance Program Notification of Contract Award.
19. Facilities Division Form FD5-031, if applicable) and forward it to the Wrap-Up Insurance Program Broker, the Manager, Properties and Commercial Operations, MDAD Risk Management. Thereafter the TAC-N Project Manager Issues a Notice to Proceed.
20. Prior to commencement of construction, the Tenant shall submit copies of the summary level construction schedule, the cost estimate, and the Building Permit to the TAC-N Project Manager. The Tenant must also provide any revisions to the summary level construction schedule and Building Permit as they are issued.
21. The TAC-N Project Manager shall determine, based on the complexity and magnitude of the Project, if a pre-construction meeting should be held and if regularly scheduled construction meetings are required. If such meetings are required, the frequency of the meetings will be based on the complexity and duration of the Project. The Tenant's A/E and contractor, the TAC-N Project Manager, or designee, and others, as may be required, will attend the construction meetings.
22. The TAC-N Project Manager, or designee, shall periodically visit the jobsite. The permit set of drawings must be available on the construction site at all times.
23. Based on the Project's complexity, at project completion a walk-through will be scheduled and coordinated by the TAC-N Project Manager.
24. Unless otherwise agreed, the Tenant must submit to the TAC-N Project Manager copies of the following documents at project completion:
  - Signed off Building Permit Inspection (within twenty-four hours of issue)

- Certificate of Occupancy or Certificate of Completion (within twenty-four hours of Issue)
  - Warranties, manuals, instructions, etc. for any equipment that will be maintained by MDAD
  - Two (2) complete sets of as-built construction drawings that contain a stamp by the contractor or design-builder with the following statement: "to the best of our knowledge and based on the information received from the subcontractors, these as-built drawings represent the as-built conditions" and two (2) AutoCad files of the as-built construction drawings in a compact disk format or other format designated by the Department, including all pertinent shop and working drawings and such other as-built drawings as the Department may reasonably require, all of which must be submitted within sixty (60) business days from issuance of the Certificate of Occupancy or Certificate of Completion.
25. When the Certificate of Occupancy has been issued and all As-Built Records have been transferred to MDAD Technical Support Division, the TAC-N Project Manager and Tenant shall close the Project.
26. Should conflicts, ambiguities or discrepancies exist between the Ground Lease Agreement and this TAC-N Exhibit (including any forms, documents or procedures referenced but not specifically attached hereto), the Ground Lease Agreement shall prevail.

**ASSOCIATED FORMS**

- |                                     |  |
|-------------------------------------|--|
| 1. Facilities Division Form FDS-009 | Design Review Transmittal                                |
| 2. Facilities Division Form FD3-061 | TAC-N Design Review Memorandum                           |
| 3. Facilities Division Form FD3-062 | TAC-N 100% Back Check Sign-off Sheet                     |
| 4. Facilities Division Form FDS-017 | TAC-N Concurrence Letter                                 |
| 5. Facilities Division Form FDS-031 | Wrap-Up Insurance Program Notification of Contract Award |

## References

[illegible][illegible]



# MAP OF BOUNDARY SURVEY KENDALL TAMPA EXECUTIVE AIRPORT DEVELOPMENT AREA 'C'

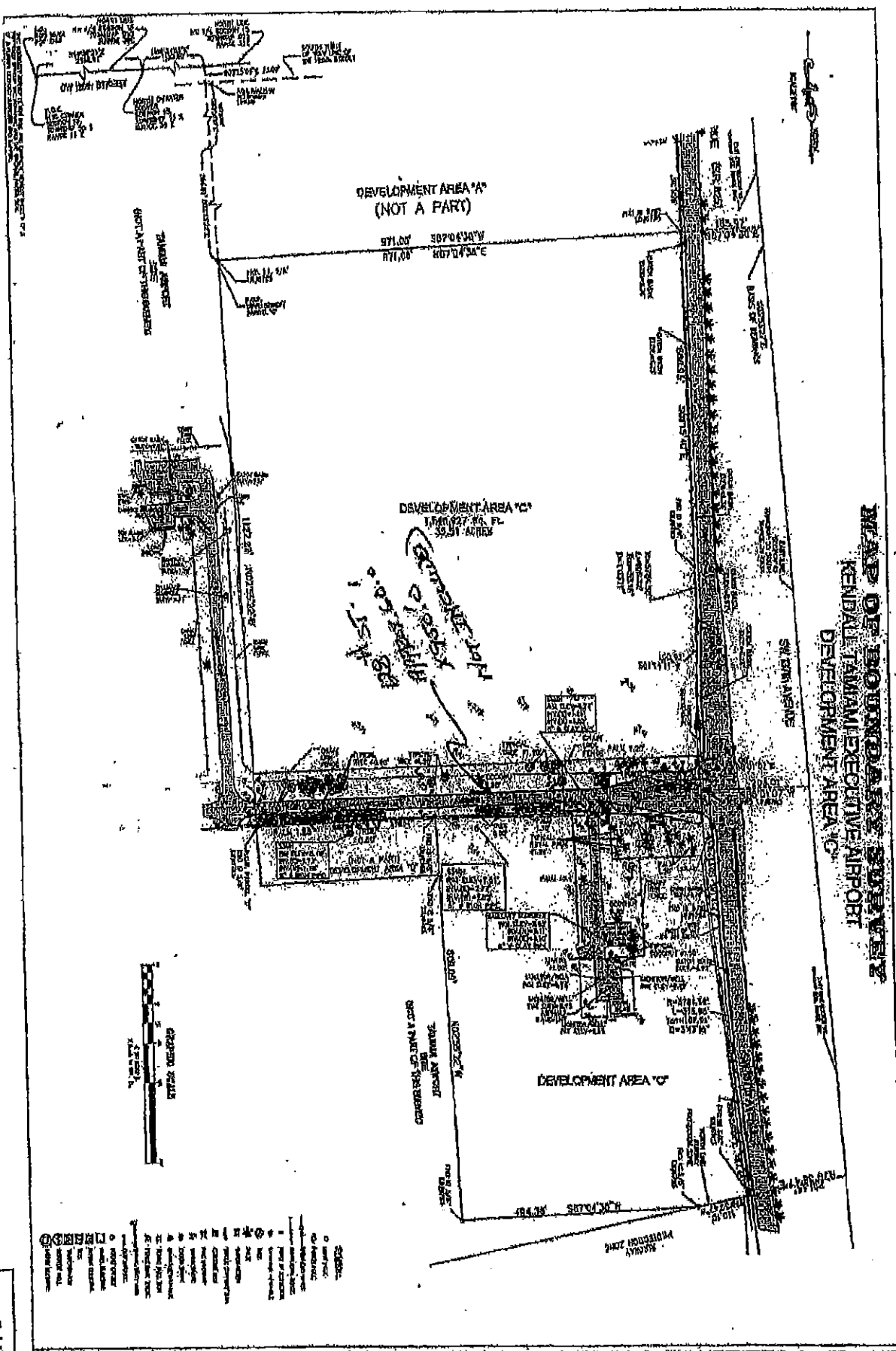


Exhibit "B"  
Survey Legal  
(See Section 2.2)

DEVELOPMENT AREA "C"

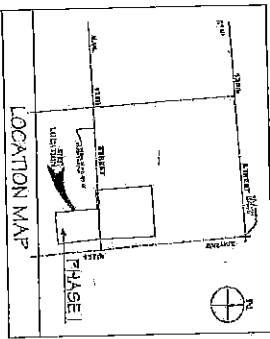
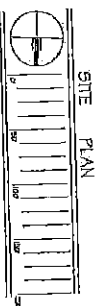
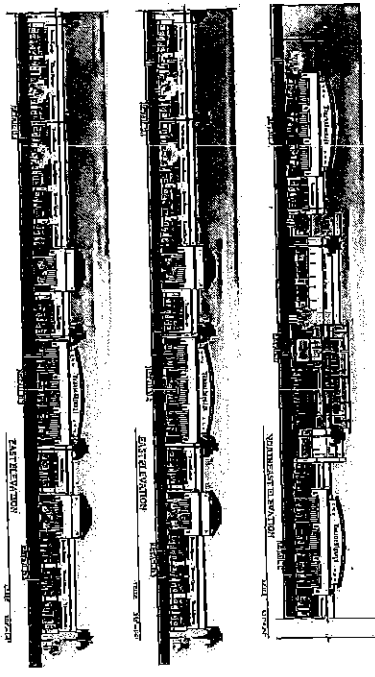
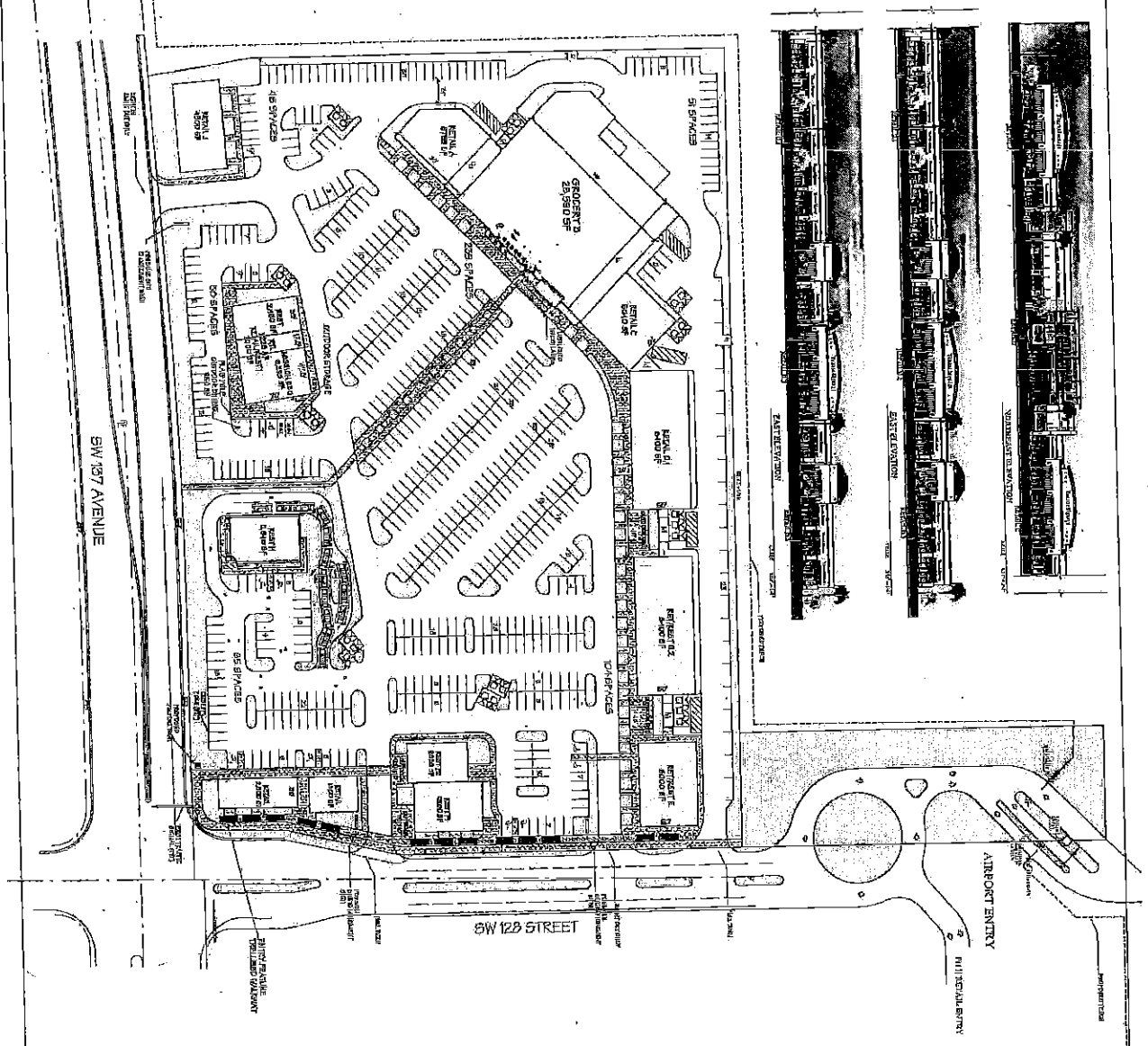
A PARCEL OF LAND LYING AND BEING IN SECTION 15 TOWNSHIPS 55 SOUTH RANGE 39 EAST, MIAMI-DADE COUNTY, FLORIDA MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT NORTHWEST CORNER OF SAID SECTION 15, TOWNSHIP 55 SOUTH, RANGE 39 EAST, THENCE NORTH  $86^{\circ}36'29''$  EAST ALONG THE NORTH LINE OF THE NORTH WEST ONE QUARTER (NW 1/4) OF SAID SECTION 15 FOR A DISTANCE OF 2686.54 FEET TO THE NORTH QUARTER CORNER OF SAID SECTION 15; THENCE NORTH  $86^{\circ}34'55''$  EAST ALONG THE NORTH LINE OF THE NORTHEAST ONE QUARTER (NE 1/4) OF SAID SECTION 15 FOR A DISTANCE OF 1582.50 FEET; THENCE SOUTH  $03^{\circ}25'05''$  EAST FOR DISTANCE OF 35.00 FEET TO ITS INTERSECTION WITH THE SOUTH RIGHT OF WAY LINE OF SW. 120th STREET; THENCE SOUTH  $02^{\circ}58'11''$  EAST FOR 1375.66 FEET; THENCE SOUTH  $02^{\circ}55'22''$  EAST FOR 366.61' TO THE POINT OF BEGINNING OF THE HEREAFTER DESCRIBED PARCEL OF LAND; THENCE NORTH  $87^{\circ}04'38''$  EAST, FOR 971.06 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE OF SW. 137th AVENUE; THENCE ALONG SAID WEST RIGHT OF WAY LINE OF SW. 137th AVENUE FOR THE FOLLOWING EIGHT (8) DESCRIBED COURSES: 1) THENCE SOUTH  $01^{\circ}15'40''$  EAST, FOR 660.95 FEET TO A POINT OF CURVATURE WITH A CURVE CONCAVE TO THE NORTHEAST, SAID CURVE HAVING A RADIUS DISTANCE OF 5784.58 FEET; 2) THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE A CENTRAL ANGLE OF  $1^{\circ}03'11''$  AND ARC LENGTH OF 106.32 FEET; 3) THENCE TANGENT TO LAST DESCRIBED SOUTH  $01^{\circ}14'11''$  WEST FOR 150.93 FEET; 4) THENCE SOUTH  $03^{\circ}12'45''$  EAST FOR 188.79 FEET; 5) THENCE NORTH  $88^{\circ}01'07''$  EAST FOR 11.00 FEET; 6) THENCE SOUTH  $03^{\circ}12'45''$  EAST FOR 251.18 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHEAST, SAID CURVE HAVING A RADIUS DISTANCE OF 5784.58 FEET; 7) THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, A CENTRAL ANGLE OF  $3^{\circ}43'16''$  AND AN ARC LENGTH OF 375.68 FEET; 8) THENCE TANGENT TO LAST DESCRIBED SOUTH  $06^{\circ}56'01''$  EAST, FOR 187.45 FEET TO THE NORTH LINE OF A RUNWAY PROTECTION ZONE; THENCE ALONG SAID NORTH LINE OF RUNWAY PROTECTION ZONE SOUTH  $78^{\circ}32'47''$  WEST FOR 110.10 FEET; THENCE SOUTH  $87^{\circ}04'38''$  WEST FOR 494.36 FEET; THENCE NORTH  $02^{\circ}55'22''$  WEST FOR 809.09 FEET; THENCE SOUTH  $87^{\circ}04'45''$  WEST FOR 376.04 FEET; THENCE NORTH  $02^{\circ}55'22''$  WEST FOR 1127.22 FEET TO THE POINT OF BEGINNING.

CONTAINING 1,546,927 SQUARE FEET, EQUIVALENT TO 35.51 ACRES MORE OR LESS.

LESS AND EXCEPTING THEREFROM THE STRIP OF LAND KNOWN AS "SW 128 STREET" SAID STRIP HAVING DEMENSIONS OF APPROXIMATELY 60 FEET IN WIDTH (MEASURED IN AN NORTHERLY TO SOUTHERLY DIRECTION) AND APPROXIMATELY 950 FEET IN LENGTH (MEASURED IN AN EASTERLY TO WESTERLY DIRECTION), THE PRECISE LEGAL DESCRIPTION OF SAID STRIP TO BE DETERMINED BY FINAL SURVEY.





PHASE I			
PROJECT NAME	AVIATION SQUARE	PROJECT NO.	1001
OWNER	AVIATION SQUARE	DESIGNER	J. L. BROWN
DATE	05/05/03	SCALE	1/8" = 1'-0"
BUILDING AREA BREAKDOWN (S.F.)			
RETAIL	11,100	RESTAURANT	11,100
GROCERY	22,200	PARKING	11,100
LANDSCAPE	11,100	STREET LIGHTS	11,100
TOTAL			
100,000	100,000	100,000	100,000

**AVIATION SQUARE**

MIAMI-DADE COUNTY, FLORIDA

**WOLFECHART**

1000 N. MIAMI AVENUE

MIAMI, FL 33132

**AVIATION SQUARE**

1000 N. MIAMI AVENUE

MIAMI, FL 33132

Exhibit "C"

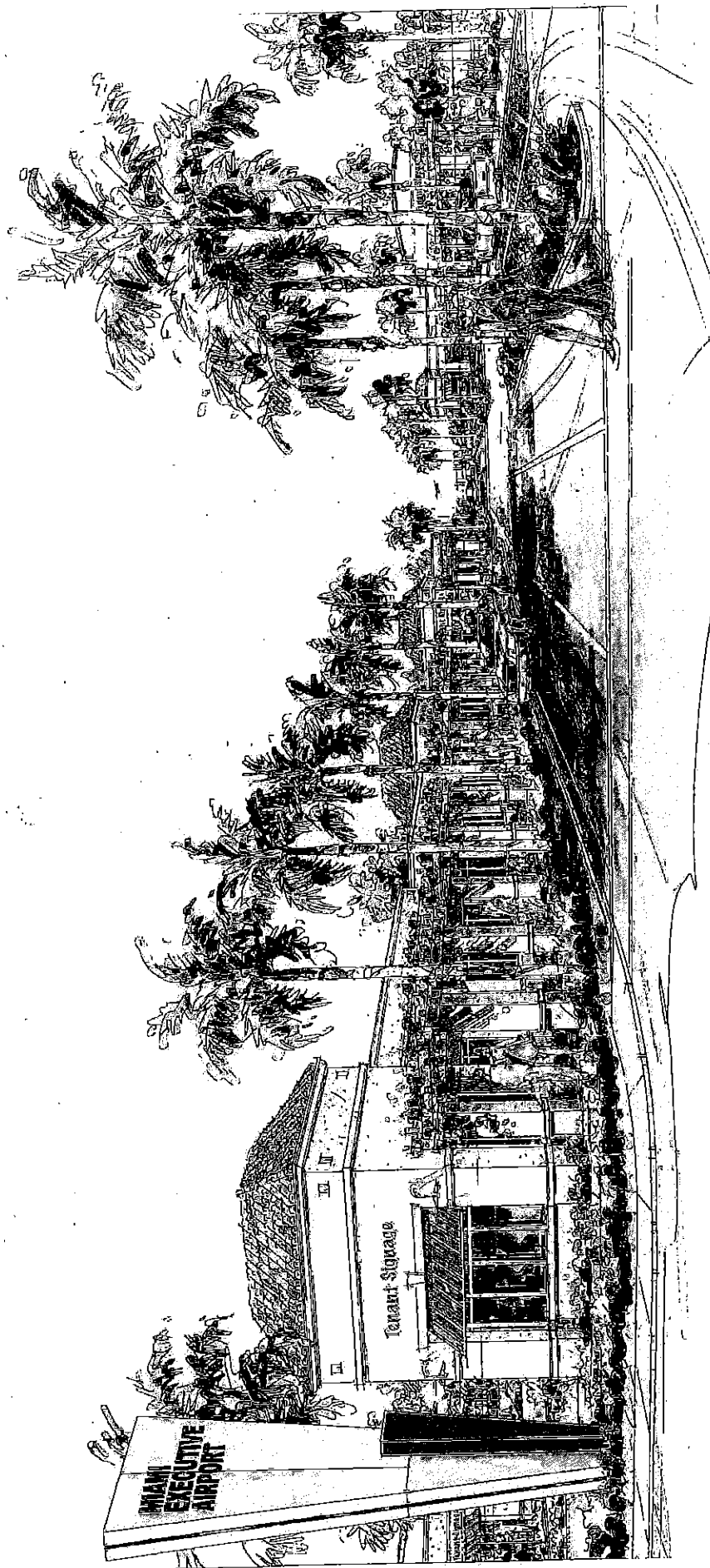


Exhibit 468

EXHIBIT "D"  
FORM OF MEMORANDUM OF LEASE  
[Three Year Lease]

THIS INSTRUMENT WAS PREPARED BY  
AND SHOULD BE RETURNED TO:  
DAVID J. WIENER, ESQ.,  
DAVID J. WIENER, P.A.  
2240 Northwest 19<sup>th</sup> Street, Suite 801  
Boca Raton, FL 33431

**MEMORANDUM OF LEASE**

This Memorandum of Lease is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and between **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida ("Lessor"), and **WMD TAMiami LLC**, a Florida limited liability company ("Lessee")

**Article 1.      LEASE; DEMISE.**

LESSOR and LESSEE have entered into that certain Lease dated the \_\_\_\_ day of \_\_\_\_\_, 201\_\_ (the "Lease") between MIAMI-DADE COUNTY (as "Lessor") and WMD TAMiami LLC (as "Lessee"), pursuant to the terms of which Lessor has leased and demised to Lessee, and Lessee has leased and hired from Lessor that certain parcel of real property (the "Premises") more particularly described on **Exhibit "A"** annexed hereto and incorporated herein by this reference.

**Article 2.      TERM.**

The term of the Lease shall commence on the "Effective Date" (as hereinafter defined) and shall end at 11:59 p.m. (Eastern Time) on the Third (3<sup>rd</sup>) anniversary of the Effective Date, subject to any extension(s) of such Term pursuant to any provision(s) of the Lease.

As used herein the term "Effective Date" shall mean and refer to the date upon which the last of the following shall occur: (a) the Lease is approved by the FAA and (b) ten (10) days after the date of the adoption of a resolution by the Miami-Dade County Board of County Commissioners approving the Lease and waiving, as to Lessee's sublessees (and any sub-sublessees, if applicable) the sublessee insurance requirements under County Resolution No. R-273-15, unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by Miami-Dade Board of County Commissioners, and (c) the date of expiration of the "Lessee's Feasibility Period" (as hereinafter defined). As used herein, the term "Lessee's Feasibility Period" shall mean and refer to the period of one hundred eighty (180) days following the date upon which the last of the events referred to in Section 1.11(a) and (b) above shall have occurred. The Effective Date of the Lease will be confirmed in writing by the parties promptly following the determination of the Effective Date.

**Article 3.      CONSTRUCTION LIENS.**

LESSOR's interest and estate in the Premises shall not be subject to any construction, mechanic's, equitable or other lien by, for, benefiting or filed for the account of, any person, firm or entity for any work, labor, services or materials claimed to have been performed or furnished for or on behalf of LESSEE, its sublessees or any of their respective contractors, agents or employees or anyone holding any part of the Premises through or under LESSEE. Nothing contained in the Lease shall be deemed, construed or interpreted to imply any consent or agreement on the part of LESSOR to subject LESSOR's interest or estate to any liability under any construction, mechanic's or other lien law.

Article 4. INCORPORATION OF LEASE TERMS.

This Memorandum of Lease is executed pursuant to the provisions of the Lease. All of the terms, covenants and conditions of the Lease are hereby incorporated into this Memorandum of Lease and made a part hereof as if set forth at length herein. Unless otherwise indicated, capitalized terms used herein shall have the meanings, respectively, ascribed to them in the Lease. This Memorandum of Lease is executed and is to be recorded for the sole purpose of giving notice of the Lease and is in no way intended to supersede or vary any of the terms or conditions of the Lease, which shall, at all times, control.

[Signatures appear on the following page(s)]

IN WITNESS WHEREOF, LESSEE and LESSOR have caused these presents to be duly executed as of the day and year first above written.

Signed, Sealed and Delivered  
In the Presence of:

LESSOR:

BOARD OF COUNTY COMMISSIONERS  
OF MIAMI-DADE COUNTY, FLORIDA

By: \_\_\_\_\_  
Mayor or Mayor's Designee

ATTEST: Harvey Ruvin, Clerk

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

Approved for form and legal sufficiency:

\_\_\_\_\_  
Approved  
Legal Department

LESSEE:

WMD TAMIAMI LLC, a Florida limited liability  
company

By: Woolbright Tamiami Member LLC, a  
Florida limited liability company, Managing  
Member

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: Vice President



STATE OF FLORIDA

COUNTY OF MIAMI DADE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by \_\_\_\_\_, as Mayor of Miami-Dade County Florida. S/He is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification and who did not take an oath.

(SEAL)

NOTARY PUBLIC

Print Name:

My Commission Expires:

My Commission No.:

STATE OF FLORIDA

COUNTY OF MIAMI DADE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by \_\_\_\_\_, as Deputy Clerk of Miami-Dade County Florida. S/He is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification and who did not take an oath.

(SEAL)

NOTARY PUBLIC

Print Name:

My Commission Expires:

My Commission No.:

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by \_\_\_\_\_, as Vice President of Woolbright Tamiami Member LLC, a Florida limited liability company, managing member in WMD Tamiami LLC, a Florida limited liability company. She/he is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification and who did not take an oath.

(SEAL)

NOTARY PUBLIC

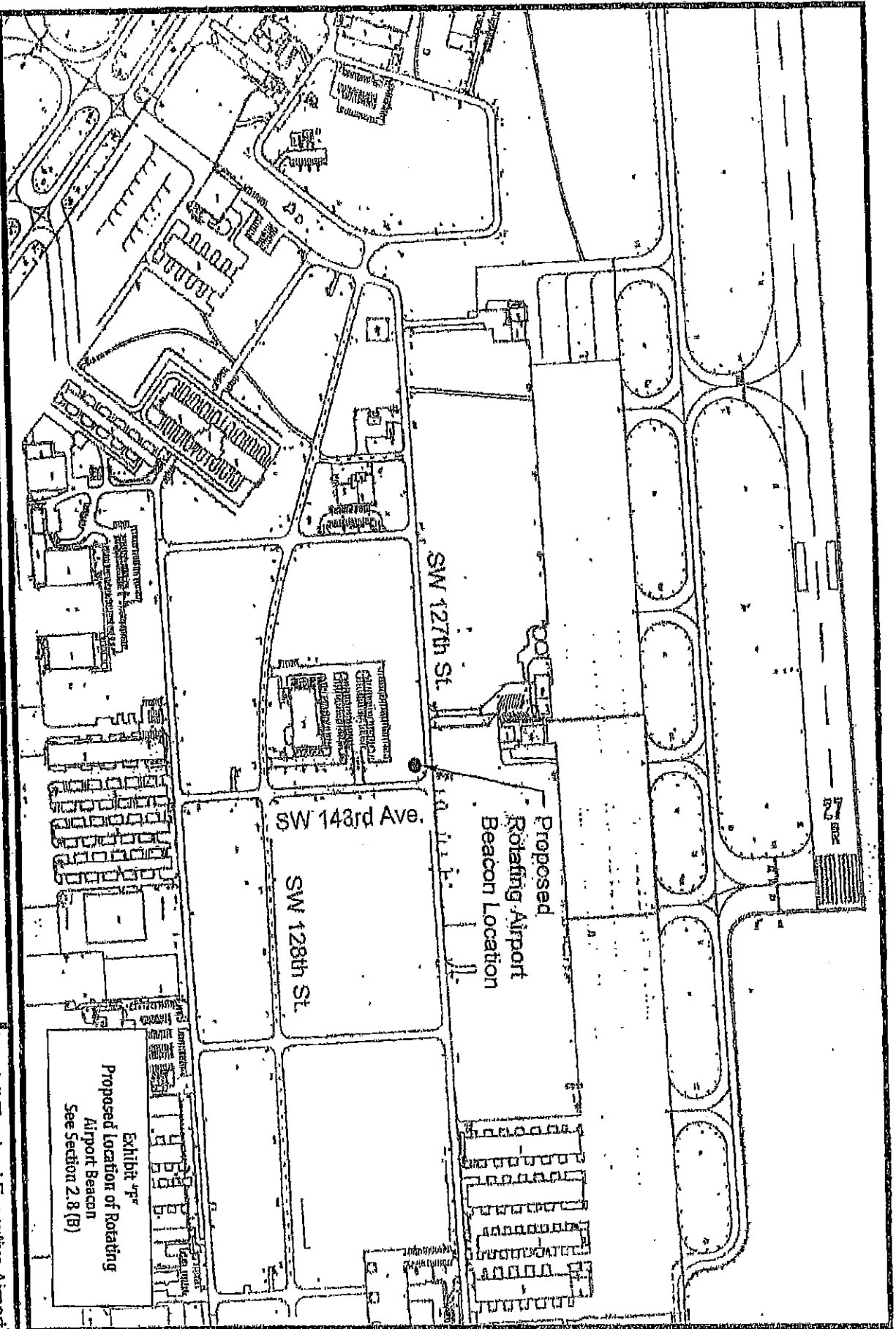
Print Name:

My Commission Expires:

My Commission No.:

EXHIBIT "E"

[RESERVED]



Aviation Planning Division

# Proposed Location of Rotating Airport Beacon

Kendall-Tamiami Executive Airport

Scale: 1" = 400'

May 29, 2012

Exhibit "F"  
Proposed Location of Rotating  
Airport Beacon  
See Section 2.8 (b)

## **EXHIBIT "G"**

### **PROHIBITED USES**

**(SEE ARTICLE 3.5)**

Notwithstanding the permissible uses that may arise under Article 3.1, Lessee shall not engage in, conduct, or use the premises, or authorize its sublessees or any other party to use the Premises for any of the following purposes without prior approval from MDAD:

1. Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as black-jack or poker; slot machines; video poker/black-jack/keno machines or similar devices; or bingo hall.
2. Any use that generates lighting or smoke that interferes with the safety of aircraft or the movement of aircraft in or about the Airport or that emits or results in strong, unusual or offensive odors, fumes, dust or vapors, or that emits noise or sounds which are audible outside of the building in question and are objectionable due to intermittence, beat, frequency, shrillness or loudness, or that creates a hazardous condition.
3. Any use that is established by Florida law to be a nuisance.
4. Any use that is otherwise prohibited by the Agreement.
5. Any church or other place of religious worship that involves the congregation of users within such buildings to be in violation of the FAA's policies.
6. Any facility for the co-generation of electrical power, or any utility not specifically approved by MDAD, such approval not to be unreasonably withheld, it being expressly understood and agreed that this restriction shall not be deemed to apply to or prohibit the installation of solar panels and/or other devices or equipment designed to supplement, supplant and/or replace, either in whole or in part, electric supply and/or other utility services otherwise provided by public utilities, or to generate surplus energy that may be re-sold to public utilities.
7. Any operation or use unacceptable to the Consulting Engineers and Traffic Engineers (i.e., the professionals charged with monitoring airport passenger traffic, as differentiated from vehicular or pedestrian traffic to, from and within the Premises) under Section 707 of Lessor's 2002 Amended and Restated Trust Agreement, it being expressly understood and agreed that the development and use of the Premises in the manner permitted by this Lease shall not be deemed to violate this covenant.
8. Any operation primarily involving any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining.

9. Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance).

10. Any dumping, disposing, incineration, or reduction of garbage (exclusive of trash compactors or trash containers located near the rear of any building).

11. Any dry cleaning plant (except that a dry cleaner that either (i) utilizes so called "green" technology, or (ii) performs all dry cleaning outside the Shopping Center shall be permitted).

12. Any living quarters, sleeping apartments, or lodging rooms.

13. Any mortuary or funeral home.

14. Any "Pornographic Use", which shall include, without limitation: (x) a store displaying for sale or exhibition books, magazines or other publications containing any combination of photographs, drawings or sketches of a sexual nature, which are not primarily scientific or educational [provided, however, that the sale of books, magazines and other publications by a national or regional bookstore of the type normally located in similar shopping centers in the State in which the Shopping Center is located (such as, for example, Borders and Barnes & Noble, as said stores currently or may in the future operate on a national or regional basis) shall not be deemed a "pornographic use" hereunder]; or (y) a store offering for exhibition, sale or rental video cassettes or other medium capable of projecting, transmitting or reproducing, independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which has been rated or advertised generally as NC-17 or "X" or unrated by the Motion Picture Rating Association, or any successor thereto, or the content of which would meet the federal or state definition of pornography; or (z) massage parlor (except for therapeutic massages given in connection with the operation of a medical facility [including but not limited to an orthopedics office, physical therapy office, etc.], day spa, reputable massage business [such as "Massage Envy"] or health club).

15. Any so-called "head shop", or other establishment primarily selling or exhibiting drug-related paraphernalia.

16. Any flea market.

17. Any pawn shop or tattoo parlor.

18. Any carnival, amusement park or circus (excluding marketing events but not more frequently than twice per year, for a period of not more than 3 days on each occasion, and providing that the FAA does not object thereto).

19. Any abortion clinic, methadone or other drug treatment facility, psychiatric rehabilitation or treatment facility, or any other facility not in keeping with medical services commonly found in similar shopping centers in Miami-Dade County; for the purpose of clarity,

neither Lessee nor its sublessees shall operate any medical facility that places its patients under full anaesthesia for more than two (2) hours at a time and which thereby prevents such patients thereafter from being ambulatory and able to respond to emergency evacuation announcements and directions.

20. Any hotel/motel.

EXHIBIT "H"  
PRELIMINARY DEVELOPMENT SCHEDULE FOR PHASE I

Fig. 1

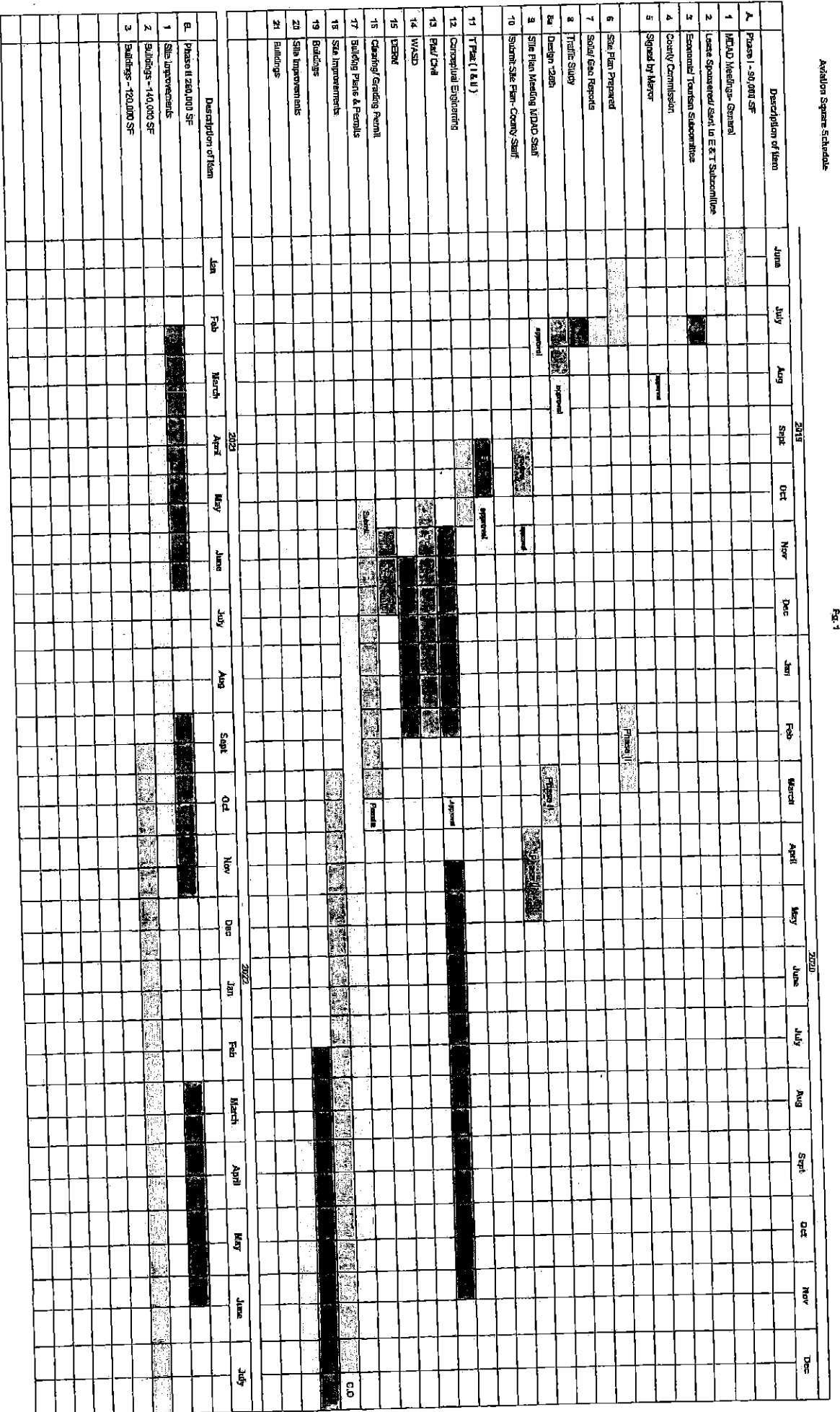




EXHIBIT "T"

[RESERVED]

EXHIBIT "J"

LIST OF COUNTY ENVIRONMENTAL REPORT(S)

PPIP Area #7, Miami International Airport, New Lease Baseline Audit prepared by Westhorp and Associates, Inc., dated June 9, 2008. Copies of the report can be obtained from MDAD Civil Environmental Engineering Division.

Exhibit "J"  
List of County Environmental Report(s)  
See Section 8.2 (B)

THIS INSTRUMENT WAS PREPARED BY,  
AND WHEN RECORDED MAIL TO:

Attn: \_\_\_\_\_

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

## SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination, Nondisturbance and Attornment Agreement (the "Agreement") is effective this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Miami-Dade County, a political subdivision of the State of Florida (the "County"), \_\_\_\_\_, a ("Sublessee") and WMD Tamiami, LLC, a Florida limited liability company ("Sublessor").

### RECITALS

A. Under that certain Development Lease Agreement, dated \_\_\_\_\_ (the "Master Lease"), the County is the lessor and Sublessor is the lessee with respect to the real property described in Exhibit A attached hereto and by this reference incorporated herein. The Exhibit A property and improvements thereon are hereinafter collectively referred to as the "Project".

B. Sublessee has executed, or will execute, a certain sublease with Sublessor dated for reference purposes on \_\_\_\_\_, for all or a portion of the Project, which portion (the "Premises") is more particularly set forth in said sublease. Said sublease and all amendments and modifications thereto are herein collectively referred to as the "Sublease." Capitalized terms used herein without definition shall have the meaning ascribed to them in the Sublease.

C. Sublessee has requested that the County agree not to disturb Sublessee's possessory rights under the Sublease in the event that Sublessor defaults under the Master Lease and the County becomes the landlord under the Sublease, provided that Sublessee is not in default under the Sublease.

D. The parties desire to establish certain rights and obligations with respect to their respective interests by means of this Agreement.

Exhibit "K"  
Subordination, Nondisturbance  
and Attornment Agreement  
See Section 10.1 (C)(1)

1 AGREEMENTS

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

4 1. Subject to the terms and conditions of this Agreement, the Sublease shall be, in  
5 accordance with the terms and conditions hereof, subordinate to the Master Lease.

6 2. the County represents and warrants to Sublessee that: (i) the County is the "Lessor"  
7 under the Master Lease; (ii) the County is the sole holder of fee simple title to the Project; (iii) the  
8 County has the full right and authority to enter into this Agreement; (iv) the Master Lease is in full  
9 force and effect and represents a valid lease of the entire Project; (v) a copy of the fully executed  
10 Master Lease and each of the amendments thereto referred to above in the Recitals hereto are true  
11 and correct, and there are no other amendments, modifications or additions to the Master Lease,  
12 written or oral; (vi) neither the County nor Sublessor are in default under any terms or conditions of  
13 the Master Lease; (vii) the current term of the Master Lease expires by its own terms on [TBD]; and  
14 (viii) Sublessor currently has [TBD] options of [TBD] years each to extend the term of the Master  
15 Lease.

16 3. The County consents to the Sublease and the leasing of the Premises to Sublessee.  
17 Further, the County: (i) consents to Sublessee's construction of the improvements reflected in  
18 Exhibit \_\_\_\_ of the Sublease and all alterations and modifications required in connection therewith;  
19 and (ii) consents to Sublessee's erection and maintenance, at its sole expense (except as otherwise  
20 provided in the Sublease), of all signage reflected in Exhibit \_\_\_\_ of the Sublease, including the  
21 locations thereof as depicted in such Exhibit.

22 4. The County and Sublessee agree that neither of them has any liability to the other by  
23 reason of any default by Sublessor under the Master Lease, and that their only liability to each other  
24 with respect to Sublessee's use of the Premises is as expressly provided herein. Furthermore,  
25 Sublessee has no liability to the County under the Sublease or otherwise until the expiration or  
26 earlier termination of the Master Lease and the County's assumption of the Sublease, pursuant to  
27 Paragraph 5 of this Agreement. Nothing contained herein or in the Sublease shall release Sublessor  
28 from its obligations under the Master Lease.

29 5. Provided that Sublessee is not in default so as to permit Sublessor to terminate the  
30 Sublease or Sublessee's right to possession of the Premises, and notwithstanding any contrary  
31 provisions in the Master Lease, the County (i) shall not disturb or deprive Sublessee in or of its use,  
32 quiet enjoyment and possession (or its right to use, quiet enjoyment and possession) of the Premises,  
33 or of any part thereof, or any right, benefit or privilege granted to or inuring to the benefit of  
34 Sublessee under the Sublease (including any right of renewal or extension thereof); (ii) shall not  
35 terminate or affect the Sublease; (iii) shall recognize Sublessee's rights, benefits and privileges under  
36 the Sublease; and, (iv) shall recognize the leasehold estate of Sublessee under all of the terms,  
37 covenants, and conditions of the Sublease for the remaining balance of the Term of the Sublease  
38 with the same force and effect as if the County were the Sublessor under the Sublease. The County  
39 hereby covenants that any sale by the County of the Project pursuant to the exercise of any rights  
40 and remedies under the Master Lease or otherwise, shall be made subject to the Sublease and the  
41 rights of Sublessee thereunder. However, in no event shall the County be:

1 (a) Liable for any act or omission of Sublessor arising prior to the date the  
2 County takes possession of Sublessor's interest in the Sublease except to the extent such act or  
3 omission is of a continuing nature, such as, for example, a repair obligation;

4 (b) Liable for any offsets or deficiencies which Sublessee might be entitled to  
5 assert against Sublessor arising prior to the date the County takes possession of Sublessor's interest  
6 in the Sublease, except to the extent that the County has received the benefit of the act of Sublessee  
7 giving rise to the right of deduction, such as, for example, relief of an obligation that would  
8 otherwise have been paid by the County as Sublessor;

9 (c) Bound by any payment of rent or additional rent made by Sublessee to  
10 Sublessor for more than one (1) month in advance, which payment was not required under the  
11 terms of the Sublease;

12 (d) Bound by any amendment or modification of the Sublease executed after the  
13 date of this Agreement which: (i) materially increases Sublessor's obligations or materially reduces  
14 Sublessee's obligations under the Sublease; and, (ii) is made without the County's prior written  
15 consent (except to the extent that the Sublease may specifically contemplate any amendment or  
16 modification thereof).

17 6. In the event of the termination of the Master Lease for any reason whatsoever, and if  
18 Sublessee is not in default under the terms and conditions of the Sublease so as to permit the  
19 Sublessor thereunder to terminate the Sublease, Sublessee shall not be made a party in the action or  
20 proceeding to terminate the Master Lease. Further, Sublessee shall not be evicted or moved, or its  
21 possession or right to possession of the Premises under the terms of the Sublease be disturbed or in  
22 any way interfered with. Subject to the provisions of this Agreement, Sublessee will attorn to the  
23 County or any other party which retains or obtains title to the Project (without the encumbrance of  
24 the Master Lease) pursuant to any remedy provided for by the Master Lease or otherwise. Such  
25 attornment shall be effective and self-operative without the execution of any other instruments on  
26 the part of any party, provided that the County notifies Sublessee thereof, and, in all events, the  
27 Sublease shall continue in full force and effect, subject to the terms of this Agreement, as a direct  
28 Lease between the County (or such party) and Sublessee under all of the exact and verbatim terms  
29 and provisions of the Sublease (including any rights of Sublessee to renew or extend the Term  
30 thereof), without the necessity for executing any new lease. In the event of such attornment, the  
31 County shall be deemed to have assumed and shall assume the performance of all of the affirmative  
32 covenants of Sublessor occurring under the Sublease from and after the time the County becomes  
33 the landlord and until such time as such obligations are assumed by a bona fide purchaser, if any.

34 7. Sublessee hereby confirms that the Sublease is in full force and effect.

35 8. Nothing contained in this Agreement shall be deemed to reduce or abrogate any  
36 rights of Sublessee to cure any default of Sublessor under the Sublease in accordance with and  
37 subject to the provisions of the Sublease and/or to deduct from rental such amounts which  
38 Sublessee may be entitled to so deduct under the provisions of the Sublease.

39 9. Unless and until the County or any subsequent purchaser succeeds to the interest of  
40 Sublessor under the Sublease, Sublessor shall continue to perform Sublessor's obligations and duties  
41 under the Sublease. Sublessor shall also perform Sublessor's obligations and duties and shall comply

1 with all of the terms, covenants and conditions of the Master Lease which are binding upon  
2 Sublessor. The County, Sublessor and Sublessee agree that, in the event of a default by Sublessor  
3 under the Master Lease, Sublessee shall have the right, but not the obligation, to cure Sublessor's  
4 default under the Master Lease, and to pursue against Sublessor any remedies available under the  
5 Sublease, and at law or in equity.

6 10. If, under the provisions of the Master Lease or the Sublease, the County is entitled to  
7 receive rent due under the Sublease in the event of a default by Sublessor under the Master Lease,  
8 but subject, always, to the terms of any leasehold mortgage encumbering the Project or any part  
9 thereof containing the Premises, Sublessee agrees that after receipt of notice from the County to  
10 Sublessee (at the address set forth below) that rents under the Sublease should be paid to the  
11 County, Sublessee shall thereafter pay to the County all monies thereafter due to Sublessor under the  
12 Sublease. In such event, Sublessee shall be entitled to rely solely upon such notice, and Sublessor  
13 and the County hereby indemnify and agree to defend and hold Sublessee harmless from and against  
14 any and all expenses, losses, claims, damages or liabilities arising out of Sublessee's compliance with  
15 such notice or performance of the obligations under the Sublease by Sublessee made in good faith in  
16 reliance on and pursuant to such notice. Sublessee shall be entitled to full credit under the Sublease  
17 for any rents paid to the County in accordance with the provisions hereof. Any dispute between the  
18 County (or any other purchaser) and Sublessor as to the existence of a default by Sublessor under  
19 the provisions of the Master Lease, shall be dealt with and adjusted solely between the County (or  
20 any subsequent purchaser) and Sublessor, and Sublessee shall not be made a party thereto.

21 11. On and after the date of the Sublease, and throughout the Term of the Sublease, the  
22 County and Sublessor shall not enter into any cancellation, termination, or material amendment or  
23 modification of the Master Lease (a "Master Lease Amendment") without Sublessee's prior written  
24 consent, which consent shall not be unreasonably withheld. However, Sublessee's withholding of  
25 such consent shall be deemed reasonable, among other reasons, if the proposed Master Lease  
26 Amendment will: (i) conflict with the provisions of the Sublease; or (ii) increase Sublessee's  
27 obligations and/or reduce Sublessor's obligations under the Sublease; or (iii) reduce Sublessee's  
28 rights and/or increase Sublessor's rights under the Sublease; (iv) reduce Sublessee's rights under the  
29 Master Lease which Sublessee is privileged to enjoy by reason of its tenancy and rights under the  
30 Sublease; or (v) materially and adversely affect Sublessee's use of the building or other improvements  
31 constructed on the Premises or Sublessee's use of the common areas of the Project.

32 12. No modification, amendment, waiver or release of any provision of this Agreement  
33 or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for  
34 any purpose whatsoever unless in writing and duly executed by the party against which the same is  
35 brought to be asserted.

36 13. This Agreement shall be binding upon and shall inure to the benefit of the parties  
37 hereto and their respective heirs, legal representatives, successors and assigns, including, without  
38 limitation, the covenants of the County herein shall be specifically binding upon any purchaser of  
39 the Project.

40 14. In the event any one or more of the provisions contained in this Agreement shall for  
41 any reason be held to be invalid, illegal or unenforceable in any respect, said provision(s) shall be  
42 void and of no further force or effect.

1 15. This Agreement shall be governed and construed according to the laws of the State  
2 of Florida.

3 16. Provided that Sublessee is not in default under the Sublease, the County shall not  
4 institute any litigation naming Sublessee as a defendant or otherwise terminating Sublessee's  
5 subleasehold interest in the Project or the Premises unless Sublessee is required to be named in such  
6 litigation by law, and only so long as Sublessee's failure to defend against any such action shall not  
7 result in a waiver of its rights to continued possession under the Sublease as set forth in this  
8 Agreement. The term "County" as used herein shall include any successor-in-interest to the County.

9 17. To be effective, any notice or other communication given pursuant to this  
10 Agreement must be in writing and sent by postage paid by United States registered or certified mail  
11 with return receipt requested. Rejection or other refusal to accept, or inability to deliver because of  
12 a changed address of which no notice has been given, will constitute receipt of the notice or other  
13 communication.

14 For purposes hereof, the County's address is:

15 \_\_\_\_\_  
16 \_\_\_\_\_  
17 \_\_\_\_\_  
18 \_\_\_\_\_

19  
20 and Sublessee's address is:

21 \_\_\_\_\_  
22 \_\_\_\_\_  
23 \_\_\_\_\_  
24 \_\_\_\_\_

25  
26 and Sublessor's address is:

27 WMD Tamiami LLC  
28 c/o Woolbright Development Inc.  
29 3200 N. Military Trail, 4th Floor  
30 Boca Raton, FL 33431  
31 Attn: \_\_\_\_\_  
32

33 At any time(s), each party may change its address for the purposes hereof by giving  
34 the other party a change of address notice in the manner stated above.

35 18. If the County or Sublessor delivers a notice to the other party of the other party's  
36 default under the Master Lease, the notifying party shall also concurrently deliver a copy of such  
37 notice to Sublessee.

38 19. This Agreement (a) contains the entire understanding of the County, Sublessor and  
39 Sublessee regarding the matters dealt with herein (any prior written or oral agreements between  
40 them as to such matters being superseded hereby), (b) can be modified or waived in whole or in part  
41 only by a written instrument signed on behalf of the party against whom enforcement of the

1 modification or waiver is sought, and (c) will bind and inure to the benefit of the parties hereto and  
2 their respective successors and assigns.

3 20. In the event of any litigation arising out of the enforcement or interpretation of any  
4 of the provisions of this Agreement, the unsuccessful party shall pay to the prevailing party its  
5 reasonable attorneys' fees, including costs of suit, discovery and appeal. The "prevailing party" shall  
6 be that party who obtains substantially the relief sought in the action.

7 21. In the event the Sublease is terminated as a result of Sublessor's bankruptcy or  
8 reorganization, whereby the County retains or obtains fee title to the Project (without the  
9 encumbrance of the Master Lease), the County agrees that the Sublease shall remain in effect as  
10 between the County (as landlord) and Sublessee, subject to the terms of this Agreement, and, upon  
11 Sublessee's written request, the County and Sublessee agree to execute a reinstatement agreement  
12 documenting that the Sublease has been reinstated as between the County (as landlord) and  
13 Sublessee and that the terms and conditions thereof shall be as stated in the Sublease, subject to the  
14 provisions of this Agreement.

15 22. The parties hereto covenant and agree that they shall execute such other and further  
16 documents as are or may become necessary to carry out the objectives of this Agreement.

17 [SIGNATURES APPEAR ON THE NEXT PAGE]



1 IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day  
2 and year first written above.

TENANT:

\_\_\_\_\_  
a \_\_\_\_\_

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

Its: \_\_\_\_\_

Witness: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Witness: \_\_\_\_\_

Printed Name: \_\_\_\_\_

THE COUNTY:

\_\_\_\_\_  
a \_\_\_\_\_

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

Its: \_\_\_\_\_

Witness: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Witness: \_\_\_\_\_

Printed Name: \_\_\_\_\_

LANDLORD:

a \_\_\_\_\_

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

Its: \_\_\_\_\_

Witness: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Witness: \_\_\_\_\_

Printed Name: \_\_\_\_\_

3

4

5

6

Add Notary Acknowledgements

## EXHIBIT "L"

(See Section 16.02)

### Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

Required Contract Provisions  
AIP Grants and Obligated Sponsors

Issued on January 29, 2016  
Airports (ARP)

## Exhibit C

Lease No. \_\_\_\_\_

Document name \_\_\_\_\_

### FIFTY YEAR LEASE AGREEMENT

BETWEEN

MIAMI-DADE COUNTY, FLORIDA, AS LESSOR,

AND

WMD TAMIAMI LLC, AS LESSEE,

FOR PREMISES AT

MIAMI EXECUTIVE AIRPORT

THIS FIFTY YEAR LEASE AGREEMENT (hereinafter sometimes referred to as this "Agreement", or as this "Lease", or as this "Fifty Year Lease") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida ("County" or "Lessor"), and WMD TAMIAMI LLC, a Florida limited liability company ("Lessee").

WITNESSETH:

WHEREAS, County owns and operates Miami Executive Airport ("TMB") through its Aviation Department ("MDAD"); and

WHEREAS, TMB has areas of land associated with its Airport that are capable of being developed for aviation, aviation-support, and non-aviation purposes; and

WHEREAS, simultaneously with the execution of this Fifty Year Lease Agreement, County and Lessee have entered into and executed that certain separate "Three Year Development Lease Agreement (hereinafter sometimes referred to as the "Three Year Lease"), pursuant to the terms of which the County has leased to Lessee the "Premises" (as hereinafter defined) for the purpose of developing the Premises for commercial and retail purposes and for a term which shall commence on the "Effective Date" of such Three Year Lease (as said term is defined in Section 1.11 of the Three Year Lease) and shall expire at midnight at the end of the calendar day immediately preceding the third (3<sup>rd</sup>) anniversary of the Effective Date of such Three Year Lease, unless the term of such Three Year Lease shall have been duly extended or earlier terminated pursuant to the terms; and

WHEREAS, Lessee is an experienced developer of property who desires (a) to develop the Premises in such manner, and in accordance with the terms, of the Three Year Lease, and (b) to thereafter operate the Premises under and in accordance with the terms of this Fifty Year Lease; and

WHEREAS, Lessee understands that all design, construction, occupancy and use of facilities either already located on the parcel or to be constructed on the parcel must be done in strict accordance with MDAD and FAA requirements;

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

## ARTICLE 1

### DEFINITIONS

- 1.1 Agreement, or Lease, or Fifty Year Lease: This written Development Lease Agreement between the County and the Lessee, including the Exhibits attached hereto and all amendments hereto and/or thereto which may, from time to time, be executed by the County and Lessee.
- 1.2 Alterations: Any alterations to the Premises and Improvements after completion of the Improvements.
- 1.3 Airport: Miami Executive Airport, where the Premises are located.
- 1.4 Certificate of Occupancy (C.O.): Any certificate of occupancy issued under the building code then applicable to the Premises.
- 1.5 [Intentionally Deleted.]
- 1.6 County: Miami-Dade County acting through its Aviation Department. The County as used in this Agreement shall mean Miami-Dade County acting through its Board of County Commissioners and includes the regulatory departments that include, but are not limited to, the Aviation Department, the Regulatory and Economic Resources ("RER") Department, the Department of Transportation and Public Works, and the Department of Water and Sewer, or their successors.
- 1.7 Date of Beneficial Occupancy (DBO): The DBO shall be the earliest of: (i) the date on which Substantial Completion of the Work associated with any building (other than temporary structures, construction trailers and the like) to be occupied or used by Lessee or its sub-lessees has occurred and the appropriate code enforcement agency has issued a C.O. or Temporary C.O. so the Lessee and/or its sublessee(s) can occupy or utilize the building for its intended use, (ii) the date on which Substantial Completion of the Work associated with the building would have occurred and on which the appropriate governmental agency would have issued a C.O. or Temporary C.O. for work associated

with the building, but for the occurrence of Lessee Delays, or (iii) the date on which Lessee commences any use of the building for its intended use.

- 1.8 Department: Miami-Dade County's Aviation Department, a department of Miami-Dade County, sometimes referred to as MDAD or County, represented by and acting through the Aviation Director or designee(s).
- 1.9 [Intentionally Deleted.]
- 1.10 Director: The Aviation Director of the Miami-Dade County Aviation Department, or his or her designee.
- 1.11 Effective Date: The calendar day immediately following the last day of the term of the Three Year Lease. The Effective Date of this Lease will be confirmed in writing by the parties promptly following the determination of the Effective Date.
- 1.12 [Intentionally Deleted.]
- 1.13 [Intentionally Deleted.]
- 1.14 Final Acceptance: The Lessee's acceptance of any of the Improvements from its contractor upon certification by the Lessee's architect/engineer that the completed improvements, or portion thereof, have been completed in accordance with the Plans and Specifications. Final Acceptance may be evidenced by a writing to such effect from the Lessee or by the Lessee's making of the final payment of the fee to its contractor for the completion of the completed Improvements unless otherwise stipulated at the time of making such payment.
- 1.15 [Intentionally Deleted.]
- 1.16 Impact Fees: Those impact fees payable by Lessee to the County or to another governmental jurisdiction prior to or at the time of the submission of Lessee's permit application for the construction of the Improvements.
- 1.17 Improvements: Those facilities that the Lessee and/or any of its sublessees and/or assignees will design and construct, or cause to be designed and constructed, pursuant to this Agreement. The Improvements will include the Phase I and Phase II Improvements, unless Lessee exercises its right not to construct the Phase II Improvements.
- 1.18 Lessee: The entity whose name appears in the first paragraph above and its successors and assigns.
- 1.19 Lessee Delay: Any delay in the design or construction of the "Project" (defined in Section 5.1(A) below) that occurs by reason of acts or omissions on the part of Lessee, or those acting for or under the direction of Lessee, or a third party acting for or under the direction of any of Lessee's agents or contractors (other than an act of Force Majeure). If a Lessee Delay occurs and if concurrently a delay occurs for a reason other than a Lessee Delay, and if the Lessee is not responsible for such concurrent delay, the period in which an overlap in the delays occurs will not constitute a Lessee Delay.

- 1.20 MDAD: Miami-Dade County's Aviation Department, as operator of TMB.
- 1.21 [Intentionally Deleted.]
- 1.22 [Intentionally Deleted.]
- 1.23 [Intentionally Deleted.]
- 1.24 Plans and Specifications: The drawings and specifications prepared by the Lessee's or any sublessee's or assignee's architect/engineer that show the approximate locations, character, dimensions (including height), floor area and major exterior design elements of each building proposed to be constructed on the Premises, subject to more detailed requirements as provided in Article 5
- 1.25 Record Drawings (As-built Drawings): Reproducible drawings in a format reasonably acceptable to MDAD showing the final completed Improvements as built, including any changes to the Improvements performed by Lessee's or any of its sublessee's and/or assignee's contractor(s) that Lessee's or any of its sublessee's and/or assignee's architect(s)/engineer(s) consider(s) significant, based on marked-up as-built prints, drawings and other data furnished by Lessee's and/or any of its sublessee's and/or assignee's contractor.
- 1.26 Risk Management Division: A Division of MDAD.
- 1.27 Substantial Completion: The stage in the progress of the Work when the Work or designated portion thereof is completed in accordance with the approved Plans and Specifications to the extent that Lessee or its sublessee(s) can occupy or utilize the relevant portion of the Improvements for their intended use. At this stage, all punch list work should be able to be completed by Lessee's or its sublessee(s)' contractor in 60 days or less.
- 1.28 TAC-N: MDAD's "Tenant Airport Construction-Nonreimbursable" procedures to be followed by Lessee hereunder for the construction of any Improvements on the Premises, as reflected on Exhibit "A" (subject, however, to such modifications therein and/or waivers thereof, which may be agreed to or granted by MDAD in its sole discretion from time to time).
- 1.29 Temporary C.O.: Any temporary or partial certificate of occupancy issued under the building code then applicable to construction in Miami-Dade County.
- 1.30 Trust Agreement: The 2002 Amended and Restated Trust Agreement between the County and the Trustee and Co-Trustee relating to the County's obligations pertaining to the aviation revenue bonds issued thereunder, and further referenced in Article 20 of this Agreement.
- 1.31 Work: All labor, materials, tools, equipment, services methods, and procedures necessary or convenient to performance by Lessee or any of its sublessees or assignees or by the Lessee's or sublessee's or assignee's contractor for the fulfillment of Lessee's and/or its

sublessees' obligation to construct improvements in accordance with the terms of this Agreement.

## ARTICLE 2

### TERM AND PREMISES

#### 2.1 Term:

(A) The County hereby leases to the Lessee, and the Lessee hereby leases from the County, effective on the Effective Date, the area described in Article 2.2 (the "Premises"), to have and to hold the same unto Lessee and its sublessees, successors and assigns (and all other parties lawfully claiming by, through or under Lessee and/or its sublessees, successors and/or assigns) for the term of this Lease, together with the right to construct, and/or cause to be constructed, and occupy, and/or cause or permit to be occupied, the improvements described in Article 5 (the "Improvements") hereof for an initial term (the "Term") that commences on the Effective Date and that ends at 11:59 p.m. (Eastern Time) on the fiftieth (50<sup>th</sup>) anniversary of the Effective Date, subject to any extension(s) thereof pursuant to any other provision(s) of this Lease.

(B) [Intentionally Deleted.]

(C) For avoidance of doubt, it is expressly understood and agreed that if, prior to the end of the term of the Three Year Lease(as the same may have been extended pursuant to any provision hereof), the Three Year Lease shall be duly terminated either in whole or in part pursuant to any termination right set forth therein, then this Fifty Year Lease shall be deemed to have been simultaneously terminated either in whole or in the same part as well, all without need of any further action or agreement of the parties; provided, however, that promptly following written request by either party, the other party shall sign a document in form reasonably acceptable to Lessor and Lessee confirming the termination of either or both agreements or the parts thereof as to which same had been terminated as aforesaid.

(D) During the Term of this Lease, and subject to any applicable restrictions contained in this Lease, Lessee and its sublessees, successors and assigns (and all other parties lawfully claiming by, through or under Lessee and/or its sublessees, successors and/or assigns) shall have and hold, exclusively, the Premises and all development rights and lease rights pertaining to the Premises, including the right to construct, and/or cause to be constructed, and to occupy and operate, and/or sublease, all Improvements located from time to time upon the Premises or any part or parts thereof, all in accordance with and to the extent permitted by this Lease.

#### 2.2 Premises; New Survey:

(A) The Premises leased herein include the parcel and improvements described in Exhibit "B" hereto, together with the right of ingress to and egress from the Premises over and across public roadways serving the Airport and, to the extent within Lessor's control, over and across any other easement areas which might be depicted on the "New Survey"

(as said term is defined in Section 2.2[B] of the Three Year Lease) or on the "Site Plan" (defined below) for the Lessee, its sub-lessees, successors and assigns and their respective agents and employees, patrons and invitees, suppliers of service and furnishers of materials. Said right shall be subject to such laws, rules, regulations and orders relating to the utilization of roadways and easements on the Airport as well as those located inside the Airport's Air Operations Area (AOA) and/or Security Identification Display Areas (SIDA) as now or may hereafter have application at the Airport, provided that same are enforced in a non-discriminatory manner against Lessee and its sublessees and their respective employees, contractors, invitees and customers. Nothing herein contained shall be construed to grant to the Lessee the right to use any other space or area, or other Airport facilities, improved or unimproved, which are leased to a third party, or which the County has not specifically leased to, or otherwise made available to, the Lessee under this Lease.

(B) [Intentionally Deleted.]

(C) The County, pursuant to the Three Year Lease, has undertaken and agreed to deliver vacant possession of the Premises to Lessee on the Effective Date of the Three Year Lease, free and clear of all leases, occupancy agreements, tenancies and other parties in possession, and the County hereby further agrees that if the Three Year Lease shall not theretofore have been terminated pursuant to any provision thereof, then Lessee shall have the right to remain and continue in possession of the Premises from and after the Effective Date of this Fifty Year Lease, free and clear of all leases, occupancy agreements, tenancies and other parties in possession, except those entered into by Lessee.

### 2.3 Infrastructure Related to Lessee's Improvements:

(A) Lessee and/or its sublessees shall have the right and obligation upon and subject to the terms and provisions of this Lease) to provide at its or their costs all infrastructure required for the construction, use and operation of their respective intended Improvements on the Premises, including but not limited to, the right to connect to all necessary and then-available utility lines, including electric, sewer, water and natural gas, to provide sanitary sewage, including the right to construct lift stations as needed, to construct facilities for the discharge and collection of storm water drainage, and to run utility lines and drainage lines through and across the adjacent portions of the Airport property to and within the boundaries of the Premises. Lessee and/or its sublessees shall be further entitled to use, improve, as needed, and/or develop and construct access roads and loop roads serving the Premises and the Improvements. The rights herein are subject to (a) approval of the County's applicable licensing and regulatory agencies (e.g., the zoning, planning and building departments); and (b) MDAD's reasonable approval (or its deemed approval) to the extent required under Article 5 hereof, and (c) FAA's review and acceptance thereof. To the extent MDAD facilities are involved, MDAD (joined by the County, to the extent required) shall grant Lessee licenses at no additional cost to Lessee (except as to recording costs and Lessee's costs of assisting with the preparation of such documents, which Lessee must absorb), needed by Lessee and/or its sublessees and/or their respective successors and/or assignees to provide the infrastructure contemplated herein as reasonably approved (or deemed approved) to the extent required under Article 5.



(B) [Intentionally Deleted.]

(C) [Intentionally Deleted.]

2.4 County Authority; Title Matters; Memorandum of Lease.

(A) County Authority: The County represents and warrants that it has full right and authority to lease the Premises to Lessee as provided in this Agreement.

(B) Title to Premises:

(1) Notwithstanding any contrary provision of this Agreement, title to all Improvements placed upon the Premises by or at the direction of Lessee (or by or at the direction of any of its sublessees) during the Term shall be deemed to immediately vest in the Lessee (or such sublessee, subject, however, to the terms of Lessee's sublease[s] with such sublessee[s]) for the Term, subject to the County's rights under this Agreement, unless Lessee (and, in the case of Improvements constructed by any sublessee, unless such sublessee, joined by Lessee) shall, within sixty (60) days following the Construction Deadline, as the same may be extended from time to time, elect in writing addressed to the County to have such title, as to any specific Improvement, vest in the County, subject to Lessee's (and/or such sublessee's) rights under this Agreement (or under any applicable sublease[s]).

(2) At the end of the Term, title to all Improvements (except for personalty and fixtures removed by Lessee [or by any sublessee] pursuant to this Agreement) shall vest in the County and, regardless of whether Lessee or any sublessee had theretofore elected to have the title to any Improvement and its FF&E vest in the County, Lessee shall execute (and any sublessee[s] who shall have elected (with the Lessee's joinder) to have its or their Improvements and FF&E vest in the County as aforesaid shall also execute) any documents required to confirm the conveyance of such title in the County, free and clear of any mechanics liens or similar encumbrances.

(C) Existing Surveys, Environmental Reports, Soil Tests, Evidence of Zoning and Concurrency Compliance, Contracts and Other Documentation:

(1) Lessee acknowledges that except as may otherwise be expressly set forth in this Fifty Year Lease or in the Three Year Lease (e.g., in Sections 2.4, 2.8 and 8.2 hereof or thereof), the County has made no representation as to the suitability of the Premises for Lessee's development purposes, as set forth in Article 2.8.

(2) [Intentionally Deleted.]

(3) [Intentionally Deleted.]

(D) Memorandum of Lease: The parties shall join in the execution of a memorandum of this Lease for the purpose of recordation, and Lessee shall pay any recording costs associated therewith, in the form attached hereto as **Exhibit "D"**.

2.5 [Intentionally Deleted.]

2.6 [Intentionally Deleted.]

2.7 [Intentionally Deleted.]

2.8 Suitability of Premises.

(A) The Lessee acknowledges that except as provided in Article 8.2 below and in Section 2.4 above, (1) the Lessor has made no representations as to the Premises or the suitability of the Premises for the purposes of the Lessee, (2) the Lessor will comply with its obligations to the extent set forth in Article 8.2 and Article 2.4, (3) the Lessor has no obligation to perform or cause to be performed any maintenance, repairs, renovations, cleanups, painting, or the like on the Premises, and that the Premises are leased in an as is condition, except to the extent of: (a) Lessor's responsibilities for environmental conditions under Article 8; and (b) Lessor's maintenance requirements in Article 6; (4) Lessee has made or shall make whatever site inspections it deems reasonably necessary so as to be apprised of the conditions of the Premises, both above ground and below ground (provided, however, that nothing contained herein shall be deemed to absolve Lessor of or from any of its obligations under this Lease including, but not limited to those relating to environmental contamination, violations of Environmental Laws, Hazardous Materials, Environmental Claims, Environmental Conditions and other matters referred to in Article 8 below), and has made or will make its own determination that the Premises are suitable for Lessee's intended use, subject, however, to the performance of the County's obligations as set forth in Article 8.2 below and in Section 2.4 above, and (5) subject to the provisions of Article 8.2 below and Section 2.4 above, including, but not limited to the performance of the County's obligations as set forth in Article 8.2 below and in Section 2.4 above, Lessee has made, or will make such other inspections of the Premises as Lessee may deem necessary in or to satisfy itself that the conditions of the Premises, facilities and utilities in their current state are satisfactory to the Lessee or that the same will be satisfactory upon due performance by the County of its obligations as set forth in Article 8.2 below and in Section 2.4 above.

(B) Lessee's obligations under this Agreement, such as those set forth in Article 8.1(C) to make commercially reasonable good faith efforts to obtain all land use, construction, and operating permits and approvals required of the Lessee at the Lessee's sole cost and expense, shall not require Lessor to take any action or perform any tasks within or without the Premises, other than providing reasonable support to and cooperation with Lessee to enable the Lessee to obtain such permits and approvals, including, but not limited to, COs, TCOs, and certificates of use, all of which shall remain the Lessee's exclusive obligation to take or perform in order to obtain such permits and approvals. Except as otherwise set forth in this Agreement, Lessor will not be responsible for any cost, loss, or damage which may be necessary or incurred by the Lessee to make the Premises suitable for the Lessee's use. Except as otherwise set forth in this Agreement, the Lessor has no obligation to perform or cause the performance of any maintenance, repairs, site work, or any other tasks in order to enable the Lessee to make use of the Premises or to enable Lessee to obtain any permits, authorizations, or licenses to make use of the Premises, which tasks shall remain

the Lessee's exclusive obligation to perform in order to obtain such permits; provided however, that the Lessor shall undertake its responsibilities under Articles 2.4, 2.8 and 8.2.

(C) The County hereby authorizes Lessee, at its cost and expense, to demolish those buildings and facilities on the Premises, to the extent described in Exhibit "E" hereto, and in addition, in accordance with the Three Year Lease, Lessee shall be required, at its cost and expense, to relocate the communications beacon and existing fences from their current location on the Premises to a new location within the Airport as shown on Exhibit "F" hereto. Such demolition and relocation shall be done in strict compliance with any and all applicable requirements of Article 5.

2.9 Use of Improvements Prior to CO or TCO Prohibited: If a certificate of occupancy (a "CO") or temporary certificate of occupancy (a "TCO") is required in order for Lessee to lawfully occupy or use any building constructed upon the Premises, Lessee shall not occupy or use that building prior to issuance of the applicable CO or TCO.

2.10 [Intentionally Deleted.]

2.11 [Intentionally Deleted.]

2.12 Eminent Domain:

(A) Generally. As used in this Article 2.12, a "Taking" or "Taken" shall mean a taking of all or any portion of the Premises for public or quasi-public use by any lawful power or authority by exercise of the right of condemnation or eminent domain or by agreement with those having the authority to exercise such right.

In the event of:

- (i) any Taking of all of the Premises; or
- (ii) any Taking of a material portion of the Premises, such that the operation of the business of Lessee or of any sublessee upon or within the Premises as a whole or the portion of the Premises so Taken shall be materially impaired; or
- (iii) any Taking which shall result in the elimination or material impairment of vehicular or pedestrian access to and from the Premises or any material portion thereof; or
- (iv) any Taking which shall result in the elimination or material impairment of parking areas or facilities within the Premises or any portion thereof,

then, in any of such events, Lessee shall have the right to terminate this Lease as to the affected portion of the Premises (or as to the whole of the Premises, i.e., in the event of a Taking of all or such a substantial portion of the Premises as will render continued use or occupancy of the balance thereof substantially non-feasible) by giving at least sixty (60)

days' prior written notice thereof to the County, such notice to be given by Lessee within ninety (90) days of the date of the Taking in question.

Upon the expiration of such 60-day period following the date of Lessee's aforementioned notice, this Lease shall terminate as to the affected portion of the Premises (or the whole thereof, as the case may be) without any further liability on the part of either Lessee or the County, except for a proration between the parties for the rent payable by Lessee hereunder and for payment to Lessee and/or its sublessees of its/their share of the award for the taking in accordance with the further provisions of this Lease.

Upon any Taking of only a portion of the Premises, the rent payable by Lessee under this Lease shall be equitably reduced in proportion to Lessee's (or its sublessee's or sublessees') loss of use of the affected portion of the Premises and the interference with the business operations of Lessee and/or its sublessee(s) therein.

Lessor and Lessee agree that the provisions of Article 10.2(C)(8) below shall apply as relates to the rights of "Leasehold Mortgagees" in connection with any Taking occurring (or award issued) during any period of time in which any Leasehold Mortgage shall be in effect.

(B) Award. Lessee shall be entitled to present at any trial on the issue of full or just compensation, and no compensation settlement or sale in lieu of condemnation shall be entered into by Lessor without Lessee's prior written consent. Lessee shall be entitled to recover, out of any condemnation award or proceeds of sale in lieu of condemnation, compensation for the value of Lessee's unexpired leasehold interest including but not limited to compensation for the value of the property taken, severance damages to the remainder, improvements, fixtures, personal property and moving costs. Lessee shall be further entitled to separately claim business damages to the extent allowed by law. Lessor's right to recover a portion of any award or sales proceeds shall be limited to the value of Lessor's reversionary interest in the Premises as of the date of termination.

(C) Temporary Taking: In the event of a temporary Taking, this Agreement shall not terminate by reason thereof but Lessee shall not be required to pay rents or other charges related to any temporarily occupied portion of the Premises. Lessee shall perform all other obligations under this Agreement, except to the extent that Lessee may be prevented from so doing due to the temporary Taking. In the event of any such temporary Taking, Lessee shall be entitled to present at trial evidence concerning the taking of or damage to its leasehold interest, business damages, and moving costs, and Lessor shall not enter into any compensation settlement or agreement without Lessee's prior written consent. Subject to Article 2.12 (B), Lessee shall be entitled to recover out of any condemnation award or proceeds of a sale in lieu of a temporary condemnation, the value of any leasehold interest temporarily taken, any damage to its remaining leasehold interest as a result of the temporary taking, and moving costs.

(D) Additional Provisions Relating to County Takings. County shall have the right to exercise its power of condemnation in accordance with Florida law in whatever manner and to whatever extent is provided by Florida law, provided, however, that such power shall not be exercised for purposes of frustrating the transaction contemplated herein. All

compensation due to Lessee and its sublessees with respect to such condemnation shall be governed by Florida law and the provisions of Section 2.12(B) above. If the County so exercises its right to condemn any portion of the Improvements and then permits Lessee and/or any sublessee(s) to continue to occupy any portion of the condemned Improvements, Lessee shall be obligated to pay rentals as set forth in this Lease (or an equitably allocated portion thereof, in the case of a partial Taking) on such condemned Improvements all in the manner and at the times then applicable under this Lease to the condemned Improvements so continued to be occupied by Lessee or such sublessee(s).

Further, if within sixty (60) months following any taking of all or any portion Premises, the County shall elect to again lease (or sell) the Premises (or the portion thereof so taken), then before proceeding with any lease (or sale transaction) with any other party (a "Third Party"), the County shall be required, first, to offer to Lessee in writing (the "Offer") the right, at Lessee's option either (x) to reinstate this Lease as to the Premises or the portion thereof so taken for term equal to the portion of the Term of this Lease that had been remaining as of the date of the taking, or (y) to lease (or, if applicable, purchase) the Premises (or the applicable portion thereof) for the same rental (or purchase price) and on the same terms and conditions as the County had been prepared to accept from such Third Party. The Offer shall be accompanied by information as to the identity of the Third Party and its principals, as well as a true, correct and complete copy of the lease and/or other agreement(s) and, if applicable, guaranty agreements and/or the like, proposed to be entered into by the County with such Third Party (and, if applicable, with affiliates of such Third Party). Lessee shall have a period of forty-five (45) following its receipt of the Offer and accompanying documentation referred to above to make the election referred to in Clause (x) or (y) above, failing which the County shall be free to proceed forward with a lease or sale to the Third Party for a rental (or price, if applicable) and on terms no more favorable to the Third Party than those contained in the Offer. If, within one hundred eighty (180) days following delivery of the Offer to Lessee, the County shall fail to consummate a transaction with the Third Party identified in the Offer, or if the County shall offer or agree to accept a rental (or purchase price, if applicable) and/or other terms that are more favorable to the Third Party than those originally disclosed to Lessee in the Offer and accompanying documentation, then Lessee's rights under this section shall be reinstated and the County shall not proceed forward with any lease or sale to any Third Party without again (i) delivering a new Offer, and required supporting information and documentation to Lessee and (ii) granting Lessee the same rights as set forth above with respect to such new Offer.

- 2.13 Maintenance and Repair by Lessee after Condemnation of Improvements: In the event County condemns the Improvements or any portion of them and, in either case, permits Lessee to occupy such Improvements, Lessee shall be responsible at its own cost to maintain and repair the Premises and Improvements for the period of such occupancy. Lessee's obligations to maintain and repair the Improvements occupied by Lessee shall be as specified in Article 6. The parties do not intend that the foregoing provisions of Article 2.12 or this Article 2.13 will in any way affect the amount of compensation payable to Lessee in connection with the condemnation, which condemnation shall be subject to Florida or federal condemnation law at the time of taking; however, the foregoing shall not be deemed to prohibit Lessee from asserting, inter alia, against the condemning authority

a claim for costs incurred for repairs, alterations or replacements caused or made necessary by the Taking.

- 2.14 Department's Right to Develop Airport. Nothing in this Lease or otherwise shall prevent or preclude MDAD from leasing to or permitting the use by another party or parties of any other portion of the Airport outside the Premises for development purposes, whether such use is for aviation, aviation support or commercial purposes. Such purposes may be consistent with the development purposes intended by or contemplated by this Lease or in direct competition therewith. Nothing shall preclude or prevent MDAD from operating and developing the entire Airport (outside the Premises) in a manner not inconsistent with law, and for avoidance of doubt, it is expressly understood and agreed, that there shall be no prohibition, restriction or limitation on any customary aviation uses desired by MDAD.
- 2.15 [Intentionally Deleted.]
- 2.16 [Intentionally Deleted.]

### ARTICLE 3

#### USE OF PREMISES AND IMPROVEMENTS

- 3.1 Authorized Uses of Premises and Improvements. In addition to the construction of the Improvements thereon, pursuant to the provisions of Article 5 hereof, the Premises and Improvements shall be used for any or all of the following purposes (collectively, the "Authorized Uses") only:

All lawful commercial, retail, office, service, restaurant, professional, financial, mixed uses and any other lawful purposes, but specifically excluding any residential use and any "Unauthorized Purposes" (defined below).

For avoidance of doubt, Lessor and Lessee expressly acknowledge and agree that except as to Sections 3.5 and 15.3 hereof, notwithstanding any contrary provision of this Lease (including, but not limited to, Section 8.1 hereof), or of any applicable law, ordinance, rule or regulation, any and all of the "Authorized Uses" set forth in this Lease shall be permitted uses and shall not be restricted or prohibited except to the extent, if applicable, that such Authorized Uses are explicitly prohibited by any such law, ordinance, rule or regulation that is in effect as of the date of this Lease.

- 3.2 [Intentionally Deleted.]
- 3.3 [Intentionally Deleted.]
- 3.4 [Intentionally Deleted]
- 3.5 Unauthorized Purposes: The Lessee shall not use the Premises, Improvements or the Airport for any "Unauthorized Purpose" (as hereinafter defined). Lessee shall include in all of its subleases provisions that prohibit its sublessees from using the Premises, Improvements, or the Airport for any Unauthorized Purpose, and shall make good faith

commercially reasonable efforts to prevent the use of the Premises or Improvements or the Airport for any Unauthorized Purposes by any of its sublessees or any of the assignees, licensees, invitees, customers, agents, employees or contractors of Lessee and/or its sublessees. Similarly, the County shall make good faith commercially reasonable efforts to prevent interference with the development and use of the Premises by Lessee and its sublessees.

As used herein, the term "Unauthorized Purpose" shall be deemed to mean and refer to any illegal or prohibited use of the Premises, the Improvements, or the Airport (including, but not limited to, the Prohibited Uses set forth in Exhibit "G"), or any other use thereof in any manner which interferes with or adversely affects the operation or maintenance of the Airport or otherwise constitutes an airport hazard including, but not limited to, any use that adversely affects the effectiveness or accessibility of the Airport's navigational aids or the drainage, sewerage, water, electrical, communications, fire protection or other systems installed or located at the Airport. Anything in the foregoing to the contrary notwithstanding, it is specifically acknowledged and agreed as follows:

- (a) that following the date of this Lease, the County shall not make changes in the operation or maintenance of the Airport, or regulations related to same (unless the changes are specifically made not applicable to the Premises) if the effect of such changes shall be to prohibit any Authorized Use set forth in Article 3.1 hereof, or to cause the cessation of or interference with then-existing uses of the Premises or Improvements (provided that such then-existing use is an Authorized Use), it being understood and agreed that nothing contained in the foregoing shall be construed to limit the power of eminent domain pursuant to Section 2.12 above; and
- (b) that the Authorized Uses set forth in Article 3.1 above shall not be deemed to be Unauthorized Purposes.

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

3.7 Lessee's Rights To Operate on Airport Not Exclusive: It is expressly understood and agreed that, except within the area of the Premises hereunder, the rights granted under this agreement are non-exclusive and Lessor reserves the right to grant similar privileges and similar leases to other lessees on other parts of TMB and to take any and all actions (including the leasing of Airport property other than the Premises for any lawful purpose) that Lessor is permitted to take under federal, state, and local law.

## ARTICLE 4

### RENTALS AND PAYMENTS

#### 4.1 Rent.

(A) Annual Rental: As annual rental (the "Annual Rent") for the Premises, the Lessee shall pay to the County the following sums:

(I) [Intentionally Deleted.]

(II) Annual Rent During the One (1) Year Period Following the Effective Date of this Fifty Year Lease:

During the one (1) year period commencing on the Effective Date of this Fifty Year Lease and ending on the calendar day immediately preceding the first anniversary of the Effective Date of this Fifty Year Lease, Lessee shall pay to the County as and for Annual Rent, an amount equal to the product computed by multiplying:

- (a) the aggregate number of square feet of land area contained within the Premises; by
- (b) the Per Square Foot Initial Annual Rent Rate (as hereinafter defined).

Such Annual Rent shall be payable in equal monthly installments in advance on the first day of each month during such one (1) year period, with each such monthly installment to be in an amount equal to one-twelfth ( $1/12^{\text{th}}$ ) of the annual sum.

As used herein, the term "Per Square Foot Initial Annual Rental Rate" shall mean an annual rate of \$1.99 per square foot, i.e., assuming that the Effective Date of this Fifty Year Lease shall be on or after October 1, 2022, but prior to October 1, 2023.

Anything in the foregoing to the contrary notwithstanding, it is understood and agreed as follows:

- (a) if the term of the Three Year Lease shall have been extended for a first one (1) year extension period pursuant Section 5.6 and/or Section 5.8 of the Three Year Lease, with the result that the Effective Date of *this Fifty Year Lease* shall be on or after October 1, 2023, but prior to October 1, 2024, then the Per Square Foot *Initial* Annual Rental Rate under this Fifty Year Lease shall be an annual rate of \$2.04 per square foot; and



- (b) if the term of the *Three Year Lease* shall have been extended for a second one (1) year extension period pursuant Section 5.6 and/or Section 5.8 of the Three Year Lease, with the result that the Effective Date of *this Fifty Year Lease* shall be on or after October 1, 2024, but prior to October 1, 2025, then the Per Square Foot *Initial* Annual Rental Rate under this Fifty Year Lease shall be an annual rate of \$2.09 per square foot.

(III) Annual Rent During the Second and Each Subsequent One (1) Year Period Following the Effective Date of this Fifty Year Lease:

- (a) During the one (1) year period commencing on the first (1<sup>st</sup>) anniversary of the Effective Date of this Fifty Year Lease and ending on the calendar day immediately preceding the second (2<sup>nd</sup>) anniversary of the Effective Date of this Fifty Year Lease, and during each succeeding one (1) year period thereafter until and including the one (1) year period commencing on the ninth (9<sup>th</sup>) anniversary of the Effective Date of this Fifty Year Lease and ending on the calendar day immediately preceding the tenth (10<sup>th</sup>) anniversary of the Effective Date of this Lease, Lessee shall pay to the County as and for Annual Rent, an amount equal to One Hundred Two and 50/100 Percent (102.5%) of the Annual Rent in effect during the immediately preceding one (1) year period.
- (b) [Intentionally Deleted].
- (c) [Intentionally Deleted].
- (d) During the one (1) year period commencing on the tenth (10<sup>th</sup>) anniversary of the Effective Date of this Fifty Year Lease and ending on the calendar day immediately preceding the eleventh (11<sup>th</sup>) anniversary of the Effective Date of this Fifty Year Lease, Lessee shall pay to the County as and for Annual Rent, and amount equal to the *greater* of:
- (i) the then current "Fair Market Value Rent" for the land comprising the Premises, determined by appraisal in the manner described in Article 4.1(A)(IV) below, provided, however, that in no event shall the amount determined pursuant to this Clause (i) exceed an amount equal to One Hundred Five and No/100 Percent (105%) of the Annual Rent in effect during the immediately preceding one (1) year period; or
- (ii) an amount equal to One Hundred Two and 50/100 Percent (102.5%) of the Annual Rent in effect during the immediately preceding one (1) year period (i.e., during the period commencing on the ninth (9<sup>th</sup>) anniversary of the

Effective Date of this Fifty Year Lease and ending on the calendar day immediately preceding the tenth (10<sup>th</sup>) anniversary of the Effective Date of this Fifty Year Lease).

- (e) Intentionally Deleted.
- (f) During the one (1) year period commencing on the eleventh (11<sup>th</sup>) anniversary of the Effective Date of this Fifty Year Lease and ending on the calendar day immediately preceding the twelfth (12<sup>th</sup>) anniversary of the Effective Date of this Fifty Year Lease, and during each succeeding one (1) year period thereafter until and including the one (1) year period commencing on the nineteenth (19<sup>th</sup>) anniversary of the Effective Date of this Fifty Year Lease and ending on the calendar day immediately preceding the twentieth (20<sup>th</sup>) anniversary of the Effective Date of this Lease, Lessee shall pay to the County as and for Annual Rent, an amount equal to One Hundred Two and 50/100 Percent (102.5%) of the Annual Rent in effect during the immediately preceding one (1) year period.
- (g) During the one (1) year period commencing on the twentieth (20<sup>th</sup>) anniversary of the Effective Date of this Fifty Year Lease and ending on the calendar day immediately preceding the twenty-first (21<sup>st</sup>) anniversary of the Effective Date of this Fifty Year Lease, Lessee shall pay to the County as and for Annual Rent, and amount equal to the greater of:
  - (i) the then current "Fair Market Value Rent" for the land comprising the Premises, determined by appraisal in the manner described in Article 4.1(A)(IV) below, provided, however, that in no event shall the amount determined pursuant to this Clause (i) exceed an amount equal to One Hundred Five and No/100 Percent (105%) of the Annual Rent in effect during the immediately preceding one (1) year period;
  - (iii) an amount equal to One Hundred Two and 50/100 Percent (102.5%) of the Annual Rent in effect during the immediately preceding one (1) year period (i.e., during the period commencing on the nineteenth [19<sup>th</sup>] anniversary of the Effective Date of this Fifty Year Lease and ending on the calendar day immediately preceding the twentieth [20<sup>th</sup>] anniversary of the Effective Date of this Fifty Year Lease).
- (h) During the one (1) year period commencing on the twenty-first (21<sup>st</sup>) anniversary of the Effective Date of this Fifty Year Lease and ending on the calendar day immediately preceding the twenty-second (22<sup>nd</sup>) anniversary of the Effective Date of this Fifty Year Lease, and

during each succeeding one (1) year period thereafter until and including the one (1) year period commencing on the twenty-ninth (29<sup>th</sup>) anniversary of the Effective Date of this Fifty Year Lease and ending on the calendar day immediately preceding the thirtieth (30<sup>th</sup>) anniversary of the Effective Date of this Lease, Lessee shall pay to the County as and for Annual Rent, an amount equal to One Hundred Two and 50/100 Percent (102.5%) of the Annual Rent in effect during the immediately preceding one (1) year period.

- (i) During the one (1) year period commencing on the thirtieth (30<sup>th</sup>) anniversary of the Effective Date of this Fifty Year Lease and ending on the calendar day immediately preceding the thirty-first (31<sup>st</sup>) anniversary of the Effective Date of this Fifty Year Lease, Lessee shall pay to the County as and for Annual Rent, and amount equal to the greater of:
  - (i) the then current "Fair Market Value Rent" for the land comprising the Premises, determined by appraisal in the manner described in Article 4.1(A)(IV) below, provided, however, that in no event shall the amount determined pursuant to this Clause (i) exceed an amount equal to One Hundred Five and No/100 Percent (105%) of the Annual Rent in effect during the immediately preceding one (1) year period;
  - (ii) an amount equal to One Hundred Two and 50/100 Percent (102.5%) of the Annual Rent in effect during the immediately preceding one (1) year period (i.e., during the period commencing on the twenty-ninth [29<sup>th</sup>] anniversary of the Effective Date of this Fifty Year Lease and ending on the calendar day immediately preceding the thirtieth [30<sup>th</sup>] anniversary of the Effective Date of this Fifty Year Lease).
- (j) During the one (1) year period commencing on the thirty-first (31<sup>st</sup>) anniversary of the Effective Date of this Fifty Year Lease and ending on the calendar day immediately preceding the thirty-second (32<sup>nd</sup>) anniversary of the Effective Date of this Fifty Year Lease, and during each succeeding one (1) year period thereafter until and including the one (1) year period commencing on the thirty-ninth (39<sup>th</sup>) anniversary of the Effective Date of this Fifty Year Lease and ending on the calendar day immediately preceding the fortieth (40<sup>th</sup>) anniversary of the Effective Date of this Lease, Lessee shall pay to the County as and for Annual Rent, an amount equal to One Hundred Two and 50/100 Percent (102.5%) of the Annual Rent in effect during the immediately preceding one (1) year period.

- (k) During the one (1) year period commencing on the fortieth (40<sup>th</sup>) anniversary of the Effective Date of this Fifty Year Lease and ending on the calendar day immediately preceding the forty-first (41<sup>st</sup>) anniversary of the Effective Date of this Fifty Year Lease, Lessee shall pay to the County as and for Annual Rent, and amount equal to the greater of:
- (i) the then current "Fair Market Value Rent" for the land comprising the Premises, determined by appraisal in the manner described in Article 4.1(A)(IV) below, provided, however, that in no event shall the amount determined pursuant to this Clause (i) exceed an amount equal to One Hundred Five and No/100 Percent (105%) of the Annual Rent in effect during the immediately preceding one (1) year period;
  - (l) an amount equal to One Hundred Two and 50/100 Percent (102.5%) of the Annual Rent in effect during the immediately preceding one (1) year period (i.e., during the period commencing on the thirty-ninth [39<sup>th</sup>] anniversary of the Effective Date of this Fifty Year Lease and ending on the calendar day immediately preceding the fortieth [40<sup>th</sup>] anniversary of the Effective Date of this Fifty Year Lease).
- (l) During the one (1) year period commencing on the forty-first (41<sup>st</sup>) anniversary of the Effective Date of this Fifty Year Lease and ending on the calendar day immediately preceding the forty-second (42<sup>nd</sup>) anniversary of the Effective Date of this Fifty Year Lease, and during each succeeding one (1) year period thereafter until and including the one (1) year period commencing on the forty-ninth (49<sup>th</sup>) anniversary of the Effective Date of this Fifty Year Lease and ending on the calendar day immediately preceding the fiftieth (50<sup>th</sup>) anniversary of the Effective Date of this Lease (said date being the last day of the term of this Lease), Lessee shall pay to the County as and for Annual Rent, an amount equal to One Hundred Two and 50/100 Percent (102.5%) of the Annual Rent in effect during the immediately preceding one (1) year period.

Annual Rent at the adjusted rates set forth above shall be payable in equal monthly installments in advance on the first day of each month during each applicable period, with each such monthly installment to be in an amount equal to one-twelfth (1/12<sup>th</sup>) of the applicable adjusted annual sum.

(IV) Determination of Fair Market Value Rent.

- (a) The Fair Market Value Rent for the Premises shall be determined as follows:
  - (i) In the event that either the County or Lessee shall elect, as aforesaid, to seek an adjustment in the Annual Rent to reflect the Fair Market Value Rent, then the party seeking such adjustment (the "Appraisal Initiator") shall present to the other party (the "Appraisal Respondent") an appraisal of the Premises (the "Initial Appraisal") prepared at the Appraisal Initiator's expense by an MAI certified appraiser selected by the Appraisal Initiator (the "Initial Appraiser"), such appraiser to have a minimum of ten (10) years of experience in appraising airports in the State of Florida similar to the Airport. The Initial Appraisal shall set forth the determination of the Initial Appraiser as to the Fair Market Value Rent for the Premises as of the Appraisal Date.
  - (ii) The Initial Appraisal shall be based on comparables for non-aviation uses at similar general aviation airports throughout the State of Florida, it being expressly understood and agreed, however, that such appraisal shall *not* take into account:
    - (aa) the value of any rental income or other revenues payable to Lessee in respect of the Premises or any part thereof (whether same shall be payable by sublessees or others); or
    - (bb) the value or use of any infrastructure, buildings or other Improvements constructed on the Premises or any part thereof (whether the same shall have been constructed by Lessee, or by any sublessees or by any other party); or
    - (cc) the value of any entitlements or permits secured by Lessee or any of its sublessees or any other parties in respect of the Premises or any part thereof.
  - (iii) If the Appraisal Recipient shall disagree with the determination of the Fair Market Value Rent of the Premises as set forth in the Initial Appraisal, then the Fair Market Value Rent of the Premises for purposes of determining the Annual Rent payable by Lessee under this Lease shall be determined by an appraisal process in which Lessee and the County each shall designate an MAI certified appraiser (which may be the Initial Appraiser), each of which

appraisers shall have a minimum of ten(10) years of experience in appraising airports in the State of Florida similar to the Airport, and the two appraisers so designated by Lessee and the County shall each appraise the Premises subject to the criteria set forth in Subsection 4.1(A)(IV)(a)(ii) above.

- (iv) If the Fair Market Value Rent for the Premises, as determined by the two appraisers designated by Lessee and the County as aforesaid, shall not differ by more than ten percent (10%), then the Fair Market Value Rent for the Premises for purposes of determining the Annual Rent payable by Lessee under this Lease shall be the arithmetic average of the Fair Market Value Rent for the Premises as determined by such two appraisers.
- (v) However, if the Fair Market Value Rent for the Premises, as determined by the two appraisers designated by Lessee and the County as aforesaid shall, in fact, differ by more than ten percent (10%), then said two appraisers shall mutually agree upon and select a third MAI certified appraiser (which may be the Initial Appraiser) who also has a minimum of ten (10) years of experience in appraising airports in the State of Florida similar to the Airport.

The third appraiser so selected shall independently appraise the Premises subject to the criteria set forth in Subsection 4.1(A)(IV)(a)(ii) above, and the new Annual Rent payable by Lessee under this Lease shall be determined on the basis of the Fair Market Value Rent for the Premises as so determined by such third appraiser, provided, however, that the Fair Market Value Rent as determined by such third appraiser shall not be higher than the amount thereof as set forth in the higher of the first two appraisals nor lower than the amount thereof as set forth in the lower of the first two appraisals, and if such figure is either higher than the higher, or lower than the lower, of the first two appraisals, then the appraisal closest to that of the third appraiser shall be utilized to determine the new Annual Rent for the Premises.

- (b) [Intentionally Deleted.]
- (c) The new Annual Rent determined as aforesaid shall also be subject to increase in accordance with the applicable provisions of Section 4.1(A)(III) above.

Annual Rent payments in the amount determined as aforesaid, together with any applicable state sales tax as required by law, shall be made on the first day of each

and every month in advance and without billing, at the offices of the Department as set forth in Article 4.7 (Address for Payments). The rentals payable for the first month shall be prorated if less than a full month.

(B) Percentage Rent.

(I) In addition to the Annual Rent payable by Lessee to the County in accordance with Section 4.1(A) above,

(a) Lessee agrees that not later than 120 days following the first (1<sup>st</sup>) anniversary of the Effective Date of this Fifty Year Lease, and not later than 120 days following each subsequent anniversary of the Effective Date of this Fifty Year Lease during the Term of this Lease, Lessee shall also pay to the County, as and for percentage rent under this Lease, an amount equal to two percent (2%) of the amount by which the Gross Revenues realized by Lessee from the operation of the Premises during the immediately preceding year shall exceed the Annual Rent payable by Lessee to the County during such immediately preceding year; and

(b) Intentionally Deleted.

Each such payment of percentage rent shall be accompanied by a statement of the amount by which the Gross Revenues realized during the preceding year exceeded the Annual Rent payable by Lessee to the County during such preceding year, with a certification by Lessee as to the accuracy of such statement in the form reasonably prescribed by the Department.

(II) As used herein, the term "Gross Revenues" shall be deemed to mean and refer to all revenues actually received by Lessee that Lessee derives from any leases, subleases and/or licenses of the Premises, including all base rents and percentage rents, if any, paid to Lessee by sublessees of the Premises. Anything in the foregoing or elsewhere in this Lease to the contrary notwithstanding, if Lessee shall, through subterfuge, attempt to disguise rentals or other revenues from its sublessees so as to evade responsibility for paying Percentage Rent with respect thereto, such disguised rentals or other revenues shall nevertheless be deemed part of the Gross Revenues as defined above and subject to Percentage Rent under this Section (II).

(III) Anything in the foregoing to the contrary notwithstanding, it is expressly understood and agreed that for purposes of this Section 4.1(B), Gross Revenues shall not include sums paid by sublessees and/or licensees for:

(a) real estate taxes, assessments, sales taxes and/or other levies or impositions, whether the same shall be payable by such sublessees and/or licensee directly to the applicable taxing authorities or to Lessee for remittance, in turn, to such taxing authorities (or to

reimburse Lessee for previous remittances or payments made by Lessee to such taxing authorities);

- (b) insurance premiums payable in respect of liability, property, casualty, windstorm, flood and/or other insurance coverages for the Premises or Improvements, or any portion of either of same (including all or any portion of any parking areas and/or other common areas of the Project to be developed on the Premises), whether the same shall be payable by such sublessees and/or licensee directly to the applicable insurers or to Lessee for remittance, in turn, to such insurers (or to reimburse Lessee for previous remittances or payments made by Lessee to such insurers);
- (c) utility charges and fees, including but not limited to charges and fees for sewer, water, electricity, telecommunications, cable television or other utility services attributable to any part of the Premises (including all or any portion of any parking areas and/or other common areas of the Project to be developed on the Premises), whether the same shall be payable by such sublessees and/or licensee directly to the applicable utility and/or service providers or to Lessee for remittance, in turn, to such utility and/or service providers (or to reimburse Lessee for previous remittances or payments made by Lessee to such utility and/or service providers);
- (d) intentionally deleted;
- (e) security deposits which Lessee is required to refund to sublessees or licensees;
- (f) amounts payable to Lessee by any insurer or by a sublessee or licensee for casualty losses or damages sustained to any Improvements;
- (g) condemnation awards payable to Lessee in connection with any permanent or temporary taking of all or any part of the Premises or the Improvements thereon;
- (h) any sums paid by sublessees, licensees and/or other parties as a contribution towards any of the construction costs of the Project or the Improvements thereon, or any part thereof; and
- (i) any and all other sums payable to Lessee by any sublessee(s), licensee(s) and/or other party(ies) as a reimbursement to Lessee for amounts paid and/or incurred by Lessee for goods and/or services provided in connection with the development, construction, operation, insuring, maintenance, repair, replacement, and/or management of the Premises.



- (j) any and all concession fees, licenses fees or similar revenues paid to sublessees, retailers, or other operators by concessionaires, licensees, and parties operating under agreements with such sublessee, retailers, or operators.
- (IV) At all times during the term of this Agreement, Lessee shall keep in its principal office, with a copy to be made available for inspection by the County at any time in Miami-Dade County promptly following request by the County, all records and reports customarily used in, and as necessary to, report its Gross Revenues and to calculate the Percentage Rent payable hereunder. The form of all such records and reports shall be subject to the reasonable approval of the Department and/or the County's auditors (which may be one or more of the following: the designated external auditing firm or other certified public accounting firm selected by the Department, or the Internal Auditing Department of the County or auditors of the State of Florida) which approval shall not be unreasonably withheld, conditioned or delayed. Subsequent reasonable recommendations for reasonable changes, additions or deletions of such records and reports by the County's auditors shall be complied with by the Lessee or be required by Lessee of its sublessees when requested by the Department (i.e., to the extent that Lessee shall have the right to require such changes, additions or deletions under the terms of the applicable subleases), and must be complied with by Lessee if the records and reports submitted by Lessee do not enable the auditors to certify that the Gross Revenues were reported in accordance with generally accepted accounting procedures. The Department and the County's auditors shall have the right, without limitation, and shall be permitted, during normal business hours and upon reasonable notice, to audit and examine all records and reports relating to Lessee's Gross Revenues. Lessee shall not be required to retain such records and reports Florida for more than five years after the end of each annual period of this Agreement nor for more than three years following termination of this Agreement.
- (V) The County shall have the right, within ninety (90) days following its receipt of each annual report of Gross Revenues furnished by Lessee in accordance with Section 4.1(B)(I) above to conduct an audit of Lessee's Gross Revenues. Such audit must be commenced, if at all, prior to the expiration of such 90-day period, and must be completed within thirty (30) days following the date of commencement thereof. If any such audit shall reveal an understatement of Gross Revenues and resulting underpayment of percentage rent, or an overstatement of Gross Revenues and resulting overpayment of percentage rent, then the County shall promptly furnish Lessee with a copy of the report of the County's auditors and, within thirty (30) days following Lessee's receipt of such audit report Lessee shall pay to the County the amount of any percentage rent underpayment or the County shall refund to Lessee the amount of any percentage rent overpayment, as the case may be, as set forth in such audit report. If such audit report shall reveal an underpayment of percentage rent by Lessee of more than five percent (5%) of the actual amount due, then Lessee shall also

pay the actual reasonable out-of-pocket cost of the audit, not to exceed \$1,500.00.

Anything in the foregoing to the contrary notwithstanding, if Lessee shall contest any such audit report, by written notice to the County within 30 days following Lessee's receipt thereof, then unless Lessee and the County shall resolve such dispute within 30 days following Lessee's aforementioned notices, the dispute regarding such audit report shall be resolved by arbitration (before a single arbitrator who shall be (x) a certified public accountant, (y) a partner or principal of any nationally or regionally recognized accounting firms having an office in Miami-Dade County, Florida, and (z) experienced in gross revenue audits relating to percentage rent provisions of commercial real estate leases. In the event that Lessee and the County are unable to agree upon such arbitrator within ten (10) days following the County's receipt of Lessee's contest notice, the arbitrator shall be selected by the president or other executive officer of the Miami-Dade County office of the Board of Realtors. The decision of the arbitrator shall be final, conclusive and binding on the parties, but the powers of the arbitrator are hereby expressly limited to the determination of factual issues, and the arbitrator shall have no power to reform, supplement or modify this Lease. The arbitrator shall make only required findings of fact incident to an arbitrable dispute, which findings shall be set forth in reasonable detail in a written decision by the arbitrator. Lessee and the County shall share equally in the cost and expenses of such arbitration, and each shall separately pay its own attorneys' fees and expenses, unless the arbitrator finds that one of the parties did not act in good faith in connection with the dispute or the conduct of the arbitration proceeding, in which case the arbitrator may award all or part of said costs, expenses and fees to the other party.

4.2 [Intentionally Deleted.]

4.3 [Intentionally Deleted.]

4.4 [Intentionally Deleted.]

4.5 Sales Taxes and Other Charges. Lessee shall pay to the Lessor, in addition to the foregoing rents, all applicable State sales taxes as well as all federal, state or local taxes or other charges arising out of Lessee's use of the Premises. In the event that Lessee shall register as a dealer for Florida sales tax purposes and complies with then-existing regulations of the state taxing authority regarding such registration, Lessee shall not be required to pay sales tax to Lessor on the Annual Rent, Percentage Rent or any other sums which are deemed rent or additional rent under this Lease, to the extent permitted or allowed by State law or such regulations of the Department of Revenue.

4.6 Holdover Rental: In the event that the Lessee remains in possession of the Premises and Improvements beyond the expiration of the Term or the earlier termination of this Agreement, the Lessee shall be bound by all of the terms and conditions of this Agreement

to the same extent as if this Agreement were in full force and effect during the time beyond the expiration date of this Agreement. However during any such possession of the Premises and Improvements as a holdover tenant after the County has demanded in writing the return of the Premises and Improvements, the Lessee shall be liable for holdover rental in an amount equal to the sum of (a) 125% of the Annual Rent payable during the last year of the Term of the Lease, plus (b) all Percentage Rent payable pursuant to Article 4.1(B)(I)(a) above, plus all other sums payable by Lessee to the County under this Lease for so long as the Lessee remains in possession after such demand.

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

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

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

Miami-Dade County Aviation Department  
Finance Division  
Third Floor  
Building 5A  
4200 N.W. 36 Street  
Miami, Florida 33122.

- 4.8 Late Payment Charge: In the event the Lessee fails to make any payments, as required to be paid under the provisions of this Agreement, within ten days after same shall become due, interest at the uniform default rate for similar lease obligations established from time to time by the Board of County Commissioners shall accrue against the delinquent payment(s) from the original due date (and not from just the last day of the applicable grace period) until the Department actually receives payment. In no event shall such rate exceed eighteen percent (18%) per annum. The right of the County to require payment of such interest and the obligation of the Lessee to pay same shall be in addition to and not in lieu of the rights of the County to enforce other provisions herein, including termination of this Agreement, and to pursue other remedies provided by law.
- 4.9 Dishonored Check or Draft: In the event that the Lessee delivers a dishonored check or draft to the County in payment of any obligation arising under the terms of this Agreement, the Lessee shall incur and pay a service fee of TWENTY-FIVE DOLLARS, if the face value of the dishonored check or draft is \$50.00 or less; THIRTY DOLLARS if the face value of the dishonored check or draft is more than \$50.00 and less than \$300.00; and FORTY DOLLARS if the face value of the dishonored check or draft is \$300.00 or more, or FIVE PERCENT of the face value of such dishonored check or draft, whichever is greater. Further, in such event, the Department may require that future payments required pursuant to this Agreement be made by cashier's check or other means reasonably acceptable to the Department.

- 4.10 Utilities: the rentals paid by the Lessee under this Article 4 do not in any manner cover the cost for any electrical, water and sewer, storm drainage and other utilities' consumption. The Lessee shall be solely responsible for the payment, to the appropriate billing entities, whether it be the Department or others, for all utilities usage on the Premises and Lessee shall not permit any liens to be filed against the Premises and Improvements for failure to pay such utility charges.
- 4.11 [Intentionally Deleted.]
- 4.12 [Intentionally Deleted.]

## ARTICLE 5

### IMPROVEMENTS

#### 5.1 Improvements to Premises:

- (A) (1) Subject to the provisions of the Three Year Lease and this Fifty Year Lease, the Lessee and/or any sub-lessee shall design, construct and pay for, in one or more "Phases" or "Sub-Phases", and in a sequence that is consistent with the sequence identified in Exhibit "C" hereto or else is reasonably approved by MDAD, a commercial, retail, office, service, restaurant, financial, non-residential mixed-use and/or other non-residential project (sometimes herein, the "Project") substantially as shown on the site plan (the "Site Plan") for the Premises attached hereto and incorporated herein as Exhibit "C", which Site Plan is hereby approved by Lessor. Such Site Plan may be modified by Lessee from time to time with the County's prior written approval as to any material modifications, such approval not to be unreasonably withheld, conditioned, or delayed. The County's failure either to approve a proposed material modification of the Site Plan or to furnish Lessee with written notice setting forth the grounds for the County's disapproval thereof (which grounds may not be unreasonable, arbitrary or capricious) within fourteen (14) business days after the County's receipt of Lessee's written request for such approval will constitute the County's approval of the proposed modification.

It is expressly acknowledged, understood and agreed that while Exhibit "C" contains a conceptual graphic depiction of numerous buildings proposed to be constructed on the Premises, said Exhibit "C" omits any conceptual graphic depiction of one (1) of more other buildings (collectively, the "Optional Future Buildings", and each, individually, an "Optional Future Building") which Lessee, at its option, may in the future wish to construct or to cause or permit one or more its sublessees to construct on the Premises. However, Exhibit "C" does identify the anticipated approximate future locations (the "Future Building Areas") for such Optional Future Buildings. Should Lessee desire, at any time during the term of this Lease, to proceed (or to permit any sublessee to proceed) with the construction of any such "Optional Future Building", Lessee shall seek Lessor's consent to one or more modifications of the Site Plan for the Premises to add any or all of such Optional Future Buildings in the Future Building Areas identified on

Exhibit "C" or in such other location(s) as may be approved by Lessor. Lessor's approval with respect to any such requested site plan modification shall not be unreasonably withheld, delayed or conditioned. All construction of Improvements during the term of this Fifty Year Lease shall comply with the design and construction requirements contained in the Three Year Lease and this Fifty Year Lease, except to the extent specifically amended by written agreement of the parties.

(2) The development of the Project as aforesaid may be undertaken either by Lessee directly, and/or by one or more contractors engaged by Lessee, and/or by one or more other parties, including sublessees, to whom Lessee may delegate responsibility for development of any portion(s) of the Project.

(3) In connection with such development activities, Lessee shall have the right to create, relocate or cause to be relocated any utility lines within the Premises as may be reasonably required for the development of the Project, the foregoing to be done with the consent and cooperation of the County and any approvals required from the applicable utility company or other party in whose favor such easement runs, which consent by the County shall not be unreasonably withheld, conditioned or delayed.

(4) If any comprehensive land use plan amendments, concurrency certifications, CDMP and/or DRI designations, zoning and/or rezoning approvals and/or other like entitlements are required for the development and/or operation of the Project (whether at the inception of the Project or at any other time during this Lease), then: (i) Lessee shall be responsible for, and agrees to, apply for same and diligently pursue approval thereof at its cost and expense; and (ii) the County will fully cooperate with Lessee in connection with such filing and pursuit of approval of such applications as is necessary and/or reasonably requested by Lessee, and will execute any such applications, consents thereto or other instruments required to be signed by the County as owner of the Premises or reasonably requested by Lessee in connection with its seeking of such approvals.

(5) All the Improvements shall become part of the Premises and shall be the property of (and all depreciation deductions and like benefits associated therewith may be taken by) Lessee or its sublessees, but such Improvements shall become the property of the County at the end of the Term or upon the earlier termination of this Agreement. At the County's request, Lessee shall execute in favor of the County appropriate documentation that conveys its interest in the Improvements to the County free and clear of any liens or encumbrances within thirty (30) days after the end of the Term or the date of any earlier termination of this Agreement.

(B) Throughout the term of this Fifty Year Lease, Lessee or its successors in interest will cause to be constructed, and thereafter maintain, Improvements on the Premises that are reasonably consistent with the Improvements shown on Exhibit "C" as the parties may reasonably adjust in size, number, and configuration from time to time.

- (C) Except as may be otherwise specifically set forth in this Lease, the Lessee shall bear and be solely responsible for all costs arising out of the Improvements, including, but not limited to, the following:
- (1) Land use approvals development fees, concurrency fees, and permit fees for the design, construction, and subsequent use of the Improvements and infrastructure;
  - (2) Design and construction of the Improvements and infrastructure, including but not limited to utilities, roads, parking lots, and landscaping;
  - (3) Financing, construction bonding and insurance, building permits, impact and concurrency fees, utility installations and/or hook-ups or other infrastructure, as may be required to make the Premises suitable for the use of the Improvements;
  - (4) Construction audits (as may be required elsewhere herein);
  - (5) Consultants, accountants, financing charges, legal fees, furnishings, equipment, and other personal property of the Lessee; and
  - (6) All other direct or indirect costs associated with the approvals, design, construction, and financing of the Improvements, and their subsequent maintenance and use (other than the cost to remediate Recognized Environmental Conditions not caused by Lessee as provided in Article 8.2).
- D. Except as may be otherwise specifically set forth in this Lease, Lessee acknowledges that the Lessor shall have no funding or maintenance responsibility for any of the Improvements, utilities, and infrastructure to be constructed by Lessee.

### 5.3 Design of Improvements:

- (A) The design and design process of any Improvements constructed during this Fifty Year Lease must comply with all applicable regulations and requirements of the Federal Aviation Administration, and (ii) Lessor's TAC-N procedures, as such procedures may be amended from time to time. The design of Improvements need not, however, comply with the Department's Design Guidelines Manual, unless MDAD indicates that compliance is required for a particular structure, provided, however, that MDAD acknowledges that none of the structures depicted on the Site Plan attached hereto as Exhibit "C" will require such compliance.
- (B) The Lessee and its architect/engineer have the responsibility to insure that the project design shall be in accordance with all applicable federal, state and local laws, ordinances and codes, as well as all applicable FAA regulations and, to the extent applicable (and not waived or modified by the County) the provisions of MDAD's TAC-N requirements to the extent shown in Exhibit "A". Notwithstanding any other provision of this Agreement or requirement of the

County or MDAD and without in any way affecting or diluting Lessee's responsibility to comply with the Building Code, Lessee has no obligation to comply with the MDAD Deliverables Requirements Manual (DRM), the Airport Life Safety Master Plan (LSMP) and the MDAD Design Guideline Manual (DGM), except to the extent requirements therein are included in the provisions of the Building Code that have general application throughout Miami-Dade County to all retail/commercial projects being developed in the County.

- (C) Before commencing construction of any building on the Premises, Lessee must submit to the Department for its review a proposed development plan for such building depicting the anticipated location of the proposed building on the Premises together with a set of Plans and Specification for such building. Except as and to the extent otherwise explicitly required by this Agreement, the Department's review will be limited to the exterior architectural features of the Improvements and determining whether any aspect of the improvements reflected in the Plans and Specifications under review will (i) materially interfere with any operations conducted elsewhere on the Airport, (ii) not be in material compliance with federal or MDAD siting or height criteria, it being understood and agreed that the buildings depicted on the Site Plan attached hereto as Exhibit "C", as the same may be amended from time to time with the County's approval (or deemed approval) shall be deemed to be in compliance with such siting and height criteria, or (iii) be materially at variance with any preliminary designs provided to Lessee depicting the siting or size of such building(s).
- (D) Upon receipt of each submission of any Plans and Specifications, the Department shall review and/or comment upon, in writing, that submission within the time period established in Article 5.3(D) below. Except to the extent that Lessee requests reconsideration of the Department's comments, Lessee must incorporate the Department's reasonable comments relating to the matters referred to in Article 5.3(B) above into the Plans and Specifications prior to the next review submittal. The Lessee may request reconsideration of any of the Department's comments. Such request shall include documentation supporting the Lessee's position. The Department shall review the request for reconsideration and shall either approve or disapprove the request or alter its initial comments in light of the reconsideration. The process outlined in this Subsection 5.3(C) shall continue until such time as the Department shall have approved the submission in question, it being expressly understood and agreed (x) that such approval shall not be unreasonably withheld or conditioned and (y) that such approval shall be deemed granted unless written notice to the contrary setting forth the County's reasonable grounds for disapproval shall be delivered to Lessee within fourteen (14) days of Lessee's request for approval, and (z) that such approval may not be withheld except on account of the matters outlined in Clauses (i), (ii) and/or (iii) of Subsection 5.3(C) above.
- (E) MDAD'S review and approval of Lessee's proposed Improvements or their alteration, as well as MDAD's review and approval of Lessee's proposed design and construction of the proposed Improvements or their alteration, at any time during the Term shall be limited to review and approval of:

- (1) the exterior architectural features for the Improvements considering the surrounding buildings and facilities of Lessor;
  - (2) all aspects of the interfaces, if any, to be constructed by Lessee between the Improvements and existing MDAD utilities and structures;
  - (3) compliance with:
    - (a) Article 3 above,
    - (b) the Airport Master Plan,
    - (c) Comprehensive Development Master Plan (CDMP),
    - (d) the Airport Layout Plan,
    - (e) FAA requirements,
    - (f) federal and state requirements (provided, however, that MDAD shall not disapprove any proposed Improvement[s] on this basis where such Improvement[s] are approved by the applicable federal and state agencies having primary jurisdiction over these requirements),
    - (g) environmental, life safety, and building code requirements (provided, however, that MDAD shall not disapprove any proposed Improvement[s] on this basis where such Improvement[s] are approved by the County departments having primary jurisdiction over these requirements, with MDAD having primary jurisdiction over environmental requirements and shared primary jurisdiction over life safety and building code requirements as relates to TAC-N and any other matters over which MDAD has jurisdiction pursuant to Section 5.3[A] above), and
    - (h) the utilities master plan including the storm water master plan (provided, however, that MDAD shall not disapprove any proposed Improvement[s] on this basis where such Improvement[s] are approved by the County building department or other applicable departments having primary jurisdiction over these requirements, with MDAD having shared primary jurisdiction over environmental requirements to extent applicable in the review of such storm water master plan).
- (F) As soon as reasonably practicable, but in no event later than thirty (30) days prior to Lessee's submission to the County building department of each application for a building permit for Improvements to be constructed by Lessee, Lessee shall also submit to the Department fifteen (15) sets of: (a) of Lessee's aforesaid application; (b) a summary project schedule; and (c) cost estimate for the Improvements. The Department may from time to time request that other documents be submitted by Lessee for a particular Improvement, and Lessee shall comply with such reasonable request. At the end of any construction of an Improvement, the as-built documents



shall be provided in electronic format as well as hard copy, with MDAD identifying the type of electronic format acceptable to MDAD at the time.

- (G) Approval by the Department of the Plans and Specifications does not constitute certification or warranty by the Department as to the quality of the Plans and Specifications prepared by the Lessee's or its sublessee(s)' architect(s) and/or engineer(s), that the Plans and Specifications are free of design errors or omissions, or that they are in compliance with all applicable laws, codes, rules or regulations of the authorities having jurisdiction over the construction of the improvements.
- (H) After the Department approves any Plans and Specifications that Lessee has submitted for review, Lessee may not make a material change in the scope of those Plans and Specifications without the Department's reasonable approval.
- (I) The Department shall review, comment upon, or approve within 14 business days each submission Lessee makes in accordance with this Section 5.3, it being understood and agreed that the Department's approval shall not be unreasonably withheld or conditioned. The Department's failure either to approve a submission or to furnish Lessee with written notice setting forth the grounds for the Department's disapproval thereof (which grounds may not be unreasonable, arbitrary or capricious) within that time period will constitute the Department's approval of the submission.

5.4 Submission of Certain Documents Prior to Commencement of Construction and Following Completion of Construction:

- (A) At least ten (10) days prior to commencing construction of each building or other improvement comprising a portion of the Project, Lessee or its sublessee(s) shall submit (or cause to be submitted) the following to the Department's Facilities Project Manager, who will be assigned to this Agreement (provided, however, that if the County has not notified Lessee in writing of the name of the Facilities Project Manager so assigned, then such items shall instead be submitted to the Director):
  - (1) A copy of the building permit(s);
  - (2) All bonds required under Article 5.10 below;
  - (3) Environmental Insurance policy to the extent required under Article 12 below;
  - (4) Consents from Lessee's general contractor and architect to the conditional assignment of Lessee's rights under its contracts with such parties to the County, in compliance with Article 5.12.
  - (5) (a) Payment to MDAD of one and one-half percent (1½%) of the budgeted construction hard costs for the particular building or other improvement for which a building permit shall be requested, which sum shall be tendered and accepted in discharge of Lessee's or its sublessee's building permit fee and any building permit

inspection fee of the County's applicable departments, including the Building Department, Fire Rescue Department, and Department of Environmental Resources Management, related solely to building permits and inspection fees, together with a certificate of the applicant, or its general contractor as to the then current budgeted (or agreed) amount of such hard costs of construction. If the final construction hard costs at the conclusion of the construction of the building or other improvement in question are higher or lower than the budgeted amount, the difference shall be multiplied by 1½ % and shall either be paid by the applicant to the Department if the resulting number is a positive amount or refunded to the applicant by the Department if the resulting number is negative. Except as otherwise provided in the immediately preceding sentence, such 1½% payment shall be non-refundable. Until and unless MDAD eliminates the program under which the 1½% is collected by MDAD for these fees, such 1½ % payment constitutes full payment for all building and inspection fees required by the County for construction of the Improvements upon which the 1½% is based regardless of the actual amounts, whether more or less, that MDAD pays to or otherwise compensates such departments or agencies for these fees on Lessee's behalf. In furtherance of the foregoing, MDAD shall within five (5) days following MDAD's receipt of the 1½% payment advise the County's Building Department and any other applicable County departments that the fee has been received from Lessee so that the building permit fee is not an impediment to the Building Department's issuance of the building permit. In this connection, it is expressly understood and agreed that each Lessee's sublessee's shall be deemed third party beneficiaries of the rights provided in this Section 5.4(A)(5).

(b) In addition, if Lessee or a sublessee obtains a building permit and allows the permit to expire prior to completion of the Improvements without having secured extension(s) thereof, then Lessee or such sublessee shall be required to pay an additional one-half of one percent (½ of 1%) of the budgeted construction hard costs as administrative fees for plans processing reviews required by Building Department staff to issue a building permit. Such additional one-half of one percent (½ of 1%) fee shall be non-refundable and shall be payable in addition to the 1½ % payment required pursuant to this Article 5.4.

(c) Lessee shall not be authorized to begin construction until the above-listed items have been so submitted to the Department. If Lessee begins construction prior to submission of the Documents in the form required pursuant to this Article 5.4, the Department shall be authorized to halt Lessee's construction activities without any liability to the County until such time as Lessee satisfies this requirement. In such event, no extensions of time shall be granted by the Department to Lessee.

(B) Within thirty (30) days following the completion of construction of any Improvement for which a Certificate or Temporary Certificate of Occupancy is issued (or within such other reasonable time as may then be required by the TAC-N Procedures), the Lessee shall furnish the following documents to the Department:

(1) Documents showing that all permits relating to the Improvement in question

have been closed out;

- (2) Documents that Lessee has obtained lien waivers from the general contractor and all parties designated by the Department, along with any final affidavit of the general contractor required by Chapter 713, Florida Statutes;
- (3) A copy of the Temporary Certificate of Occupancy or Certificate of Occupancy for any above-ground building or a Certificate of Completion from Lessee's or sublessee's architect for any infrastructure or below-ground facility;
- (4) An engineer's certificate of substantial completion as to all infrastructure improvements constructed on the Premises, and an architect's certificate of substantial completion as to each building constructed on the Premises;
- (5) At least one copy of an as-built survey of the area covered by the Improvement; and
- (6) Two (2) complete sets of as-built construction drawings and two (2) AutoCad files of the as-built construction drawings in a compact disk format or other format reasonably designated by the Department, including all pertinent shop and working drawings and such other as-built drawings as the Department may reasonably require.

5.5 Inspections.

- (A) [Intentionally Deleted.]
- (B) During construction of any and all of the Improvements, MDAD and appropriate County departments shall have the right to inspect or to have inspected the construction to assure that construction is in substantial conformance with the approved Plans and Specifications and County requirements. Failure of any County Department to make any such inspection shall not impose any liability on the Department or the County, nor constitute the County's acceptance of the Improvement as being in accordance with Lessee's obligations hereunder.

5.6 [Intentionally Deleted.]

5.7 [Intentionally Deleted.]

5.8 [Intentionally Deleted.]

5.9 Certain Construction Contract Terms: All contracts entered into by the Lessee for the construction of the Improvements shall require completion of the Improvements within a specified time period following the execution of said contract(s). The Lessee agrees that it will use commercially reasonable efforts to take all necessary action available under such construction contract to enforce the timely completion of the work covered thereby. In no event shall delays on the part of any contractor or subcontractor engaged by Lessee or any

sublessee(s) entitle Lessee to an extension of the Construction Deadline, except to the extent that such delays were caused by force majeure or a Lessor-caused delay or any other circumstance(s) for which extension(s) of the Construction Deadline may be available pursuant to the express provisions of this Agreement. Further, as a standard construction practice, all such contracts shall contain provisions requiring the retention of 10% of contractor billings, subject to possible partial reductions of the amount of such retainage upon full completion of constituent components of the work covered by particular contracts. All contracts shall provide that the County is a conditional assignee thereof.

5.10 Construction Bonds and Insurance Required: Lessee shall maintain, or cause to be maintained, the following construction bonding and insurance during the construction of the Phase I infrastructure Improvements:

- (A) As and if required by Section 255.05 of the Florida Statutes, separate completion, performance and payment bonds, reasonably satisfactory to the County and in the form set forth in Section 255.05, Florida Statutes, as amended from time to time, in the full amount of the Phase I infrastructure Improvements, to assure completion of contract work and payment of the costs thereof, free and clear of all claims, liens and encumbrances of subcontractors, laborers, mechanics, suppliers and material men. The required bonds shall be written by or through, and shall be countersigned by, a licensed Florida agent of the surety insurer in accordance with Florida Statutes.
- (B) A contract completion bond or documentation from the Lessee's lenders that demonstrate Lessee will have access to sufficient funds to complete the Project.
- (C) Completed Value Builders Risk and/or Installation Floater, issued in the name of the Lessee's contractor, the Lessee, and the County as their interest may appear, in amount(s) not less than 100% of the insurable value of the structural Improvements, covering perils on an "All Risks" basis including windstorm.
- (D) Commercial General Liability Insurance as specified in Article 11 (Indemnification) and Article 12 (Insurance) herein.
- (E) Workers Compensation as required by Florida Statutes.
- (F) Automobile Liability Insurance as specified in Article 12 (Insurance) herein.
- (G) All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and rated no less than "A-" as to management and no less than Class "VIIP" as to strength, in accordance with the A.M. Best Company Insurance Guide, or its equivalent as approved by the County Risk Management Division.
- (H) Environmental contamination insurance as may be required under Article 8 below, if applicable, provided, however, that such insurance shall be required only in connection with uses that involve the regular storage or use of Hazardous Materials,

such as gasoline filling stations and similar operations that pose a significant risk of environmental contamination of the Premises.

- (I) The Lessee shall furnish certificates to the Department all required insurance certificates to the County for approval as may be required by the County Risk Management Division (such approval not to be unreasonably withheld, delayed or conditioned). These certificates shall clearly indicate that the Lessee or its contractors have obtained insurance of the types, amounts and classifications required by these provisions and that County is an additional insured thereon. No material change or cancellation of the insurance shall be effective without a 30-day prior written notice to and approval by the County Risk Management Division.
- 5.11 Demolition Bonds. Lessor and Lessee agree that, in lieu of providing the completion bond and/or other documentation required by Section 5.10(B) above, Lessee, during the course of Lessee's construction of any building within the Premises, may instead maintain in full force and effect a demolition bond in the County's favor in order to ensure that, if Lessee shall abandon the construction of such building prior to substantial completion of same, adequate funds shall be available to demolish and remove such partially completed building, if so elected by the County. Upon substantial completion of each such building undertaken by Lessee, such bond shall be cancelled, terminated and returned to Lessee and/or the bonding company that issued same. In lieu of such bond, Lessee may, at its option, provide the County with a letter of credit, or a cash deposit, or some other form of security, in an amount equal to the reasonably estimated costs of such demolition and removal. The provisions of this Article 5.11 shall not apply to any sublessee(s) or to any construction projects undertaken by any such sublessee(s).
- 5.12 Assignment of Contract Documents. The Lessee shall provide the County with conditional assignments of its contracts with its architects and general contractors, which condition shall be removed (i.e., the assignment shall be deemed unconditional) upon the failure of Lessee to complete construction hereunder in the time periods provided (including cure periods). Notwithstanding the foregoing, these assignments shall be subordinate to the rights of Lessee's lenders (including Leasehold Mortgagees); provided, however, such assignments shall not be subordinate to the extent the County takes actions thereunder to remedy contract matters affecting life, safety or public health not being remedied by Lessee or Lessee's lenders (including Leasehold Mortgagees) following written notice and reasonable opportunity to cure.
- 5.13 Moratorium. If, prior to completion of any portion of the Project, a moratorium (or any other delay or freeze of such portion of the Project occurs, including those due to Force Majeure or wrongful delays caused by the County, but not routine delays in permitting and inspections on the part of the County or other governmental agencies ) is applicable to such portion of the Project and such moratorium or other occurrence causing a delay or freeze either delays or stops the construction of the Project or any portion thereof, or prevents sublessees from occupying and utilizing all or any portion of the Project, then, the Construction Deadline shall be correspondingly extended and during the existence of any such moratorium or other occurrence resulting in a delay or freeze, no rent of any type shall be due except rent applicable to portions of the Premises for which the Date of Beneficial Occupancy has occurred and with respect to which Lessee is then collecting rent from one

or more sublessees. In the event a moratorium or other occurrence resulting in a delay or freeze arises during any period when no rent is due from Lessee pending the passage of time, such time then remaining to pass prior to the inception of such rent shall automatically be deemed extended by the time period during which such moratorium or other occurrence causing a delay or freeze remain in effect or applicable. Should a moratorium or other occurrence causing a delay or freeze be imposed or arise following the time that all contemplated Improvements hereunder have been fully completed and the moratorium or other occurrence does not affect the ability of Lessee to lease the Project nor prevent any sublessees from occupying its subleased portion of the Premises and from operating same for the purposes intended, then such moratorium shall have no effect on the rentals due Lessor hereunder.

5.14 [Intentionally Deleted.]

5.15 Ad Valorem Real Property Taxes: Lessor has advised Lessee that current law provides that land owned by Lessor, specifically Miami-Dade County, a political subdivision of the State of Florida, is immune from ad valorem taxes and that consequently neither Lessee nor any of its sub-lessees will be responsible for the payment of any ad valorem real property taxes ("Taxes") on the land leased by the County to Lessee under this Lease, nor on the land subleased by Lessee to any of its sublessee, nor in respect of any Improvements constructed from time to time on such land if title to such Improvements has been transferred to and vested in the County. However, the parties acknowledge that Lessee could be subjected to certain taxes in the event that Lessee is hereafter determined to be the "equitable owner" of the Premises. In this connection, and for avoidance of doubt, it is the intent and agreement of Lessee and the County that this Agreement constitutes a true lease of the land leased by the County to Lessee under this Lease and that this Agreement does not convey, and is not intended to convey, equitable ownership of such land to Lessee.

5.16 Co-Operation and Assistance: In connection with the contemplated Improvements, but subject to the limitations of Lessor's involvement and rights as set forth in Article 21.14, Lessor agrees to join in and/or execute any plat or other applications, restrictive covenants, easement vacations or modifications and other documents, including but not limited to estoppels and non-disturbance and attornment agreements as provided in this Agreement, as may be necessary for Lessee (or any sub-lessee[s]) to develop and construct Improvements and to use the Premises and Improvements in accordance with this Lease; provided that such joinders by Lessor shall be at no cost to Lessor other than its costs of review, and also provided that the location and terms of any such restrictive covenants, and related documents, shall be reasonably acceptable to Lessor, which acceptance shall not be unreasonably withheld, conditioned or delayed. In addition, Lessor agrees reasonably to cooperate with Lessee with respect to and in support of applications and procedures dealing with governmental or other financing sources, and possible grants, benefits or incentives to which Lessee may be entitled in connection with the Improvements.

5.17 License for Lessee to Construct Roadway; Other Infrastructure Construction and Connection Rights:

(A) Lessor hereby grants to Lessee and its sublessees the right and license (at Lessee's option) during the term of this Lease, in accordance with Section 13.1 below, to construct (or cause to be constructed) a 4-lane roadway commencing at the intersection of S.W. 124<sup>th</sup> Street and S.W. 137<sup>th</sup> Avenue for the purpose of permitting users of Lessee's Premises (which term shall be deemed to include, without limitation, Lessee, its sublessees, all of their respective contractors, subcontractors, materialmen, suppliers, customers, invitees, licensees, concessionaires and others having business at the Premises) to access such Premises from such intersection. Such roadway shall not be nor be deemed to be an extension of S.W. 124<sup>th</sup> Street. Lessor shall have no obligation to compensate Lessee at any time during the term of this Agreement for such roadway, and Lessee shall at all times during the term of this Agreement shall have the obligation to maintain and repair such roadway (or cause same to be done) to the condition reasonably required by the County for all other similarly situated roadways. Lessee shall have no obligation to compensate Lessor for its use of the roadway other than through the costs incurred by Lessee (or its sublessee[s] or designee[s]) during this Agreement to provide all required maintenance and repair of the roadway. Such roadway shall be designed, and constructed by Lessee in accordance with Lessor's reasonable requirements and standards (including compliance with Lessor's requirements as to the connection of such roadway to the S.W. 124<sup>th</sup> Street intersection). The roadway shall extend in a westerly direction to a point (the "Turn Point") which shall be located not less than 250 feet and not more than 500 feet to the west of the westerly right of way line of S.W. 137<sup>th</sup> Avenue, and then turn south until it connects with Lessee's roadways or parking areas on Lessee's Premises. The precise location of the Turn Point within the 250-500 foot zone referred to in the preceding sentence shall be mutually agreed upon by Lessor and the County prior to the commencement of construction of the Phase I infrastructure Improvements (each party to negotiate in good faith with respect to the location of the Turn Point and neither party shall unreasonably withhold, delay or condition its agreement with respect thereto), it being the intent of the parties that the Turn Point shall be sited, designed, and constructed so as not to materially compromise Lessor's ability to make use of or develop Lessor's adjoining property, as Lessor reasonably determines.

(B) Lessor shall have a right and license to make use of the entire roadway, including that portion of the southern leg of the roadway that extends over Lessee's Premises, in order for Lessor and its agents and contractors to access the Premises and the main road leading into the Airport. Such right and license shall be at no cost to Lessor but Lessor shall comply at all time with reasonable requirements of Lessee for Lessor's use of the portion of the roadway that is on Lessee's Premises.

(C) Lessor grants to Lessee and its sublessees the right and license (at Lessee's option) to construct all infrastructure required for the development and/or use of the Project, including new infrastructure and utility connections serving the Premises, and to run new utility lines across the Premises and the lands to the north and south of the Premises that are located outside of the operational areas of the Airport. Lessee's siting, design, and construction of any such utility lines on either Lessee's Premises or Lessor's

land shall be in compliance with all applicable code requirements and reasonable requirements of Lessor.

(D) The County further grants to Lessee and its sublessees (1) the non-exclusive right and license to connect to all existing and/or new utility lines within the adjacent portions of the Airport, including electric, sewer, water and natural gas lines and (2) the right to provide sanitary sewage, including the right to construct lift stations as needed, the right to construct facilities for the discharge and collection of storm water drainage, and the right to run utility lines and drainage lines through and across the adjacent portions of the Airport to the boundaries of the Premises. Lessor shall have the right to identify the conditions under which any utility lines may be installed on or under any adjacent portion of the Airport, including the right to require Lessee to install such utilities along boundary lines or roadways, or rights of way, and shall have the right to deny installation of any such utility lines placed on Airport parcels if Lessor reasonably determines that such lines are detrimental to or inconsistent with Lessor's current or future operations of the Airport.

(E) As reasonably requested by Lessor or Lessee or any of its sublessees, the County and Lessee or its sublessees shall provide each other with appropriate documentation to confirm and memorialize the rights granted by the County as aforesaid. Such documentation may be in recordable form if requested and paid for by the requesting party.

- 5.18 Temporary Structures: Trailers or temporary structures used for construction purposes but not for business purposes shall be allowed on the Premises during the period of construction of the Improvements subject to all required permitting. All trailers or temporary structures must comply with the Florida Building Code and must be removed prior to or upon the ending of construction. Copies of the building permits shall be submitted to the Department's Facilities Project Manager within ten (10) calendar days of issuance to Lessee.
- 5.19 Tenant Airport Construction Contracts: From time to time, the Lessee and the County through its County Manager shall be entitled, but not obligated, to enter into separate Tenant Airport Construction, reimbursable ("TAC-R") or non-reimbursable contracts ("TAC-N") for the purpose of enabling Lessee to construct facilities or Improvements on the Premises or on the Airport deemed necessary or appropriate either for Lessee's construction and use of its Improvements on the Premises or for Lessor's reasonable needs. Such contracts, if ever entered into by Lessee and the County, shall comply with the Department's TAC-R or TAC-N contract requirements, as such requirements may be amended by the Department from time to time.
- 5.20 Compliance with Responsible Wages and Benefits for County Construction Contracts (AO#3-24 dated July 25, 2000): Lessee is aware that Section 2-11.16 of the Miami-Dade Code (the "Responsible Wage Ordinance") requires privately funded construction on County-owned land to comply with the Responsible Wages requirements of the County, as they may be amended from time to time. Accordingly, to the extent applicable to the Premises and unless exempted or otherwise conditioned by the County's Responsible Wages ordinance, Lessee shall comply with such Responsible Wages Ordinance.



5.21 Other Programs:

- (A) To the extent required by the terms of the County's Community Business Enterprise (CBE) Program applicable to architects and engineers under Section 2-10.4.01 of Miami-Dade County's Code, the Community Small Business Enterprise (CSBE) Program for construction activities under Section 10-33.02, the Living Wage Ordinance under Section 2-8.9, the Art in Public Places (AIPP) Program under Section 2-11.15, the Residents First Training and Employment Program under Section 2-11.17, and the Employ Miami-Dade Program under Implementing Order No. 3-63, Lessee agrees to comply with such applicable programs and provisions as well as any applicable Administrative Orders and other directives issued by the County relating to such programs to the extent such programs, provisions, ordinances, Administrative Orders, and other directives apply as of the date of this Agreement.
- (B) To the extent any other program, provision, ordinance, Administrative Order, or other directive may apply to the Lessee's activities hereunder, either currently or in the future, that are not related to the programs, provisions, ordinances, Administrative Orders, or other directives identified in Article 5.21(A), then, subject to Lessee's contest rights with respect thereto, all of which contest rights Lessee hereby reserves and retains, Lessee shall agree to comply therewith, as they may be amended, enacted, or promulgated from time to time, if and to the extent that Lessee is legally required to do so.

**ARTICLE 6**

**MAINTENANCE AND REPAIR BY LESSEE**

- 6.1 Cleaning: The Lessee shall, at its sole cost and expense or at the sole cost and expense of its sublessees, perform or cause to be performed, services which will at all times keep the Premises and Improvements clean, neat, orderly, sanitary and presentable.
- 6.2 Removal of Trash: The Lessee shall, at its sole cost and expense or at the sole cost and expense of its sublessees, remove or cause to be removed from the Premises and Improvements all trash and refuse which might accumulate and arise from its use hereunder and the business operations of the Lessee under this Agreement. Such trash and refuse shall be stored temporarily and disposed of in a manner reasonably approved by the Department.
- 6.3 Maintenance and Repairs:

(A) The Lessee shall repair and maintain or cause to be repaired and maintained in good condition the Premises and all Improvements or alterations thereto, except for those items for which the County is responsible pursuant to Article 7 (Maintenance by County).

Such repair and maintenance shall include, but not be limited to, all shrubbery, grass, and trees on the Premises, roof, exterior walls, exterior painting, exterior doors, windows, pavement, exterior equipment, exterior appurtenances, replacement of light bulbs, ballasts and tubes in exterior lighting fixtures and the replacement of all broken glass in exterior windows, and shall at all times be based on a standard of care reflecting prudent property management. Maintenance and repairs shall be in quality and class equal to or better than the original work to preserve the Premises and Improvements in good order and condition. The Lessee shall repair or cause to be repaired all damage caused by the Lessee and its employees, agents, independent contractors, patrons, servants or invitees. If Lessee delegates its maintenance and repair obligations to a Property Owners Association or the like, Lessee shall provide Lessor with a copy of the documents relating to such delegation and the standards of performance to be followed.

(B) Prior to or at termination of this Agreement, injury done by the installation or removal of furniture and personal property of the Lessee shall be repaired so as to restore the Premises and Improvements to their original state, subject to normal wear and tear and damage by casualty and Lessee shall be required to quit and surrender up the Premises and Improvements in such good order and condition except for reasonable wear and tear and damage by casualty provided however that such return of the Premises and Improvements under this Article 6.3 shall not relieve the Lessee of its obligations under Article 21.21 below.

(C) Lessee shall be responsible for complying at its cost with any applicable federal, state, or local requirement relating to construction re-certification of any Improvement on the Premises, including, but not limited to, the "40-year recertification" requirement under the current building code, i.e., to the extent then applicable to such Improvements. Even if Lessee chooses not to extend this Agreement beyond its initial Term, Lessee shall be obligated to comply with and complete the 40-year recertification requirement for each Improvement on the Premises at the end of the 39<sup>th</sup> year following DBO.

(D) Lessee shall be responsible for maintaining the Improvements throughout the Term of this Agreement in good condition and repair and in a condition that is consistent with ordinary and prudent commercial practices.

- 6.4 Annual Maintenance Inspection: In addition to other inspections agreed to herein the Lessee agrees that the Consulting Engineer of the Department shall perform an annual survey of the condition of the Improvements to verify compliance with the obligations set forth in Section 6.3 above. The Lessee agrees to perform any maintenance of the Improvements reasonably identified as necessary to keep the Improvements in good order and condition consistent with the obligations set forth in Section 6.3 above.
- 6.5 Excavation of Land: Except in connection with the development and/or redevelopment of the Premises by Lessee and/or its sublessees, no excavation of any of the land shall be made, no soil or earth shall be removed from the Premises, and no well of any nature shall be dug, constructed or drilled on the Premises, except as may be required in connection with the construction of the Improvements, as described in the approved Plans and Specifications, pursuant to Article 5.3 (Design of Improvements) and for environmental

monitoring purposes pursuant to Article 8.2 (Environmental Protection) and for irrigation, if permitted by applicable regulations.

- 6.6 Water and Sewerage System: The Lessee shall, at its sole cost and expense and/or at the expense of any or all of its sublessees, and in accordance with the requirements of the Miami-Dade Water and Sewer Authority Department ("MDWSAD", operate and maintain or cause to be operated and maintained all the components of the water, sanitary sewerage and storm drainage facilities within the boundaries of the Premises and constructed as part of the Improvements. Once constructed, the Lessee shall not make any material alterations or modifications to such facilities without the advance written approval of MDAD AND MDWSAD (such approval not to be unreasonably withheld, delayed or conditioned).
- 6.7 Industrial Waste Facilities: The Lessee shall be fully responsible for all industrial wastes that exit the Premises and Improvements and that Lessee's activities on the Premises generate and in response thereto shall provide, operate and maintain adequate facilities on the Premises for separating, neutralizing and treating industrial waste and foreign materials and the proper disposal thereof, in accordance with applicable laws, rules and regulations.
- 6.8 Inspections: The Department and/or its designated representatives, shall have the right, during normal working hours, to inspect the Premises and Improvements to identify those items of maintenance, repair, replacement, modification and refurbishment reasonably required (a) of the Lessee, pursuant to Section 6.2 above, or (b) of the County, pursuant to Article 7 (Maintenance by County), to keep the Premises and Improvements in good order and condition. The Lessee shall perform all corrective work required of it, identified in such inspection(s) within 30 days of receipt of written notice from the Department or within such longer period of time following that notice as may be reasonable required to complete the corrective work approved in writing by the Department following that notice through the exercise of prompt, diligent and continuous effort. Trash and debris problems shall be corrected within 24 hours following receipt by Lessee's hub manager or representative at the Premises of either oral or written notice from the Department.
- 6.9 Failure to Maintain: If it is reasonably determined by the Department that the Lessee has failed to properly clean, remove trash and refuse, maintain, repair, replace and refurbish the Premises and Improvements as required by this Article 6 (Maintenance and Repair by Lessee), the Department shall provide to the Lessee a written list of deficiencies, and if that failure continues for more than 30 days after the date of Lessee's receipt of written notice of the failure or for more than such longer period of time reasonably approved in writing by the Department following that notice, and provided that Lessee has not registered a good faith objection as to its obligation to do so, the Department following fifteen (15) days further written notice to the Lessee, may enter upon the Premises and Improvements and perform all work, which, in the reasonable judgment of the Department, may be necessary and Lessee shall pay the County for the cost of such work, plus fifteen percent (15%) for administrative costs, and such cost shall be and constitute a part of the rent. Subsequent to receipt of the further notice of intent to perform repairs or cleanup from the Department, the Lessee shall not undertake performance of such repairs or cleanup without specific prior written authorization from the Department.

- 6.10 Lessee Maintenance Subject to Certain Conditions: Such maintenance, repair, refurbishment and replacement by the Lessee may be subject to interruption caused by strikes, lockouts, labor controversies, inability to obtain fuel, power or parts, accidents, breakdowns, catastrophes, national or local emergencies, acts of God, and other conditions beyond the control of the Lessee. Upon any such happening, the Lessor shall have no claim for damages for the Lessee's failure to furnish or to furnish in a timely manner any such maintenance repair, refurbishment and replacement, provided however that the Lessee shall exercise reasonable diligence to remedy and/or cure any such interruptions, to the extent such interruptions are within the Lessee's control.

## ARTICLE 7

### MAINTENANCE BY COUNTY

- 7.1 County Maintenance: The County shall operate and maintain, or cause to be operated and maintained, in good condition all components of the water, sanitary sewerage and storm water drainage facilities that lie outside the boundaries of the Premises. The County shall have no maintenance responsibility within the Premises, except to the extent that such maintenance shall be required due to the negligence or misconduct on the part of the County or its employees, agents or contractors.
- 7.2 County Maintenance Subject to Certain Conditions: Such maintenance by the County may be subject to interruption caused by repairs, strikes, lockouts, labor controversies, inability to obtain, fuel, power or parts, accidents, breakdowns, catastrophes, national or local emergencies, acts of God, and other conditions beyond the control of the County. Upon any such happening, the Lessee shall have no claim for damages for the County's failure to furnish or to furnish in a timely manner any such maintenance; provided, however, that the Department shall provide a rent abatement for that portion of the Premises whose normal use is materially disrupted or that is otherwise rendered unusable for the period of time that the County is unable to make the repairs required by Article 7.1 (County Maintenance). The County shall exercise reasonable diligence to remedy and/or cure any such interruptions, to the extent such interruptions are within the County's control.

## ARTICLE 8

### REGULATIONS, LICENSES AND PERMITS

#### 8.1 Rules and Regulations - General:

- (A) Subject to the provisions of this Lease that confirm that Lessee has no liability for any Environmental Condition(s) existing at the Premises as of the Effective Date of this Lease except for any conditions caused by Lessee, Lessee shall comply with all applicable Ordinances of the County, and all applicable laws, statutes, ordinances, regulations and rules of the Federal, State and County Governments. If however after the execution of this Agreement and before the date on which Lessee commences the construction of the Phase I Improvements, the County enacts or adopts any ordinance, resolution, or regulation that will have the effect of materially increasing the cost of constructing the Improvements, Lessee may terminate this

Agreement by the delivery of written notice to the County within 90 days after the date of newly enacted ordinance, resolution or regulation becomes effective. Lessee shall have no right to monetary compensation of any type resulting from Lessee's termination of the Agreement.

- (B) The Lessee agrees to permit the entry, at all reasonable times, of inspectors of the Department and any other County Department having jurisdiction over the Premises; or any Federal, State, or County agency having jurisdiction over any law or requirement referenced in Article 8.1(A) (Rules and Regulations - General) above, to make inspections of the Premises and Improvements to determine the Lessee's compliance therewith.

(C) Permits and Licenses:

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

- (2) Such permits and licenses shall include, but not be limited to, any required Certificate of Use and/or Certificate of Occupancy, and, to the extent required pursuant to Section 6.7 above, any Industrial Waste or Operating Permits from the County's pertinent regulatory agencies. Prior to use of any facility or Improvement on the Premises, the Lessee shall provide to the Department evidence that it has obtained the Certificate of Use and/or a Certificate of Occupancy and, to the extent required pursuant to Section 6.7 above, Industrial Waste or Operating Permits. Upon written request of the Department, the Lessee shall provide to the Department copies of any permits and licenses, and applications therefor, which the Department may request.

- (D) Violations of Rules and Regulations: Lessee agrees to pay on behalf of the County any penalty, assessment or fine issued against the County, or to defend in the name of the County any claim, assessment or civil action, which may be presented or initiated by any agency or officer of the Federal, State or County governments, based in whole or substantial part upon a claim or allegation that the Lessee, its agents, employees, sub-lessees, contractors, invitees, trespassers or any other party for whom Lessee is responsible at law have, while on the Premises, violated any law, ordinance, regulation, rule or directive described in Article 8.1 (Rules and Regulations - General) above.

8.2 Environmental Protection

(A) [Intentionally Deleted.]

(B) County's Disclosure of Soil and Ground Water Contamination

To the extent that they may exist, County has furnished Lessee with copies of Environmental Records Review documents ("ERR") regarding soil and groundwater contamination at the Premises, which ERR documents are contained in Exhibit "J" to this Agreement. Lessee and the County acknowledge that Environmental Conditions may be present on the Premises as of the Effective Date, and that such conditions may be known or unknown. The County agrees that the remediation of all existing Environmental Conditions, whether or not disclosed in the ERR's, or the "Initial Baseline Audit" (defined below) and whether or not discovered as of the Effective Date, are the sole responsibility of the County. Nothing herein shall be construed to shift to the Lessee any portion of the responsibility for any Environmental Condition present on the Premises as of the Effective Date. The parties recognize the possibility that not all Environmental Conditions existing as of the Effective Date may be set forth in the ERR's, or Initial Baseline Audit, and such existing Environmental Conditions are the sole responsibility of the County notwithstanding any failure to list an existing Environmental Condition in the ERR's, Initial Baseline Audit, or any other environmental report. County has installed and is operating remediation systems to clean up the contamination described in such ERR's. Lessee agrees that during the Term County's authorized representatives shall have the right to enter the Premises in order to operate, maintain, relocate and replace such systems, but not in buildings constructed on the Premises. The County must, however, coordinate with Lessee any entry made on the Premises on the authority of this Article 8.2(B) in order to minimize interference with either the construction of the Improvements or Lessee's conduct of its business activities on the Premises. In particular, if the County has any discretion under Environmental Law as to the location of wells required in connection with the remediation of the Premises, or the method of remediation the County uses, the County shall consult with lessee regarding the locations at which the County's representatives place remediation equipment or install monitoring or other types of wells and the method of remediation the County uses. Without limiting the generality of the foregoing, the County shall have the right, subject to the limitations set forth in this Article 8.2(B) to: (a) install, use, monitor, remove (or, in connection with monitoring wells, abandon in place in accordance with applicable governmental regulations) soil borings, treatment systems, pumps, monitoring wells, and associated equipment; (b) construct, maintain, and ultimately remove various mechanical devices designed to aid in the monitoring and remediating effort, and (c) undertake such related activities as the County or other governmental authorities may require or recommend, utilizing such methods as County or the applicable governmental authorities may elect in order to remediate the contamination described in the ERR's, the baseline audits, and the tenant audits described below (collectively the "Remedial Action"). County shall utilize reasonable efforts to minimize any disturbance or interference with the Lessee's or any sublessee's use of the Premises caused by the Remedial Action, and Lessee

shall use reasonable efforts not to interfere with or obstruct the Remedial Action so long as Lessee's use, development, operations and/or quiet enjoyment of the Premises is not materially affected. County and Lessee each agree to take such action as may be reasonable to coordinate their operations so as to minimize any interference with the other party. If vehicles, equipment, or materials belonging to the Lessee have to be temporarily relocated to permit the Remedial Action to be performed, the Lessee will cause such relocation to occur. If Lessee can accomplish the relocation without materially increasing the cost of conducting its activities on the Premises by using other portions of the Premises not directly affected by the Remedial Action, Lessee may not seek reimbursement from the County for costs Lessee incurs in connection with the relocation. If however Lessee must relocate equipment or materials off the Premises or reconfigure the improvements or the equipment Lessee installs within the improvements as a result of Remedial Action that differs significantly from that described in Exhibit "J" or that County conducts at locations other than those depicted on the sketch attached as part of Exhibit "J", the County shall be responsible for the costs reasonably associated with the relocation and the design and implementation of the reconfiguration. If, at any time, there is discovered the need for Remedial Action for which the County bears responsibility under this Section 8.2, the County shall promptly undertake such Remedial Action. If Remedial Action equipment or materials need to be temporarily stored in a secure location on the Premises, the parties will cooperate in identifying reasonable storage locations at no cost to Lessee. The Lessee will provide the County with water and electrical service in connection with the Remedial Action. Within 30 days after the County's receipt of Lessee's invoices, the County shall reimburse Lessee for the cost of the water and electrical power consumed during the Remedial Action as calculated on the basis of the rates the local utility service providers charge Lessee. Lessee may install submeters at the County's expense for the purpose of measuring the County's water and electrical power consumption. The Lessee acknowledges that, subject to the limitations set forth in this Article 8.2(B), the Remedial Action may be conducted at the locations depicted on the site sketch attached to Exhibit "J" at any time during the Term and may continue until such time as a no-further-action letter or the equivalent is obtained from the appropriate regulatory authorities. Lessee expressly waives any right to recover from the County any damages, including direct, indirect, economic or consequential damages, which it may sustain or incur as a result of the County's performance of the Remedial Action. The foregoing waiver does not apply to actual damages that Lessee sustains as a direct result of the County's breach of this Article 8.2(B), if County fails to rectify the breach within a reasonable time following Lessee's delivery of written notice of the breach to the County. To the extent the County's or its agents', employees' or contractors' actions required or provided under this Article, interfere with Lessee's construction or operation hereunder, at Lessee's election, this Agreement and all Lessee's obligations hereunder, including, but not limited to payment of Rent and other charges, shall be equitably abated to the extent of such interference during the period of such interference, and the Term shall be extended for the number of days that such abatement shall remain in effect. Lessee shall use reasonable efforts to conduct its construction activities to minimize the number of days to be abated.

Should the County fail to timely take the Remedial Action required under this Section 8.2, Lessee may do so, at Lessee's option. In such event Lessee shall be entitled to be fully reimbursed by the County for the full cost of such Remedial Action and Lessor shall promptly reimburse Lessee for same. Should the County fail to reimburse Lessee promptly following demand for same, Lessee may take a credit in the amount due it against the amounts next due Lessor under this Lease until fully reimbursed for the full cost of the Remedial Action.

(C) Baseline and Tenant Audits

County has engaged or will engage, at its sole cost and expense, a consultant to conduct an environmental audit of the Premises, which audit conforms to the standards set forth in ASTM E 1527-05 and may also include analyses of representative soil and groundwater samples that are not the subject of the CARs and RAPs (the initial Baseline Audit). The County has furnished (or will furnish within 60 days following the date of this Lease) Lessee with a copy of the initial Baseline Audit. Lessee may terminate this Lease in its entirety or as to the affected portion of the Premises within thirty (30) days of receipt of the initial Baseline Audit if Lessee, in its sole discretion, determines that the Environmental Conditions disclosed are unacceptable. In the event of a partial termination, there shall be an equitable reduction in the rent payable hereunder. The County shall promptly remove any underground storage tanks disclosed by the Baseline Audits and promptly remediate to the extent required by law Hazardous Materials associated with any such underground storage tanks. At the County's option, Lessee shall perform such removal and remediation work and the County shall promptly reimburse Lessee for all reasonable costs and expenses incurred in so doing. The County shall be responsible for the prompt remediation of any other Recognized Environmental Conditions disclosed by the Baseline Audit; however, the Baseline Audit in no way limits the County's responsibility for undisclosed and/or undiscovered Environmental Conditions existing as of the Effective Date of this Lease. If a failure or delay in remediating any Recognized Environmental Condition will preclude Lessee from obtaining a Certificate of Occupancy or any other permit or license that Lessee must obtain in order to be able to undertake the construction of the improvements or to lawfully occupy the improvements, the County shall conduct and complete Remedial Action with respect to that Recognized Environmental Condition to the greatest extent practicable within a time that is sufficient to enable Lessee to proceed with its construction of the Improvements in accordance with the construction schedule Lessee furnishes to the County in accordance with Article 5.5.

- (1) Lessee shall have the right, at its sole cost and expense, to conduct at any time during the Term of this Lease an environmental inspection of the Premises (the initial "Tenant Audit") through an independent environmental consultant approved in writing by County, such approval not to be unreasonably withheld or delayed. Lessee shall furnish County a copy of the initial Tenant Audit immediately following its completion. The purpose of the Tenant Audit is to determine whether there are present on the Premises any Recognized Environmental Conditions within the meaning of



ASTM E 1527-05, and to delineate the vertical and horizontal extent of any soil or ground water contamination not identified in the ERR's or the Baseline Audits. Within 30 days of receipt of a Tenant Audit, County shall notify Lessee if it disputes the Recognized Environmental Conditions or the delineation of subsurface conditions delineated in the Tenant Audit. Any such dispute shall be resolved by the Airports Section of the Miami-Dade County PERA, which resolution shall be binding on the parties. If the Tenant Audit reveals any Recognized Environmental Conditions or delineates any subsurface contamination not disclosed in the ERR's or Baseline Audits, then the County shall be responsible for the Recognized Environmental Conditions and subsurface contamination to the same extent as the County is responsible for the Recognized Environmental Conditions and subsurface contamination disclosed in the ERR's and the Baseline Audits. Lessee may terminate this Agreement in whole or as to only designated portion(s) of the Premises within 30 days of the delivery of the Tenant Audit to the County if the Tenant Audit discloses Recognized Environmental Conditions or delineates subsurface contamination not previously disclosed in the ERR's, or Baseline Audits. Lessee's failure to give such termination notice within the specified time period shall constitute a waiver of Lessee's rights to terminate its obligations under this Agreement and a waiver of any claim it may have against the County with respect to Recognized Environmental Conditions and subsurface contamination disclosed in such Tenant Audit, except as otherwise provided in this Article or disclosed in the Tenant Audit. For avoidance of doubt, it is understood and agreed that Lessee's failure (or election not) to so terminate shall not absolve the County of its remediation obligations as otherwise required under this Article 8.2.

- (2) If, at any time during the Term of this Lease, whether during the construction or rehabilitation of the Improvements on the Premises, or otherwise, Lessee encounters contaminated media containing Hazardous Materials, Lessee shall make commercially reasonable efforts to segregate such contaminated media so that construction may proceed without delay. Lessee shall promptly provide the County with (i) statement of the facts that have caused Lessee to suspect that the material is contaminated, (ii) information regarding its location and the manner in which is being stored, and (iii) the volume of material thought to be contaminated. Within a reasonable time following the receipt of such notice, the County shall arrange for characterization of the contaminated media so identified. If the County determines that such materials may not be lawfully re-used on site, the County shall arrange for the disposal of such contaminated media as its sole cost and expense within a reasonable time following receipt of its characterization analysis. The County shall not be responsible for the characterization, storage, transportation or disposal costs of any materials that may lawfully be left on the Premises. If, within a reasonable time following notice from the Lessee of the discovery of suspected contaminated media, County fails to notify Lessee that it has arranged for the characterization of the contaminated soils and any subsequent storage,

transportation and disposal that may be required, County shall reimburse Lessee for its Costs in segregating, characterizing, storing, transporting and disposing of those suspected contaminated media determined not to be appropriate for re-use on site. Lessee must obtain two bids from qualified contractors approved by the County for such work. The County shall reimburse Lessee within 45 days of receipt of paid invoices from such approved contractors. County's liability to Lessee hereunder is subject to the cap on liability to Lessee as set forth in Article 8.2(L).

(D) Acceptance of Property and Covenant to Surrender

Except as provided in Article 2 and in this Article 8.2 the County makes no covenant, representation, or warranty as to the suitability of the Premises for any purpose whatsoever or as to the physical condition thereof. Except as provided in Article 2 and in this Article 8.2, Lessee accepts the Premises as being in satisfactory condition and repair and accepts all buildings and other improvements in their present condition. Lessee agrees to surrender the Premises to County on the last day of the Term in good and sanitary order, condition and repair, except for: (a) such wear and tear as would be normal for the period of the Lessee's occupancy and damage by fire or other casualty, subject to Lessee's obligations to remove damaged Improvements pursuant to Article 21.21 below; (b) the Environmental Conditions that are the subject of the Remedial Action described in Article 8.2; (c) the Recognized Environmental Conditions that are disclosed either by any CARs, or by the Baseline Audit, or by any Tenant Audits conducted under this Article 8.2 or by the construction of the Improvements, (d) any Environmental Condition that originated from an off-site discharge, disposal, or release by a party other than Lessee or any of its employees, agents, or contractors, and (e) any Environmental Condition that resulted from a discharge, disposal, or release by the County or any of its employees, agents or contractors, or that existed on the Premises on the Effective Date. Lessee shall be responsible for all Tenant Contamination, as defined in Article 14.5.

- (E) Maintenance of the Premises: Except for obligations of the County under this Section 8.2, Lessee shall, at its sole cost and expense and/or at the cost and expense of any or all of its sublessees, keep, maintain, use and operate (or cause same to be done) the Premises at all times in material compliance with all applicable Environmental Laws. The Lessee warrants that it will secure or cause to be secured at the required time or times all permits or approvals that are required, and shall maintain or cause to be maintained the Premises in good and sanitary order, condition and repair. As part of this maintenance obligation, Lessee shall promptly respond to and clean-up or cause its sublessee(s) to respond to and clean up any release or threatened release of any Hazardous Material into the drainage systems, soil, surface water, groundwater, or atmosphere, (i.e., other than those required to be remediated by the County as otherwise provided by this Section 8.2) in a safe manner, in accordance with Environmental Law, and as authorized or approved by all federal, state and/or local agencies having authority to regulate the permitting, handling, and clean-up of Hazardous Materials. In making the foregoing covenants, Lessee specifically acknowledges its agreement to be liable for or to

cause any or all of its sublessees to be liable for, and its and/or its sublessee(s)' responsibility to take such actions as may be required by Environmental Laws (including assessment and remediation) for, any Recognized Environmental Condition(s) and Hazardous Materials on the Premises (i) not revealed by the Remedial Action, as defined in section 8.2(B), any CARs, any Baseline Audit, or any Tenant Audit; (ii) intentionally deleted; (iii) not resulting from an off-site discharge, disposal, or release by a party other than Lessee, its employees, agents, or contractors; (iv) not resulting from a discharge, disposal, or release by the County or any of its employees, agents, or contractors, and (v) not existing on the Premises as of the Effective Date. Except as expressly provided below, Lessee, however, will not be liable for, and will have no responsibility to take any action with respect to, any of the matters or conditions referred to in Clauses (a) through (e) of Article 8.2(D) above, including but not limited to any Environmental Condition or Hazardous Materials that originated from an off-site discharge, disposal or release by a party other than Lessee or any of its employees, agents or contractors, notwithstanding the fact that the presence of that Environmental Condition or those Hazardous Materials on, about, or beneath the surface of the Premises was accelerated by virtue of, or resulted from, the construction of the Improvements. The limitation set forth in the preceding sentence will not apply to the extent that the presence of the Environmental Condition or the Hazardous Materials on, about, or beneath the surface of the Premises is attributable to Lessee's failure to comply with all requirements of any de-watering permit that an appropriate regulatory authority issues in connection with the construction of the Improvements. In making the foregoing covenant and the covenants set forth in Article 14.5, Lessee agrees to take or cause to be taken all actions at its sole cost and expense and/or at the expense of one or more of its sublessees as are necessary to return the Premises and any other affected soil or groundwater to their condition existing immediately prior to the commencement of this Agreement, subject, however, to the provisions of Section 8.2(D) above.

- (F) Use of Hazardous Materials Shall be in Compliance With All Applicable Law: Except for those Hazardous Materials that Lessee or its sublessees may lawfully use during the regular course of its/their business, Lessee shall not use, store, generate, treat, transport, or dispose of any Hazardous Material on the Premises without first obtaining County's written approval it being expressly understood and agreed (x) that such approval shall not be unreasonably withheld or conditioned and shall be deemed granted unless written notice to the contrary setting forth the County's reasonable grounds for disapproval shall be delivered to Lessee within ten (10) days of Lessee's request for approval, and (y) that such approval shall not be required as relates to typical building materials, paints, cleaning supplies, insecticides in small quantities and other items carried in inventory of Lessee's sublessee in accordance with applicable Environmental Laws. Lessee shall notify County and seek such approval in writing at least thirty (30) days prior to bringing any previously unapproved Hazardous Material onto the Premises (provided, however, that this notice requirement shall not apply to items referred to in clause [y] of the immediately preceding sentence (the "Permissible Items"). County may withdraw approval of any such Hazardous Material (other than the Permissible Items) at any time, for reasonable cause related to the threat of site

contamination or damage or injury to persons, property or resources on or near the Premises. Upon withdrawal of such approval, Lessee shall immediately remove the proscribed Hazardous Material from the Premises. County's written approval of, or failure to approve the use of a Hazardous Material under this Agreement shall not limit or affect Lessee's obligations under this Lease, including Lessee's duty: (i) to remedy or remove releases or threatened releases caused by Lessee or its agents or employees; (ii) to comply with Agreement relating to the use, storage, generation, treatment, transportation, and/or disposal of any such Hazardous Materials; and (iii) to indemnify County against any harm or damage caused thereby.

- (G) Environmental Audits: If County shall have reason to believe that Hazardous Materials (other than the Permissible Items) have been discharged on the Property by Lessee or its agents or employees or sublessees, by reason of the occurrence of a release of Hazardous Materials or receipt by Lessee or County of any Environmental claim (as defined in Article 8.2(N)(1)), then County shall have the right, in its sole discretion, to require Lessee to perform to County's reasonable satisfaction, an environmental audit and, if deemed necessary by County, a contamination assessment of any areas of suspected disposal or release of Hazardous Material. Such audit and/or risk assessment must be by an environmental consultant reasonably satisfactory to County. Should Lessee fail to perform any such environmental audit or assessment within thirty (30) days after County's request subject to delays resulting from Force Majeure events, County shall have the right to retain an environmental consultant to perform such environmental audit or assessment. Subject to the limitation set forth below, all costs and expenses incurred by County in the exercise of such rights shall be payable by Lessee within 30 days after the County's demand. Lessee will not be responsible for the cost of such audit or assessment unless the audit or assessment reveals that a breach of any of Lessee's obligations under the terms of this Article 8 that was not revealed by a prior audit or assessment has occurred, in which case Lessee shall pay the full cost of the audit or assessment. The County shall pay any costs associated with an audit or assessment that Lessee is not required to pay in accordance with the foregoing.
- (H) Reports to County: For any year in which any Hazardous Materials (other than the Permissible Items) have been used, generated, treated, stored, transported or otherwise been present on or in the Premises pursuant to the provisions and subject to the limitations of this Article 8, Lessee shall provide County with a written report listing (i) the Hazardous Materials that were present on the Premises other than Hazardous Materials that Lessee has lawfully used during the regular course of its business; (ii) all releases of Hazardous Materials that occurred or were discovered on the Premises; (iii) all compliance activities related to such Hazardous Materials, including all contacts with government agencies or private parties of any kind concerning Hazardous Materials; and (iv) all manifests, business plans, consent agreements or other documents relating to Hazardous Materials executed or requested during that time period. The report shall include copies of all documents and correspondence between Lessee and any governmental authority or any party making an Environmental claim that relate to such activities and a written summary

of the terms of oral contracts relating thereto. The report need not list documents relating to Hazardous Materials that Lessee or any sublessee(s) lawfully uses in the ordinary course of its business. The provisions of this Section 8.2(H) shall not apply to any hazardous materials for which the County is responsible as set forth in Section 8.2 of this Lease.

- (I) Entry by County: Lessee shall permit County and its agents to enter into and upon the Premises upon reasonable prior notice to Lessee, at all reasonable times for the purpose of inspecting the Premises and all activities thereon, including activities involving Hazardous Materials, to determine the extent of Lessee's compliance with the requirements set forth in this Article 8. Such right of entry and inspection shall not constitute managerial or operation control by County over activities or operations conducted on the Premises by Lessee.
- (J) Notice of Discharge to County: In the event that Lessee shall become aware of or receive any notice of (a) the happening of any material event involving the spill, release, leak, seepage, discharge, or clean-up of any Hazardous Material on the premises in connection with Lessee's operation thereon and in violation of applicable Environmental Laws; or (b) any Environmental Claim resulting from Lessee's use of the Premises, then Lessee shall immediately notify County orally within twenty-four (24) hours and in writing within three (3) business days of said notice. If the County, acting reasonably, determines that Lessee is not promptly commencing the response to either of such events, then County shall have the right but not the obligation after reasonable notice to Lessee and, if applicable, to sublessees to enter onto the Premises or to take such other actions as it shall deem reasonably necessary or advisable to clean up, remove, resolve or minimize the impact of or otherwise deal with any such Hazardous Material or Environmental Claim following receipt of any notice from any person or any entity having jurisdiction asserting the existence of any Hazardous Material or an Environmental Claim pertaining to the Premises or any part thereof, which if true, could result in an order, suit or other action against the county; provided, however, that Lessee shall first be given a reasonable opportunity (i) to take or cause to be taken such actions as Lessee shall deem necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with any such Hazardous Material or Environmental Claim to the satisfaction of the applicable environmental agency or complainant, or (ii) to protest such notice or proposed action required thereunder in accordance with such procedures established by applicable Environmental Laws, provided such procedures allow for suspension of such proposed action pending determination of such protest. If Lessee is unable to resolve such action in a manner that results in no liability on the part of County, all reasonable costs and expenses incurred by County in the exercise of any such rights shall be secured by this Lease and shall be payable by Lessee within 30 days after County's demand. Notwithstanding anything in this Section 8.2(J) to the contrary, it is the clear and absolute understanding of the parties that any Hazardous Material Release not caused by the acts of Lessee, its sub-lessees, agents, employees, contractors or invitees, including without limitation any Hazardous Materials Release attributable in whole or in part to the actions of third parties, shall be deemed to be, as between Lessee and Lessor, the responsibility of the County. Lessee's responsibility for

remediation under this Section 8.2(J) shall be limited to the actions necessary for compliance with existing Environmental Requirements not related to contamination for which the County is responsible under Section 8.2 of this Lease. If Lessee is permitted to leave any Hazardous Material in place under existing Environmental Requirements, or to employ other alternative response actions, Lessee shall have the option of so doing.

- (K) Agency or Third Party Action: Without limiting its obligations under any other paragraph of this Agreement, Lessee shall be solely and completely responsible (subject to any rights to reimbursement which Lessee may have under any of its subleases or otherwise) for responding to and complying with (or causing to be responding to and complying with) any administrative notice, order, request or demand, or any third party claim or demand relating to potential or actual contamination of the Premises alleged to arise out of Lessee's operations. The responsibility conferred under this Article 8.2(K) includes but is not limited to responding to such orders on behalf of County and defending against any assertion of County's financial responsibility or individual duty to perform under such orders relating to contamination on the Premises alleged to arise out of Lessee's or its sublessee(s)' operations. In accordance with, and subject to the limitations set forth in, the Indemnity provisions set forth in Article 8.2(L), Lessee shall assume or cause to be assumed, any liabilities or responsibilities that are assessed against County in any action described under this Article 8.2(K). The provisions of this Section 8.2(K) shall not apply to any Hazardous Materials for which the County is responsible under Section 8.2 of this Lease.

(L) Indemnity:

- (1) Lessee hereby indemnifies, defends and holds harmless County from and against any suits, actions, legal or administrative proceedings, demands, claims, liabilities, fines, penalties, losses (including diminution of the value of the Premises), injuries, damages, expenses or costs, including, without limitation, interest and reasonable attorneys' and paralegals' fees for attorneys of County's choice, costs of investigation and/or remediation, costs of defense (direct and on appeal), settlement or judgment (a) that may be paid, incurred or suffered by, or claimed or asserted under any Environmental Law by any person or entity or governmental department or agency against, County for, with respect to, or as a direct or indirect result of, the presence on or under the Premises, or the transportation, handling, management, storage, spill, escape, seepage, leakage, spillage, discharge, emission, or release to or from the Premises of, any Hazardous Material, that is in any way connected with any death or injury to any person, any destruction or damage to any property, or any potential or actual impacts on, contamination of, or adverse effects in, the environment, and (ii) that is occasioned by (1) Lessee's breach of any term or provisions of this Agreement, or (b) Lessee's negligent or intentional activities before, during or after Lessee's occupancy of the Premises or (c) Lessee's violation of any Environmental Law. County hereby indemnifies, defends and holds Lessee harmless from and against any suits, actions, legal or administrative

proceedings, demands, claims, liabilities, fines, penalties, losses (including diminution of the value of the Premises), injuries, damages, expenses or costs, including without limitation, interest and reasonable attorneys' and paralegals' fees for attorneys of Lessee's choice, costs of investigation and/or remediation, costs of defense (direct and on appeal), settlement or judgment, that may be paid, incurred or suffered by, or claimed or asserted under any Environmental Law by any person or entity (excluding Lessee, Lessee's agents, employees, assigns, and successors) or governmental department or agency against Lessee for, with respect to, or as a direct or indirect result of, the presence on or under the Premises of, or the transportation, handling, management, storage, spill, escape, seepage, leakage, spillage, discharge, emission or release to or from the Premises of, any Hazardous Material that is in any way connected with any death or injury to any person, any destruction or damage to any property, or any potential or actual impacts on, contamination of, or adverse effects on, the environment, that the County or any of its employees, authorized representatives or contractors spilled, discharged or released after the Effective Date of this Lease Agreement, or that existed on the Premises on the Effective Date of this Lease Agreement, or that migrates onto the Premises from an off-site source.

- (2) The foregoing indemnity specifically includes the direct obligation of the indemnifying party to perform, at its sole cost and expense, any remedial or other activities required, ordered, recommended or requested by any agency or government official, or otherwise necessary to avoid or minimize injury or liability to any person, or to prevent the spread or pollution, however it came to be located thereon (hereinafter, the "Remedial Work"). The indemnifying party shall perform all such work in its own name in accordance with Environmental Law.
- (3) Without waiving its rights hereunder, the indemnified party may, at its option, perform remedial work as described in Article 8.2(L)(2) above if the indemnifying party fails (i) to perform the Remedial Work and that failure continues for more than 30 days after the receipt of written notice of the default or for more than such longer period of time as may be reasonably required to rectify the default through the exercise of prompt, diligent and continuous effort, and (ii) to contest such remedial work. After performing Remedial Work, the indemnified party is entitled to reimbursement for the costs thereof from the indemnifying party. Lessee shall permit County access to the Premises to perform such remedial activities.
- (4) Whenever the indemnified party has incurred costs described in this Article 8.2(L) on account of the other party's failure to perform hereunder, the indemnifying party shall, within sixty (60) days of receipt of notice thereof, reimburse the indemnified party for all such reasonable expenses together with interest from the date of expenditure at the "applicable federal rate" established by the Internal Revenue Service.

- (5) If a failure or delay in remediating (i) any Recognized Environmental Condition disclosed in the CARs, the RAPs, or the Baseline Audit, or (ii) any Recognized Environmental Condition or subsurface contamination disclosed in the Tenant Audit following the resolution in accordance with the procedure set forth in Article 8.2(C)(1) of any dispute regarding the Recognized Environmental Conditions and subsurface contamination delineated in the Tenant Audit, or in characterizing any suspected contaminated media that Lessee encounters at any time or in storing, transporting or disposing of that media, once characterized as contaminated, will preclude Lessee from obtaining a Certificate of Occupancy or any other permit or license that Lessee must obtain in order to be able to undertake the construction of the Phase I Improvements and Phase II Improvements, if applicable, or to lawfully occupy the Improvements, if applicable, the County shall conduct and complete Remedial Action with respect to those Recognized Environmental Conditions, subsurface contamination or contaminated media to the greatest extent practicable within a time that is sufficient to enable Lessee to proceed with its construction of the Improvements in accordance with the construction schedule Lessee furnishes to the County in accordance with Article 5.5.
- (M) Survivability of Terms: The terms and conditions of the Environmental Indemnification described in Article 8.2(L) shall survive the expiration of the Term or the earlier termination of this Agreement.
- (N) Definitions
- (1) "Environmental Claim" means (i) any investigative, enforcement, cleanup, removal, containment, remedial or other private or governmental or regulatory action at any time threatened, instituted or completed pursuant to any applicable Environmental Law against Lessee or against or with respect to the Premises or any condition, use or activity on the Premises (including any such action against the County); and (ii) any claim that any person threatens or makes at any time against Lessee or against the Premises (including any such claim against the County), and that relates to damage, contribution, cost recovery, compensation, loss or injury resulting from or in any way arising in connection with any Hazardous Material on the Premises or the application of any Environmental Law to activities on the Premises.
- (2) "Hazardous Material" means any substance, whether solid, liquid or gaseous, that is listed, defined or regulated as a "hazardous substance," "hazardous waste," "solid waste," or pesticide, or is otherwise classified as hazardous or toxic, in or pursuant to any Environmental Law; or that is or contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or motor fuel or any petroleum hydrocarbons; or that causes or poses a threat to cause a contamination or nuisance on the Premises or any adjacent property or a hazard to the environment or to the health or safety of persons on the



Premises. Hazardous Materials shall not be deemed to include building materials, paints, insecticides in small amounts, or other inventory items carried by Lessee or its sublessee, provided same are stored and handled in accordance with Environmental Laws.

- (3) "Environmental Condition" means (a) any violations of any Environmental Law with respect to any Hazardous Material present, or any environmental activity conducted or permitted, at the Premises; (b) any liability that may attach to an owner or operator of the Premises in connection with any Hazardous Material or environmental activity; or (c) any imminent and substantial endangerment to the health or safety of occupants of the Premises arising from any Hazardous Material present or environmental condition described in (a) or (b) above.
- (4) "Environmental Law" federal, state or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree, or rule of common law, and any judicial or agency interpretation of any of the foregoing, that pertains to any Hazardous Material, or the environment (including, but not limited to, ground or air or water or noise pollution or contamination, and underground or above ground tanks) and shall include, without limitation, the Solid Waste Disposal Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq. ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act, 41 U.S.C. § 300f et seq.; the Florida Resource Recovery and Management Act, the Water Control Assurance Act of 1983, the Florida Resource Conservation and Recovery Act, the Florida Air and Water Pollution Control Act, the Florida Safe Drinking Water Act, the Pollution Spill Prevention and Control Act as any of the foregoing now exist or may be changed or amended to come into effect in the future.
- (5) "On" or "on", when used with respect to the Premises or any property adjacent to the Premises, means "on, in, under, above or about."
- (6) "Recognized Environmental Conditions" shall have the same meaning as set forth in ASTM E 1527-05, as may be updated from time-to-time.
- (7) "Discovery Period" means any of the six-month periods that begin on the dates on which Tenant causes construction of Improvements to be commenced.

- (O) Lessee's Obligations: At all times during the Term, the Lessee shall comply with the following:
- (1) Disposal of Wastes: The Lessee shall dispose or cause its sublessees to dispose all industrial, domestic, hazardous, and solid wastes that are generated in connection with Lessee's activities on the Premises in accordance with applicable Federal, State and County laws, rules and regulations, it being the responsibility of the Lessee to determine the approved method of disposal of its wastes and take action accordingly.
  - (2) Intentionally Deleted.
  - (3) Records: The Lessee shall maintain such records as are reasonably necessary to adequately assess environmental compliance in accordance with Federal, State and County laws, rules and Regulations.
- (P) Lessee Performance of Remedial Action: Upon request of the County, Lessee shall perform any remedial actions that are required to be performed by the County hereunder ("Lessee Remedial Actions"). The County is willing to permit Lessee to recover the costs Lessee reasonably incurs in connection with the Lessee Remedial Actions by means of a rental credit against the land rent payable by virtue of Article 4 hereof. Lessee shall proceed to perform the Lessee Remedial Actions, in accordance with the procedures set forth by the Department from time to time and a remedial action plan agreed upon between the Lessee and the County. The Lessee's agreement to perform the Lessee Remedial Actions shall in no way abridge any of Lessee's rights or the County's responsibilities under this Lease with respect to environmental matters unless Lessee's is negligent in the performance of the Lessee Remedial Actions. Within ninety (90) days after the completion of the Lessee Remedial Actions, Lessee shall submit to the Department a certified accounting of the monies actually expended in the performance of the Lessee Remedial Actions in accordance with the requirements of this Section, which accounting will be prepared by an independent certified public accounting firm that the Department approves in advance (the "Auditor"). The Department may not unreasonably withhold, delay or condition that approval. In order for a project cost that Lessee incurs to be eligible for reimbursement by means of land rent credits, Lessee must document for the Auditor that it expended the monies and that the project cost is true, correct and eligible for reimbursement in accordance with the terms of this Section. Eligible project costs include (i) costs for project management, including, without limitation, a reasonable project management fee, (ii) consultant and engineering costs, (iii) costs of materials, labor, supervision and other goods and services used in the performance of the Lessee Remedial Actions in accordance with the approved plan and any changes to the plan that Lessee requests and the Department approves, (iv) the cost of the certification the Auditor performs, (v) the amount of any increase in any financing fee or other associated expenses (including, without limitation, attorneys' fees) that Lessee pays in connection with its construction or permanent financing for the Improvements that becomes necessary by reason of the enlargement of the scope of that project to include the Lessee Remedial Actions, and (vii) interest accruing with respect to the

each of the foregoing eligible project costs from the date expended through the date on which performance of the Lessee Remedial Actions is completed at a rate equal to the greater of (a) the rate of interest then in effect under Lessee's leasehold mortgage loan(s), if any or (b) the rate of seven percent (7%) per annum.

Beginning on the next date on which land rent is payable under the terms of Article 4 of the Agreement and that is at least 30 days after the date of the delivery to the County of the Auditor's cost certification report and on each of the ensuing monthly rent payment dates, Lessee will be entitled to a credit against the land rent payable on each such date in an amount equal to the amount that would be required to fully amortize in equal monthly installments the aggregate amount of the eligible project costs reflected in the Auditor's audit report, together with interest accruing on a declining balance basis at a rate equal to the greater of (a) the rate of interest then in effect under Lessee's leasehold mortgage loan(s), if any or (b) the rate of nine percent (9%) per annum, provided, however, that any balance then remaining as of the expiration or termination of this Lease shall be promptly remitted to Lessee in cash and in full.

- Q. For avoidance of doubt, it is expressly understood and agreed, anything in this Agreement to the contrary notwithstanding, that the County shall be responsible for all environmental remediation and site cleanup of Environmental Conditions existing on the Premises now or in the future unless same can be shown to have been caused by Lessee or its sub-lessees, as contemplated in this Section 8.2. Further, in the event that the County shall delay the development and construction activities of Lessee by virtue of delays in its remediation activities, any damages suffered by Lessee shall be paid to Lessee by the County and Lessee shall be entitled to a credit against the Rent due hereunder in respect of same if not promptly paid by the County.
- R. Anything in this Article 8.2 to the contrary notwithstanding, it is understood and agreed as follows:
- (i) the County shall not be required to remediate any Environmental Condition to the extent that same is not required to be remediated under Federal, state, or local law; and
  - (ii) routine "de-watering" of the kind typically undertaken as a part of the normal construction of commercial buildings similar to those proposed to be constructed on the Premises as contemplated in this Lease shall not be deemed an Environmental Condition as to which the County shall be required to take Remedial Action; and
  - (iii) prior approval of the County (such approval not to be unreasonably withheld, delayed or conditioned) shall be required with respect to any Remedial Actions and/or other actions undertaken by Lessee for which the County shall be required to reimburse Lessee pursuant to the provisions of this Article 8.2; and

- (iv) should any Remedial Actions have the effect of delaying substantial completion of any of the Improvements, the Construction Deadline for such delayed Improvement(s) shall be correspondingly extended.

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

## ARTICLE 9

### ALTERATION OF PREMISES AND ERECTION OF SIGNS

9.1 Alteration: After construction of the Improvements pursuant to Article 5 hereof, neither the Lessee nor any sublessee shall substantially alter the exterior of the Improvements in any material manner whatsoever without the prior written approval of the Department, such approval not to be unreasonably withheld or conditioned, and such approval shall be deemed granted unless written notice to the contrary is provided by MDAD setting forth MDAD's reasonable grounds for disapproval and delivered to Lessee within fifteen (15) business days of Lessee's request for approval. In the event the Lessee or any sublessee is given approval to make alterations to the Premises and Improvements, the Lessee or such sublessee shall comply in all material respects with the terms and conditions of such approval, as contained in the Department's approval letter, and a failure to do so following applicable notice and grace periods shall constitute a default pursuant to Article 14.3 (Other Defaults) hereof.

9.2 Signage: The design and installing of all identifying signs (including monument, pylon and entry feature signage) or any advertising matter, of any type or kind which is visible to the public on the exterior of the Premises and Improvements shall be the responsibility of the Lessee subject to the County's prior written approval, such approval not to be unreasonably withheld or conditioned and shall be deemed granted unless written notice to the contrary setting forth the County's reasonable grounds for disapproval shall be delivered to Lessee within fifteen (15) business days of Lessee's request for approval.

The County, in its capacity as Lessor hereunder, may only object to standard signs, logos, trade dress and the like of any and all national retailers with whom Lessee shall enter into

any sublease agreements and all other customary signage commonly allowed in other first class shopping centers in Miami-Dade County, Florida, on the grounds that the height, lighting, or visual features of such signage presents a reasonable danger to aircraft or is in support of or is reference to a use of the Premises that is prohibited herein. Nothing contained in the foregoing shall preclude the FAA from denying Lessee's requests for signage installations that conflict with FAA's determinations on grounds of safety or other grounds within the FAA's jurisdiction, nor be deemed to divest or limit the authority of the County's building department to enforce the requirements of the County's sign codes as relates to the matters referred to in the preceding sentence.

- 9.3 Removal: Any alterations pursuant to Section 9.1 above constructed or installed by the Lessee or its sublessees at its and/or their sole expense, including signage, and telecommunications equipment, that can be removed from the Premises and Improvements without materially damaging, altering, or altering the use of the Premises and Improvements and is not otherwise expressly required hereunder to remain on the Premises shall be considered the personal property of the Lessee or such sublessee(s) and may be removed by the Lessee or such sublessee(s) at any time during the Term. All other such improvements shall become a part of the Premises and Improvements and shall become the property of the County upon expiration of the Term or the earlier termination of this Agreement.

## ARTICLE 10

### ASSIGNMENT AND SUBLETTING

#### 10.1 Right to Assign and Sublet:

- (A) Reserved.
- (B) County Consent Required; Exceptions:

(1) Except as otherwise expressly provided in this Article 10, including as provided in Article 10.1 (C) below and Article 10.2, Lessee may not assign, transfer, mortgage, hypothecate, encumber or otherwise convey an interest in this Lease (each of the foregoing being hereinafter sometimes referred to as an "Assignment"), or sublet any portion of the Premises and Improvements, or permit their use by others, without the County's prior written consent, which consent shall not be unreasonably withheld or conditioned. The Lessee, however, may make Permitted Subleases and Permitted Assignments without County consent in the manner set forth in this Article 10.1. The conditions under which a Permitted Assignment may be made may require Lessee's payment of a Transfer Fee are provided in Article 10.1(B)(2). The County's failure either to consent to the proposed Assignment or sublease or to furnish Lessee with written notice setting forth the grounds for the County's denial of such consent (which grounds may not be unreasonable, arbitrary or capricious) within fifteen (15) business days after the County's receipt of Lessee's written request for such consent will constitute the County's consent to the proposed Assignment or sublease. Additionally, the County may not withhold or delay that consent if the proposed assignee or sublessee satisfies the criteria set forth in Article 10.2(C)(4).

(2) Transfer Fee:

(a) Statement of Intent: It is the desire of Lessor to participate monetarily to a reasonable degree by receiving a fee calculated as noted below (a "Transfer Fee") in connection with any transfer of Lessee's interests in this Agreement (other than those transfers as to which Lessor has agreed [as set forth below] that no Transfer Fee, or only a partial or reduced Transfer Fee shall be payable) or in connection with any transaction (other than those transactions as to which Lessor has agreed [as set forth below] that no Transfer Fee, or only a partial or reduced Transfer Fee shall be payable) of Lessee or a member or owner of Lessee resulting in a financial gain to Lessee or to such member or owner in which the value of the leasehold interest is a significant component of the transaction. Accordingly, except as otherwise provided herein:

(1) Where Lessee itself or any member or owner transfers in whole or in part any interest they may have in the Lease or in Lessee to another party for a monetary or non-monetary consideration of determinable value; or

(2) Where Lessee or a member or owner of Lessee engages in a transaction (other than an "Exempt Transaction" [defined below]) wherein a monetary or non-monetary consideration of determinable value is received by the transferring party or its principals because of the value of their interest in this Agreement; or

(3) Where Lessee engages in a transaction under which Lessee as a limited liability company transfers its interest to an existing or newly-formed corporation, partnership, joint venture, or other form of company which holds the leasehold rights hereunder in whole or in part and in which a monetary or non-monetary consideration of determinable value is received; or

(4) Where Lessee engages in a transaction that results in a change in ownership of Lessee or a change in the company form of Lessee, and Lessee or the resulting company retains the leasehold interests herein in whole or in part and in connection with such change, a monetary or non-monetary consideration of determinable value is received,

then, except as otherwise provided herein, Lessor shall be entitled to receive a Transfer Fee equal to at least five percent (5%) of the "Net Profit" (as defined below) resulting from any such transactions, except where a higher amount is stated below.

The term "Lessee's interests in this Agreement" (or words of similar import) as used in this Section 10, shall be deemed to include Lessee's interests in the Premises.

A "transfer" may include an "assignment" but is not limited to just an assignment but rather refers to any form of transaction by which Lessee, or a member or owner of Lessee, exchanges something of determinable value and receives something of determinable value from another, with the transaction being based in part on the underlying value of the leasehold interest herein. If any transaction does not involve the exchange of consideration of determinable value, then Lessor shall not receive a Transfer Fee. Where the consideration is monetary, then the Transfer Fee shall be based on the total amount of monetary consideration that is exchanged. If the consideration is non-monetary or partially non-monetary, then the non-monetary portion shall be reduced to a monetary amount by use of any then-current generally

accepted accounting principles and the Transfer Fee shall be based on the total of the monetarized amounts.

For avoidance of doubt, and anything in the foregoing to the contrary notwithstanding, it is understood and agreed that a transfer of this Agreement or of equity interests within Lessee to affiliated parties that is effectuated *solely for convenience* and that does *not* result in the direct or indirect receipt of any consideration of determinable value shall not be deemed to be a "transfer" within the meaning of this Article 10.

For example, if, in connection with a financing transaction, the lender requires that the Lessee or the Lessee's sole member must be a newly formed Delaware limited liability company, then the assignment of this Agreement to such Delaware company or the assignment of the membership interests in Lessee to such Delaware company, in exchange for the issuance to the transferring party of membership interests in such new Delaware company shall not be deemed a "transfer" within the meaning of this paragraph provided that such transaction does not result in any net additional consideration of determinable value to the transferring party or to any of the direct or indirect principals of Lessee.

(b) The following examples of a transaction subject to a Transfer Fee are not all-inclusive and are merely illustrative of the type of transaction that could trigger a Transfer Fee. A transaction will be subject to the Transfer Fee if the transaction is of a type set forth in the Statement of Intent above. However, in the case of the specific examples below, the respective Transfer Fees identified for the transactions referred to in such examples shall be the applicable Transfer Fee rather than the Transfer Fee of five percent (5%) of the Net Profit resulting from the transaction, and notwithstanding anything to the contrary set forth above:

(1) If Lessee makes an assignment to a third party of Lessee's entire interest in this Agreement, Lessee shall pay Lessor a Transfer fee equal to the greater of (x) 5% of the Net Profit received by Lessee in that transaction, or (y) \$2,500,000;

(2) If Lessee makes an assignment to a third party of only a portion of Lessee's interest in this Agreement, Lessee shall pay Lessor a Transfer Fee equal to the greater of (x) 5% of the Net Profit received by Lessee or (y) a proportionate share of \$2,500,000, such share to be the fraction whose numerator shall be the square footage of the portion of the Premises covered by the partial assignment, and whose denominator shall be the square footage of the Premises as a whole.

(3) For any assignment by Lessee of Lessee's interest hereunder to a subsidiary of Lessee or a member of Lessee or an affiliate of Lessee, Lessee shall pay Lessor a Transfer Fee equal to 5% of the Lessee's Net Profit on the assignment, but no Transfer Fee shall be due if there is no monetary consideration of determinable value exchanged between the parties, but a Transfer Fee shall be due on the non-monetary consideration when and if Lessee sells such non-monetary consideration, at which time Lessee shall pay Lessor a Transfer Fee equal to 5% of the Lessee's Net Profit on such sale.

(4) If, prior to the third anniversary of the Effective Date of this Agreement, Lessee itself engages in a public offering of its securities, no Transfer Fee shall be due or payable to Lessor. However, if any such public offering shall occur on or after the third

anniversary of the Effective Date of this Agreement, whether or not it involves an assignment of any interest in this Agreement in connection with the public offering, Lessee shall pay Lessor a Transfer Fee equal to 5% of the Net Profit resulting to Lessee from the public offering; provided, however, anything in this Agreement to the contrary notwithstanding, it is expressly understood and agreed that no Transfer Fee shall be due from Lessee or any other party upon the subsequent sale or transfer between individuals or companies of any of the securities resulting from the public offering.

(5) No Transfer Fee shall be due from Lessee upon the assignment by Lessee of any portion of its interest in this Agreement to a national retailer, as such term is defined herein, provided that no monetary consideration or other consideration of determinable value is exchanged between the parties. To the extent any such monetary or non-monetary consideration is involved or exchanged, Lessee shall pay a Transfer Fee equal to 5% of Lessee's Net Profit on the transaction.

"Consideration" for purposes of this Article 10.1 shall not include a release, assumption or exchange of liabilities or obligations arising out of the agreements between the parties or a reimbursement to Lessee of amounts comprising part of "Lessee's Basis" (defined below), or the ratable portion thereof allocable to the portion of the Premises assigned.

(6) No Transfer Fee shall be due from Lessee upon the assignment by Lessee of any portion of this Agreement to a national retailer that agrees to become the tenant or sub-tenant of not less than ten (10) contiguous acres of the Premises, or not less than 75,000 contiguous square feet of gross leasable floor space in any building constructed within the Premise, provided that no monetary consideration or consideration of determinable value is exchanged between the parties. If any such consideration is involved or exchanged in the transaction, Lessee shall pay Transfer Fee equal to the greater of (x) 5% of Lessee's Net Profit in the transaction, or (y) a proportionate share of \$2,500,000, such share to be the fraction whose numerator shall be the square footage of the portion of the Premises covered by the assignment to such retailer, and whose denominator shall be the square footage of the Premises as a whole.

(7) Notwithstanding the foregoing, if during the term of this Lease, any of the following transactions shall occur for monetary or non-monetary consideration of determinable value, to wit: (a) the assignment by Lessee of any portions of its interest in this Agreement to lenders, investors, equity providers and/or mortgagees for the purpose of and/or in connection with obtaining financing and/or capitalization for the project to be developed on the Premises; (b) the admission of investors or other so-called "financial partners" as member or members of Lessee; or (c) any other increase in the participating owners or members of Lessee, then Lessor shall be entitled to a Transfer Fee equal to 5% of the Net Profit received by Lessee or its principals in such transaction.

(c) Exempt Transactions.

(1) No Transfer Fee shall be payable on any assignment by Lessee of all or a portion of its interest in this Agreement to a lender or Leasehold Mortgagee under Article 10.2 or to a nominee affiliated with such Leasehold Mortgagee, or to a purchaser at a foreclosure sale that occurs by virtue of the foreclosure of a Leasehold Mortgage affecting the Premises or any portion thereof, or in connection with a Leasehold Mortgagee's (or its designee's)



acceptance of a deed in lieu of foreclosure or in connection with the exercise of any remedy available to it under the terms of the Leasehold Mortgage.

(2) No Transfer Fee shall be payable in connection with any lease, sublease, sub-sublease, license, sub-license, concession, sub-concession or other like transaction(s) relating to the Premises or any part thereof or interest therein which may be entered into by Lessee or any of its sublessees, licensees, concessionaires or other like parties at any time during the term of this Lease, where the only consideration paid to Lessee consists of market rate rentals, license payments, or concession payments;

(3) No Transfer Fee shall be payable in connection with any sale, transfer or other disposition of (i) all of the membership interests or other equity interests in [Woolbright Holdings LLC] or (ii) any individual membership or equity interests of Woolbright Holdings LLC other than a transfer of the interests of Woolbright Holdings LLC in Lessee.

(4) No Transfer Fee shall be payable in connection with any public offering of the entirety of the membership interests, equity interests or other securities in or of Woolbright Holdings LLC.

(5) No Transfer Fee shall be payable in connection with any direct or indirect merger or acquisition transaction involving Woolbright Holdings LLC or its principals, provided that the ownership or equity interests of Lessee in the Premises are not the sole interest involved in the merger or acquisition.

(6) No Transfer Fee shall be payable in connection with any transaction involving any subsidiary of Woolbright Holdings LLC (or involving any assets of any subsidiary of Woolbright Holdings LLC) that does not directly or indirectly own any interests in Lessee.

(7) No Transfer Fee shall be payable in connection with any transfer of any membership interest in Lessee or in Lessee's member(s) for estate planning purposes.

(8) No Transfer Fee shall be payable in connection with any "Exempt Post-Stabilization Transaction" referred to in Section 10.1(B)(2)(f) below.

(d) Definitions.

(1) "Net Profit":

(A) In the case of a transfer or assignment by Lessee of all or any part of Lessee's interest in this Agreement, the Lessee's "Net Profit" shall be defined as the gross proceeds received by Lessee in the transaction (the "Lessee's Gross Proceeds"), minus the "Lessee's Basis" (defined below), and minus also all ordinary and customary "costs of sale" (up to but not exceeding five percent [5%] of the Lessee's Gross Proceeds) incurred by Lessee in connection with such transaction, e.g., brokerage, transfer taxes, if applicable, title and survey expenses, attorney and other professional fees, etc.

(B) As used herein, the term "Equity Transfer" shall be defined as (i) any transfer or assignment of all or any part of the membership interests, capital stock, partnership interests or other equity interests in Lessee which are owned by Lessee's member(s) or other principals, or (ii) any public offering involving Lessee.

In the case of an Equity Transfer, the Equity Transferor's "Net Profit" shall be defined as the gross proceeds received by the transferor or assignor in such transfer or assignment transaction or the gross proceeds received by the issuer in such public offering, as the case may be, (the "Equity Transfer Gross Proceeds"), minus the "Equity Transferor's Basis" (defined below), and minus also all ordinary, reasonable, and customary "costs of sale" (up to but not exceeding five percent (5%) of the Equity Transfer Gross Proceeds) incurred in connection with such transaction, e.g., brokerage, transfer taxes, if applicable, title and survey expenses, attorney and other professional fees.

(2) The "Lessee's Basis" for the purpose of determining Lessee's Net Profit shall be defined as all hard costs and soft costs paid and/or incurred by the Lessee in connection with the acquisition of this Lease, the permitting, design, development, construction of infrastructure and other improvements upon, and financing of the Premises, and the leasing and subleasing of the Premises and/or the improvements on the Premises, including leasing commissions, tenant inducements and allowances and other similar costs, as such costs are determined in accordance with Article 5.8 herein and, to the extent not inconsistent with Article 5.8, in accordance with GAAP.

(3) The Equity Transferor's Basis for the purpose of determining the Equity Transferor's Net Profit shall be defined as the aggregate amount of (x) all costs paid and/or incurred by the Equity Transferor in connection with the acquisition of its membership interests, capital stock, partnership interests or other equity interests in Lessee, and (y) all loans and capital contributions theretofore made by the Equity Transferor to the Lessee, but less any loan repayments and/or profit distributions theretofore made by the Lessee to such Equity Transferor which have the effect of reducing such Equity Transferor's cost, with all such costs being determined in accordance with GAAP.

(e) Reporting of Transactions.

(1) Lessee shall submit to Lessor in connection with each transaction subject to a Transfer Fee a notarized statement setting forth the Lessee's Net Profit, the Lessee's Gross Proceeds and the Lessee's Basis.

(2) Lessee shall direct each Equity Transferor to submit to Lessor in connection with each Equity Transfer subject to a Transfer Fee a notarized statement setting forth the Equity Transferor's Net Profit, the Equity Transfer Gross Proceeds and the Equity Transferor's Basis.

(3) Within thirty (30) days following the closing or consummation of each transaction, assignment or Equity Transfer as to which a Transfer Fee shall be due pursuant to this Article 10, Lessee shall pay, or cause to be paid, to Lessor the applicable Transfer Fee due in connection with such transaction. Lessor will accept payment directly from an Equity Transferor in satisfaction of Lessee's obligation to make such payment (with Lessee

remaining liable for any non-payment or under-payment of the Transfer Fee due from the Equity Transferor).

(f) Exempt Post-Stabilization Transactions.

Anything in this Section 10.1(B)(2) or in any other provision of this Lease to the contrary notwithstanding, it is expressly understood and agreed, that *no Transfer Fee that might otherwise be payable under this Section 10.1(B)(2) shall be due or payable in connection with any transfer or other transaction that relates to any Phase of the Project that has achieved "Stabilization"*.

For purposes hereof, a Phase of the Project shall be deemed to have achieved "Stabilization" on the **second anniversary** of the date upon which not less than **eighty percent (80%)** of the leasable space in such Phase, as generally depicted on the Site Plan attached hereto as **Exhibit C** (as such Site Plan may be modified from time to time in accordance with this Lease), has *first* been occupied by sublessees or other occupants.

For avoidance of doubt, and without limiting the generality of the foregoing, it is expressly understood and agreed that the exemption from Transfer Fees which has been granted pursuant to this Section 10.1(B)(2)(f) shall apply to all of the transfers and transactions referred to in Sections 10.1(B)(2)(a) and (b) above and specifically including, without limitation, the following:

(x) any transfers of Lessee's interest in this Agreement as relates to such stabilized Phase (e.g., a partial assignment of this Lease as relates to such stabilized Phase);

(y) any mergers, transfers and/or other transactions relating to the capital stock, membership interests and/or other equity interests in the entity that shall then be the "Lessee" of such stabilized Phase; and

(z) any and all other sales, transfers, dispositions or other transactions of every kind, nature or description that directly or indirectly relates to or involves such *stabilized Phase* and/or the entity that is the "Lessee" of such *stabilized Phase*.

(C) (1) Permitted Subleases.

Notwithstanding any provision herein to the contrary, Lessee shall have the right to sublease without the consent of the County all or portions of the Premises to any other party provided such subletting is on a form of sublease approved by the County, which approval shall not be unreasonably withheld. The County's failure either to approve the form of such sublease or to furnish Lessee with written notice setting forth the grounds for the County's disapproval thereof (which grounds may not be unreasonable, arbitrary or capricious) within ten (10) business days after the County's receipt of Lessee's written request for such approval will constitute the County's approval of the proposed form of sublease.

In this connection, it is understood and agreed that the County's consent shall not be required with respect to a particular form of sublease, if the same shall include the following provisions:

- (a) that such sublease is subject and subordinate to this Lease;
- (b) that the term of such sublease, assuming that all possible options to renew or extend same shall be exercised, shall not extend beyond the term of this Lease;
- (c) that the County shall in no event be:
  - (i) liable for any act or omission of Lessee arising prior to the date this Lease shall be terminated by the County pursuant to Article 14 (or any other provision) hereof, except to the extent such act or omission is of a continuing nature, such as, for example, a repair obligation;
  - (ii) liable for any offsets or defenses which the sublessee might be entitled to assert against Lessee;
  - (iii) bound by any payment of rent or any other sum made by the sublessee to Lessee for more than two (2) months in advance (except for security deposits), which payment was not required under the terms of the sublease;
  - (iv) bound by any amendment or modification of such sublease executed without the County's prior written consent (such consent not to be unreasonably withheld, delayed or conditioned) if such amendment or modification would materially increase the County's obligations or materially reduce the sublessee's obligations under such sublease following a termination of this Lease (except to the extent that the sublease may specifically contemplate any amendment or modification thereof [for example, a sublease may provide for a reduction of rent if a remeasurement of subleased premises reveals same to be smaller than originally set forth in the sublease, etc.] );
- (d) that on termination of this Lease by the County pursuant to Article 14 (or any other provision) hereof, the sublessee will attorn to the County, and on request by the County, enter into a direct lease with the County on terms identical to those set forth in the sublease;
- (e) that the County's fee interest in the Premises shall not be subject to any mortgage or other financing procured by any sublessee;

- (f) that, in accordance with Section 713.10 of the Florida Statutes, the County's fee interest in the Premises shall not be subject to liens filed by lienors engaged by such sublessee;
- (g) that the sublessee under such sublease shall be required to carry customary property, casualty and liability insurance (with all such liability insurance to name the County as an additional insured), which insurance shall be in such amounts, shall be issued by such Florida-licensed carriers, and shall provide for such coverages, exclusions and deductibles, as are then customarily required of comparable tenants by other prudent landlords of comparable shopping centers in Miami-Dade County, Florida.

Further, if requested by Lessee or any sublessee, the County, Lessee and such sublessee shall enter into a Subordination, Nondisturbance and Attornment Agreement substantially in the form annexed hereto as Exhibit "K", or in such other form as may be mutually agreed upon by such parties, each such party to act reasonably in this regard.

(2) Permitted Assignments.

Notwithstanding any provision herein to the contrary, Lessee shall have the right, without need of the County's consent, to enter into the following assignment transactions, each of which shall be deemed a "Permitted Assignment":

- (a)
  - (i) any assignment of this Lease in whole or in part (or any issuance and/or transfer of equity or other interests or securities in Lessee or in its parent company[ies]) to companies related to or affiliated with Lessee or its principal(s), and/or
  - (ii) [Intentionally Deleted.]
  - (iii) any assignment of this Lease in whole or in part (or any issuance and/or transfer of equity or other interests or securities in Lessee or in its parent company[ies]) in connection with any public offering, merger, or acquisition transaction (including equity investment and/or equity interest transfers) occurring **subsequent to** the Effective Date of this Lease,
- (b) any assignment or other transfer of equity or other interests or securities in Lessee or its parent company(ies) which such equity or other interests or securities are traded on any national securities exchange or in the over-the-counter securities market, as to which no Transfer Fee shall be payable; or

- (c) any assignment or transfer of equity or other interests in Lessee between or among the then owners of equity or other interests in Lessee,
- (d) any partial assignment of this Lease (i.e., as to a portion of the Premises and/or Improvements thereon) to any affiliate of Lessee, or to any lender providing financing to Lessee in connection with the Premises, or to any the party who shall sublease any parcel within the Premises.

Without limiting the generality of the foregoing provisions of this Article 10.1(C)(2), the admission of one or more investors or other so-called "financial partners" as a member or members of the Lessee shall also be deemed to constitute a "Permitted Assignment" and a Transfer Fee calculated in accordance with Article 10.1(B)(2) above shall be payable.

(2) No Release of Liability on Assignment; Exceptions.

Except as otherwise provided in Article 10.2 below, and except for an assignment to a Qualified Assignee, no assignment of this Lease, either as to the entirety of the Premises or as to any portion thereof, shall affect or reduce any of the obligations of the Lessee hereunder, and all such obligations shall continue in full force and effect as joint and several obligations of the Lessee and its assignee. However, in the event of an assignment of this Lease to a "Qualified Assignee" (as defined below) either as to the entirety of the Premises or as to any portion thereof, then in such event, the Lessee shall be released from liability under this Lease as follows:

- (a) In the event of the assignment of this Lease to a Qualified Assignee *as to the entirety of the Premises*, the Lessee shall be released from all further liability under this Lease as to all duties and obligations first arising or accruing from and after the effective date of such assignment; and
- (b) In the event of the assignment of this Lease to a Qualified Assignee *as to only a portion of the Leased Premises*, the Lessee shall be partially released from liability under this Lease as to all duties and obligations first arising or accruing from and after the effective date of such assignment, as follows:
  - (i) As relates to the obligation to pay rent under this Lease, the Lessee shall be released from liability as to the ratable portion of the rent allocable to the portion of the Premises which is the subject of the assignment in question (such ratable portion to be calculated in the same ratio as the land area of such portion of the Premises bears to the total land area of the Premises as a whole); and

- (ii) As relates to the obligation to perform all other duties and obligations of the Lessee under this Lease (i.e., other than the payment of rent), the Lessee shall be released from liability as to those duties and obligations (or the portion thereof) applicable to the portion of the Premises which is the subject of the assignment in question.
- (3) For avoidance of doubt and anything in this Lease to the contrary notwithstanding, it is expressly understood and agreed that in the event of any partial assignment of this Lease, the following shall apply:
  - (aa) on the effective date of any partial assignment of this Lease, this Lease shall be deemed for all purposes to have been bifurcated into two (2) separate "new" leases which shall be deemed, in effect, to supersede and replace this "original" Lease, with one of such "new" leases relating to the portion of the Premises as to which this "original" Lease had been assigned (the "Assigned Portion") and with the other of such "new" leases relating to the portion of the Premises as to which this "original" Lease had not been so assigned (the "Unassigned Portion");
  - (bb) all terms and provisions of this "original" Lease shall be deemed to have been incorporated into each of the two (2) "new" leases created by means of the bifurcation referred to in clause (aa) above, i.e., all as if the respective lessees under each of such separate "new" leases had simultaneously executed an identical "new" lease with the County, with the only differences between such two (2) "new" leases being:
    - (1) that the names of the respective lessees thereunder shall be the names of the assignor and the assignee, respectively, under the partial assignment; and
    - (2) the descriptions and sizes of the respective portions of the Premises demised under each such "new" lease shall be the descriptions and sizes of the Assigned Portion and the Unassigned Portion, respectively; and
    - (3) that any covenants, requirements and obligations contained in the "original" Lease relating to matters such as (to the extent applicable):
      - (i) the amount of any security deposit required to be posted;
      - (ii) the amounts and/or percentages of areas and/or Improvements required to be constructed;

(iii) the amounts of any applicable "Required Investment" required to be made; and

(iv) any other such requirements or conditions,

shall be allocated divided between the two (2) "new" leases on a pro rata basis in accordance with the gross leasable floor area of the buildings proposed to be constructed in Assigned Portion and the Unassigned Portion, as set forth on the Site Plan attached as Exhibit "C" to the "original" Lease, as the same may theretofore have been amended or on such other basis as may be equitable and appropriate under the circumstances;

(cc) both the Assigned Portion and the Unassigned Portion, and the respective owners, lessees, sublessees, licensees and invitees thereof, shall each have and retain the continuing benefit of, and rights to use and enjoy, all utility, drainage, access, parking and other easements and licenses that were theretofore in existence and/or that may theretofore have been established by Lessee for the benefit of its sublessees as of the date of the partial assignment; and

(dd) if the lessee under either such "new" lease (such lessee being referred to herein as a "defaulting lessee") shall at any time default in the payment of any sum or in the performance of any other duty or obligation required to be paid or performed under the "new" lease to which such defaulting lessee is bound, and if such defaulting lessee shall fail to timely cure such default, or if any other act, omission, condition or circumstance shall occur, arise or come into existence which would have entitled the County to exercise any right(s) and/or pursue any remedy(ies) granted to the County under this "original" Lease had such uncured default, act, omission, condition or circumstance occurred, arisen or come into existence in the absence of any such partial assignment of this Lease, then, in any such event:

the County shall be entitled to exercise and/or pursue its aforementioned rights and remedies only as relates to the defaulting lessee and the portion of the Premises demised pursuant to the "new" lease with such defaulting lessee, and not as relates to the other lessee (the "non-defaulting lessee") or the portion of the Premises demised pursuant to the "new" lease with such non-defaulting lessee; and

(1) the non-defaulting lessee shall not be deemed to be in default under the "new" lease between the County and such non-defaulting lessee; and



- (2) neither the non-defaulting lessee, nor any of its successors or assigns, nor any other party(ies) claiming by, through or under such non-defaulting lessee, including, Leasehold Mortgagees and sublessees (such non-defaulting lessee and such successors, assigns and other parties being hereinafter sometimes collectively referred to as the "non-defaulting parties") shall be deemed, in any way, to be responsible for (or subject to any enforcement action, liability, obligation, loss or cost on account of or in connection with) any uncured default, act, omission, condition or circumstance on the part of the defaulting lessee (or its successors, assigns and/or any other parties claiming by, through or under such defaulting lessee); and
  - (3) in no event shall the "new" lease between the County and the non-defaulting lessee be subject to termination, cancellation, forfeiture or other adverse action by the County on account of or in connection with any uncured default, act, omission, condition or circumstance on the part of the defaulting lessee (or its successors, assigns and/or any other parties claiming by, through or under such defaulting lessee); and
  - (4) the County shall not disturb the leasehold estate or any of the rights, privileges and/or benefits afforded to the non-defaulting parties.
- (5) As used herein, the term "Qualified Assignee" shall mean and refer to:
- (aa) the sublessee of any portion of the Premises containing not less than ten (10) contiguous acres, or not less than 75,000 contiguous square feet of gross leasable floor space in any building(s) constructed within such portion of the Premises; or
  - (bb) any pension fund, pension manager, institutional investor or any other entity whose tangible net worth (determined in accordance with generally accepted accounting principles) shall be equal to or greater than the tangible net worth of the Lessee as of the date of the assignment; or
  - (cc) any Leasehold Mortgagee or assignee thereof, or a nominee affiliated with any Leasehold Mortgagee or its assignee, or any designee of any Leasehold Mortgagee or its assignee(s) or nominee(s).

10.2 Leasehold Mortgage Provisions.

- (A) Lessee may secure financing or re-financing and, in conjunction with that financing or re-financing, may mortgage or encumber Lessee's interest in all or any portion of the Premises and the Improvements and/or assign this Lease in whole or in part in favor of one or more lenders entitled to make secured loans affecting real property in Miami-Dade County, Florida, as long as, at the time of the closing of the financing or re-financing, the aggregate amount of the principal indebtedness secured by mortgages or like instrument (each, a "Leasehold Mortgage") encumbering Lessee's interest in the portion of the Premises encumbered by such Leasehold Mortgage does not exceed the sum of (i) the then appraised value of Lessee's interest in the portion of the Premises encumbered by such Leasehold Mortgage and any improvements previously constructed on such portion of the Premises, (ii) the value of any improvements to be constructed on such portion of the Premises in the near term future with the proceeds of such financing or re-financing, and (iii) all costs incurred, and all reserves required, in connection with such financing or re-financing. No Leasehold Mortgage or other encumbrance the Lessee executes in connection with that financing will extend to or be a lien upon or encumbrance upon County's interest in any part of the Premises or in any right appurtenant to that interest. Moreover, the County has no obligation to subordinate the County's interest in the Premises to the lien or security interest of any mortgage or other encumbrance that Lessee may execute on the authority of this Article 10.2(A).
- (B) The Department reserves the right to approve the section(s) of each proposed Leasehold Mortgage which grants to the "Leasehold Mortgagee" (defined below) remedies as relates to Lessee's leasehold interest in any portion of the Premises encumbered by such Leasehold Mortgage to ensure that the remedies granted to such Leasehold Mortgagee do not purport to (i) impair Lessor's fee interest in the Premises, or (ii) reduce to any material extent any of the rights granted to Lessor under this Lease, or (iii) increase to any material extent any of the obligations imposed on Lessor under this Lease. The Department may not unreasonably withhold its approval of such remedies section(s). Lessee must submit drafts of such remedies section(s) to the Department for review and approval in advance of Lessee's execution of the Leasehold Mortgage in question. The Department shall be deemed to have approved such remedies section(s) unless, the Department shall either (aa) approve such remedies section(s) or (bb) furnish Lessee with the Department's written objections thereto (which objections must be reasonable) in either case within fifteen (15) business days after the later of the date on which Lessee personally delivers a copy of the draft remedies section(s) to the Department's Chief of Properties and the date on which Lessee delivers a copy of such draft remedies section(s) to the County Attorney's Office.

If any "Leasehold Mortgagee" (defined below) or prospective Leasehold Mortgagee shall request any amendment(s) and/or modification(s) to this Lease which do(es) not materially increase the obligations or liabilities of the County hereunder, the County and Lessee shall promptly execute, acknowledge and deliver the requested amendment(s) and/or modification(s) to this Lease, in form

reasonably acceptable to such Leasehold Mortgagee or prospective Leasehold Mortgagee.

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

- (1) At the time that the County gives Lessee written notice of the occurrence of any default in respect of the performance of the Lessee's obligations under this agreement, the County shall simultaneously give the Leasehold Mortgagee(s) a copy of that notice in a manner established for the delivery of notices in Article 21.9 at the respective address(es) for the Leasehold Mortgagee(s) provided to the County. No notice of default to the Lessee will be effective until the County delivers the notice(s) required by this Article 10.2(C)(1). Further, in the event that this Lease shall not require the County to give notice to Lessee with respect to any particular default, the County shall nevertheless give written notice of such default to the Leasehold Mortgagee(s). Additionally, upon request by any Leasehold Mortgagee(s), the County shall notify such Leasehold Mortgagee(s) as to whether or not Lessee has cured any default with respect to which any notice had theretofore been given by the County to Lessee or to any Leasehold Mortgagee(s).
- (2) The Leasehold Mortgagee may rectify a default on Lessee's part, but has no obligation to do so, and further, if the Leasehold Mortgagee has commenced efforts to rectify a default on Lessee's part, nothing contained herein shall prevent such Leasehold Mortgagee from thereafter discontinuing such efforts. The County will accept the Leasehold Mortgagee's performance of any of the Lessee's obligations of the same extent as though the Lessee has performed. The County may exercise a remedy available to it by the reason of a default on Lessee's part only if the Leasehold Mortgagee fails to rectify the default within (a) 30 days following expiration of the time period specifically set forth in Article 14 of the Lease for a cure of a particular default, or (b) if no such time period is set forth, then within 30 days after the date of the delivery of the notice required by virtue of Article 10.2(C)(1) above, or if a cure is not reasonably possible within such 30 day period, then within a period of time reasonably required to cure the default through the exercise of prompt, diligent and continuous effort. In this regard, it is expressly understood and agreed that if the rectification of any default on Lessee's part shall require such Leasehold Mortgagee to have possession of the portion of the Premises encumbered by any Leasehold Mortgage, the

diligent efforts by such Leasehold Mortgagee to obtain such possession of such portion of the Premises shall satisfy the above requirements for diligently pursuing a cure, so long as the cure shall be completed as expeditiously as reasonably practicable once possession of such portion of the Premises shall be so obtained. Provided, however, that notwithstanding the foregoing, if the default under this Lease involves a failure to pay the required rent to Lessor or involves a condition created in violation of this Lease that is adversely affecting the safety and operations of the Airport, then, unless the Leasehold Mortgagee shall have (a) promptly cured, following written notice, the failure to pay the required rent, or (b) promptly commenced, following written notice, and be carrying out the cure of such default relating to Airport safety or operations, Lessor may resort to its remedies for such defaults (i) at any time following a 30-day cure period for non-payment of rents and charges due hereunder or (ii) at any time following the day that Lessor has declared that an emergency condition affecting the safety and operation of the Airport must be discontinued or corrected.

(3) If a termination of this Agreement as to any portion of the Premises occurs prior to the stated date of the expiration of the term of this Agreement:

(a) by virtue of a default in the performance of any Lessee's obligations as to such portion of the Premises that cannot be rectified by the mere payment of money to the County and either:

(i) such default is not reasonably susceptible to cure by the Leasehold Mortgagee of that portion of the Premises due to the personal (i.e., to Lessee) nature of the particular nature of the obligation of the Lessee that is in default, e.g., insolvency, bankruptcy, corporate dissolution, etc. (such defaults being hereinafter sometimes referred to as "personal covenant defaults"); or

(ii) the Leasehold Mortgagee was diligently seeking to rectify at the time of the termination, or

(b) by virtue of Lessee's rejection or disaffirmance of this Agreement in bankruptcy,

then, in either of such events, the County will execute and deliver a new Lease for the portion of the Premises encumbered by such Leasehold Mortgage at the Leasehold Mortgagee's request in favor of a successor lessee that satisfies the criteria set forth in Article 10.2(C)(4) (a "Successor Lessee"). For purposes of the preceding sentence and for purposes of Article 10.2(C)(2) above, and those provision only, prompt, diligent and continuous efforts to gain possession of the portion of the Premises encumbered by such Leasehold Mortgage and to succeed to Lessee's interest in such portion of the Premises by means of a foreclosure or the

exercise of any other remedy available to the Leasehold Mortgagee by virtue of the Lessee's default in respect of any of its obligations under the terms of the Leasehold Mortgage, together with the payment to the County of all rent and charges then due hereunder (i.e., without acceleration) as relates to the portion of the Premises encumbered by such Leasehold Mortgage and with respect to which Lessee becomes delinquent and good faith efforts made to rectify other defaults contemporaneously with the efforts to gain possession of the portion of the Premises encumbered by such Leasehold Mortgage, will constitute diligent efforts on the Leasehold Mortgagee's part to rectify the default that has occurred in respect to the performance of the Lessee's obligations under the terms of this Agreement. In the event that a new lease shall be entered into in accordance with the foregoing provisions of this Article 10.2(C)(3), that new lease will have a term that coincides with what would have been the remainder of the Term had termination of this Agreement not occurred and will otherwise be on the same terms and conditions as those set forth in this Agreement. The new lease will also have the same priority as this Agreement with respect to any lien or other encumbrance affecting the portion of the Premises demised thereby, including any fee mortgage, provided, however, that this Lease shall not be subordinate (nor shall any such new lease be subordinate) to any such fee mortgage(s) unless the holder(s) thereof shall agree not to disturb the leasehold interest or other rights of the Lessee under this Lease or the rights of a Successor Lessee under any new lease (or the rights of any sublessees under subleases with Lessee or any Successor Lessee) for so long as no default under this Lease by the Lessee or Successor Lessee of such portion of the Premises shall continue uncured following the giving of any and all required notices and the expiration of any and all applicable grace periods. In order for the County to be obligated to execute and deliver the new lease, the Leasehold Mortgagee must request the execution and delivery of such new lease within one year after the effective date of the termination of this Agreement with respect to the portion of the Premises encumbered by such Leasehold Mortgage, and must acknowledge and return the new lease to the County for execution on the County's part within 20 days after the date on which the County tenders the new lease to it for signature. Simultaneously with the delivery of the new lease, the Successor Lessee must also execute and deliver to the County a written plan to rectify within a reasonable period of time any default that exists at that time in respect of any of Lessee's obligations under the terms of this Agreement, including, without limitation, any default that may exist in respect of Lessee's obligations arising under the terms of Article 8, but excluding any personal covenant defaults; such plan must set forth in reasonable detail the manner in which the Successor Lessee plans to rectify each default. During the period between the time that termination of this Agreement occurs and the time at which the Leasehold Mortgagee's entitlement to the new lease expires, the County may not execute any lease or other agreement (an "End Use Lease") affecting any part of the Premises as to which such new lease would apply without the Leasehold Mortgagee's prior written consent as long as the Leasehold Mortgagee has been paying

to County all rents and charges that are/would have become due under the terms of this Agreement as relates to the portion of the Premises as to which such new lease would apply, i.e., in the absence of the termination. If the Leasehold Mortgagee consents to the County's execution of an End Use Lease during that period, that End Use Lease must provide that, if the County executes a new lease in favor of a Successor Lessee in accordance with the terms of this Article 10.2(C)(3), the End Use Lease will be automatically subordinate to the operation and effect of the new lease and the holder of the lessee's interest under the End Use Lease will attorn to the Successor Lessee as its sublandlord. Contemporaneously with the County's execution and delivery of the new lease, the Successor Lessee must pay to the County the amount, by which (i) all rent, fees and other charges that would have become due under the terms of this Agreement as relates to the portion of the Premises covered by such new lease through the date of the County's execution and delivery of the new lease absent a termination of this Agreement and that Lessee or others acting on its behalf have not previously paid to the County exceeds (ii) the aggregate amount of rent, if any, that the County has collected under the terms of End Use Leases.

- (4) A transfer of Lessee's interest in all or any portion of the Premises to the Leasehold Mortgagee, or a nominee affiliated with the Leasehold Mortgagee (herein a nominee"), or a purchaser at a foreclosure sale that occurs by virtue of the foreclosure of the Leasehold Mortgage or the Leasehold Mortgage's (or its designee's) acceptance of a deed in lieu of foreclosure or in connection with the exercise of any remedy available to it under the terms of the Leasehold Mortgage will not constitute an assignment requiring the County's consent under the terms of Article 10.1 above. The provisions of Article 3 will govern any use of the Premises that occurs prior to and after a transfer to the Leasehold Mortgagee or the purchaser at the foreclosure sale. The Leasehold Mortgagee, or its nominee, or the purchaser at the foreclosure sale may make a subsequent transfer of Lessee's interest in the portion of the Premises that had been encumbered by such Leasehold Mortgage only with the County's prior written consent as provided in Article 10.1(C). The County will, however, consent to the subsequent transfer if the proposed successor to the Lessee's interest would have been an acceptable lessee for the portion of the Premises that had been encumbered by such Leasehold Mortgage in the reasonable exercise of the County's judgment considering the successor's experience, financial strength, history of meeting contractual obligations and the then state of development of the Premises. For example, if at the time of such transfer, Lessee shall have completed development of the portion of the Premises encumbered by such Leasehold Mortgage (or of the parts of such portions of the Premises that are not subject to ground subleases which contemplate that the sublessee[s] thereunder, and not Lessee, shall construct improvements thereon), then the proposed successor need not have development expertise in order to be deemed an acceptable "Replacement Lessee", so long as such successor has adequate financial strength and/or financing to meet the reasonably anticipated financial obligations of the

Lessee under this Lease as relates to such portion of the Premises, and so long as such proposed successor has the capability to provide (and/or has contracted for) competent management of the project developed on such portion of the Premises. After succeeding to the Lessee's interest in the portion of the Premises encumbered by any Leasehold Mortgage, the Leasehold Mortgagee, its nominee, or a purchaser at the foreclosure sale that does not satisfy the requirements of this Lease (to the extent applicable) and that is not otherwise acceptable to the County as a Successor Lessee in the reasonable exercise of the County's judgment must use reasonably diligent efforts either to become or to find a Successor Lessee satisfying the criteria set forth above in Article 10.2(C)(4) in the County's reasonable judgment.

- (5) If the Leasehold Mortgagee, or its nominee, or its designee, or a purchaser at a foreclosure sale succeeds to Lessee's interest in the Premises or any party thereof by virtue of the acceptance of a deed in lieu of foreclosure or the exercise of any remedy available to the Leasehold Mortgagee under the terms of the Leasehold Mortgage, the Leasehold Mortgagee, or its nominee, or its designee or the purchaser, as the case may be, and their successors and assigns will only have personal liability for the performance of those obligations incumbent upon Lessee under the terms of this Agreement related to the portion of the Premises encumbered by such Leasehold Mortgage and that arise or accrue during the period between the time at which it succeeds to Lessee's interest in such portion of the Premises and the time at which it divests itself of that interest. The foregoing limitation will not preclude the County from terminating this Agreement if the Leasehold Mortgagee, its nominee, or its designee, or the purchaser, as the case may be, or the subsequent transferee fails to rectify without cost to County any default (other than a personal covenant default) existing respect of Lessee's obligations related to the portion of the Premises encumbered by such Leasehold Mortgage at the time the Leasehold Mortgagee, its nominee, or its designee, or the purchaser or the subsequent transferee succeeds to Lessee's interest in such portion of the Premises, including, without limitation, any obligation arising under the terms of Article 8.
- (6) Without the Leasehold Mortgagee's prior written consent, the Lessee bound by the Leasehold Mortgage held by such Leasehold Mortgagee may not amend this Agreement, exercise any right available to it under the terms of this Agreement or at Law to cancel this Agreement, or to voluntarily surrender possession of the portion of the Premises encumbered by such Leasehold Mortgage to the County. Without the Leasehold Mortgagee's prior written consent, the County may not amend this Agreement. The foregoing restrictions will not apply, however, to amendments for which express provision is made elsewhere in this Agreement. Without the Leasehold Mortgagee's prior written consent, the County may not cancel this Agreement as relates to any portion of the Premises encumbered by the Leasehold Mortgage held by such Leasehold Mortgagee and accept a surrender of the possession of such portion of the Premises except in the

instances where the cancellation and acceptance of a surrender of possession of such portion of the Premises occurs in connection with the County's exercise of its remedies following an occurrence of a default in the performance or any of Lessee's obligations as relates to such portion of the Premises. The Leasehold Mortgagee will not be bound by any amendment, cancellation or surrender that occurs in contravention of the foregoing provisions of this Article 10.2(C)(6). No failure on the part of Lessee to exercise any renewal option, and no election by Lessee to waive any renewal option shall be binding upon any Leasehold Mortgagee without such Leasehold Mortgagee's prior written consent.

- (7) The Leasehold Mortgagee will have the right to participate in the adjustment of any insured losses that becomes necessary by reason of damage or destruction occurring to the Improvements constructed on any portion of the Premises encumbered by the Leasehold Mortgage held by such Leasehold Mortgagee, and the right to supervise and control the receipt and disbursement of insurance proceeds applicable thereto to the extent provided in agreements among Lessee, the Leasehold Mortgagee and any sublessee holding an interest with respect to such portion of the Premises; provided, however, that any distribution of insurance proceeds must comply with the requirements of Article 12 of this Agreement.
- (8) If a taking of any part of the Premises encumbered by a Leasehold Mortgage occurs, the Leasehold Mortgagee thereunder will have the right to participate in any condemnation proceedings or settlement discussions pertaining to the Lessee's interests hereunder as relates to such part of the Premises and the right to supervise and control the receipt and disbursement of all condemnation awards arising from such interest hereunder and the right to supervise and control the receipt and disbursement of all condemnation awards arising from such interests to the extent provided in agreements among Lessee, the Leasehold Mortgagee, and any sublessee holding an interest with respect to such portion of the Premises. The Leasehold Mortgagee is entitled to receive and apply to the reduction of the indebtedness, the payment of which is secured by the lien of the Leasehold Mortgage, any portion of a condemnation award arising from a taking of Lessee's interests in any portion of the Premises encumbered by the Leasehold Mortgage held by such Leasehold Mortgagee that is not applied to the restoration of that portion of the premises that remains following the taking to a complete architectural unit. After payment to the County by the condemning authority of whatever compensation and damages are determined to be owing to the County for County's property interests in such portion of the Premises (i.e., as unimproved land and without regard to the Improvements thereon and/or thereto which may have been constructed by Lessee or any sublessee[s]), and after the indebtedness secured by the lien of any Leasehold Mortgagee(s) applicable thereto is discharged in full by an application of a condemnation award in accordance with the terms of the preceding sentence and after payment to the Lessee by the condemning authority of whatever compensation and damages are



determined to be owing Lessee for Lessee's property interests in the Premises, the County is entitled to receive any remaining portion of the condemnation award. If a partial taking of any portion of the Premises encumbered by a Leasehold Mortgage occurs, this Agreement will continue in effect with respect to the balance of that encumbered portion of the Premises not taken and, effective as of the earlier of the dates on which the condemning authority takes title to or possession of the part taken, the rent payable under the terms of this Agreement as relates to the portion of the Premises encumbered by such Leasehold Mortgage will be equitably reduced as contemplated in Article 2.12(A) above. If, however, the remaining part of such encumbered portion of the Premises not taken cannot be adequately restored, repaired or reconstructed so as to constitute a complete architectural unit of substantially the same usefulness, design, construction and commercial feasibility as immediately before the taking as reasonably determined by Lessee or its sublessees, then Lessee may terminate this Agreement as to the entire portion of the Premises encumbered by such Leasehold Mortgage by delivering written notice to the County by the date that is one hundred twenty (120) days after the day of the taking. Lessee's notice must specify the date the termination will become effective, which date will not be earlier than the date of such taking. If a termination occurs in accordance with the foregoing, Lessee shall pay and shall satisfy all rents and charges due and accrued hereunder as relates to the portion of the Premises as to which such termination shall apply up to such date of such termination and shall perform all of the obligations of the Lessee hereunder as relates to such portion of the Premises to such date, and thereupon this Lease and the Term shall cease and terminate as relates to such portion of the Premises, but not as relates to any other portion of the Premises. If a taking for a temporary period occurs, this Lease will continue in full force and effect and the entire award payable in respect of that taking will be payable to the Lessee(s) of the affected portion(s) of the Premises, except for any portion sought by and attributable solely to County's interest in the Premises, provided, however, that Lessee shall be entitled to an abatement of rent to the extent of any such portion of the award so payable to the County, subject to the provisions of any agreements among Lessee, the Leasehold Mortgagee and any sublessee holding an interest with respect of applicable portion of the Premises.

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

- (10) Under no circumstances will the fee estate of the County and the leasehold estate created by this Agreement merge, even though owned by the same party, without the Leasehold Mortgagee's written consent.
- (11) Without need of any notice to or consent from the County, any Leasehold Mortgagee shall be entitled to assign its Leasehold Mortgage to any other party or to sell or convey participation interests in its Leasehold Mortgage.
- (D) Upon written request from time to time made by Lessee, a Leasehold Mortgagee, a prospective Leasehold Mortgagee, or a prospective assignee of all or any portion of Lessee's interest in the Premises, the County shall execute and deliver to the requesting party an estoppel certificate in the form reasonably requested by the requesting party. In each such certificate, the County shall certify, to the extent that it then has knowledge, (i) the amounts of the monthly rent that Lessee is then obligated to pay under the terms of this Agreement and the date through which Lessee has paid that rent, (ii) that this Agreement is in full force and effect, (iii) the specific nature of any default that the County knows to exist in the respect of either party's performance of its respective obligations under the terms of this Agreement and (iv) the specific nature of any defense or offset that the County may assert in connection with any effort on Lessee's part to enforce any of the obligations the County undertakes under the terms of this Agreement.
- (E) The provisions of this Article 10.2 will survive in the termination, rejection or disaffirmance of this Agreement and will continue in full force and effect thereafter to the same extent as if this Article 10.2 were a separate and independent contract made by the County, Lessee, and the Leasehold Mortgagee. The County's agreement set forth in this Article 10.2 to enter into a new lease with the Leasehold Mortgagee as relates to any portion of the Premises constitutes a separate agreement with the County and the Leasehold Mortgagee, a new lease with the Leasehold Mortgagee separate and apart from this Agreement, as well as a part of this Agreement. The county agrees that each Leasehold Mortgagee shall be a third party beneficiary to the terms of this Agreement, and that such third party beneficiary status shall be unaffected by the rejection or disaffirmance of this Agreement in any bankruptcy proceeding by any party.
- (F) Nothing contained herein shall be deemed to prohibit Lessee from entering into more than one Leasehold Mortgage transaction at any time or times. Accordingly, if at any time, there shall be more than one Leasehold Mortgagee, then the rights and privileges conferred by this Article 10.2 shall be deemed to extend to, and inure to the benefit of, each such Leasehold Mortgagee, provided, however, that no subordinate Leasehold Mortgagee shall be entitled to take curative action in response to a default by Lessee hereunder if or to the extent that the same shall interfere with any such curative action then in the process of being taken by any senior Leasehold Mortgagee.
- (G) The County agrees that Lessee shall be entitled to grant to one or more of its sublessees the right to mortgage the subleasehold interest(s) of such sublessees in

the Premises under conditions and subject to requirements equivalent to those set forth above in this Section 10.2.

## ARTICLE 11

### INDEMNIFICATION AND HOLD HARMLESS

- 11.1 Lessee shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including reasonable attorneys' fees and costs of defense, that the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of action or proceedings of any kind or nature first arising after the Effective Date and arising out of, relating to, or resulting from the use of the Premises and the performance of this Agreement by the Lessee or its employees, agents, servants, partners, principals, contractors, subcontractors, sublessees or invitees, as well as acts of trespassers while on the Premises. Lessee shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or action of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay costs, judgments and reasonable attorney's fees which may issue thereon. Lessee expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Lessee shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents, and instrumentalities as herein provided. The indemnity provided herein is in addition to and does not limit the other indemnities of the parties provided in Article 8.2. The obligation of the Lessee hereunder shall survive the termination of this Agreement.

Nothing herein shall preclude Lessee and its sublessees from pursuing any claim or cause of action against the County which is then available at law, in equity, or otherwise. For so long as the Trust Agreement remains in effect, Lessor shall, as required by Section 706 thereof, maintain a practical insurance program, with reasonable terms, conditions, provisions and costs which the Director determines, with the approval of an independent risk management consultant, will afford adequate protection against property loss as described in Section 706 and such comprehensive public liability insurance on such Properties for bodily injury and property damage and in such amounts as may be approved by such risk management consultant.

## ARTICLE 12

### INSURANCE

- 12.1 Liability Insurance Required: In addition to such insurances as may be required pursuant to Section 12.4 below, Lessee shall maintain or cause to be maintained, without lapse or material chance, for so long as it occupies the Premises and Improvements, the following insurance:

- (A) Commercial General Liability Insurance, including Contractual Liability, to cover the Lessee's Premises and Improvements and operations, in an amount not less than \$5,000,000 combined single limit per occurrence for bodily injury and property

damage. The County must be shown as an additional insured with respect to this coverage. Coverages shall be for each occurrence, with either no aggregate or an annual policy aggregate of no less than twice the amount of coverage required for each occurrence. In the event that the Lessee's available coverage falls below the per occurrence amount shown above, the Lessee shall secure a new certificate of insurance evidencing the required coverage. Lessee acknowledges that the County reserves the right not to accept policies with aggregate limits or with deductibles in excess of \$1,000,000.00.

- (B) Automobile Liability Insurance covering all owned, non-owned and hired vehicles (including ground or mobile equipment) used by the Lessee in connection with its operations under this Agreement in an amount not less than:
  - (1) \$5,000,000 combined single limit per occurrence for bodily injury and property damage covering all vehicles and ground and mobile equipment used by the Lessee in connection with its business operation, if any, within the AOA.
  - (2) \$1,000,000 combined single limit per occurrence for bodily injury and property damage covering such vehicles when being used by the Lessee on the Premises.
- (C) The insurance coverages required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the Lessee under this Agreement. All insurance policies required pursuant to the terms of this Agreement shall be issued in companies approved to do business under the laws of the State of Florida. Such companies must be rated no less than "B" as to management, and no less than "V" as to strength in accordance with the latest edition of "Best's Insurance Guide", published by A.M. Best Company, Inc., or its equivalent, subject to approval of the County's risk Management Division.

## 12.2 Property Insurance Required:

### (A) Builders Risk and Hazard Insurance:

- (1) The Lessee and/or its sublessee(s), at its (and/or their) sole cost and expense, throughout the term of this Agreement, shall keep the Improvements insured on a "Special Form" basis in an amount not less than 100% of the full replacement value of the Improvements against loss or damage (in excess of a reasonable per occurrence deductible amount, which shall be the responsibility of the Lessee or its sublessees) by fire, lightning, tornado, hurricane, windstorm, hail, flood, explosion, riot, riot attending strike, civil commotion, vandalism and malicious mischief, sprinklers and sprinkler leakage, aircraft, vehicles and smoke, or any other casualty in an amount not less than 100% of the full replacement value of the Improvements to the extent such coverage is commercially available at commercially reasonable rates.

- (2) The full replacement value of the Improvements shall be established as of the date each Improvement is constructed and a certificate of completion (or certificate of occupancy) for same is issued by the appropriate governing authority with jurisdiction over same and shall be re-established at intervals of not more than three (3) years thereafter by Lessee's (or its sublessee[s]') insurance agent to ensure reasonable adequacy of coverage. Subject to the further provisions of this article and the provisions of Article 21.21 below, any deficiency in the amount of the proceeds from such property insurance resulting from a failure by the Lessee or any sublessee(s) to re-establish the full replacement value of the Improvements shall be the sole responsibility of the Lessee.
- (3) [Intentionally Deleted.]
- (4) Damage or Destruction and Restoration of the Improvements:
- (a) In case of damage to or loss of all or a portion of the Improvements, the Lessee shall give prompt notice thereof to the Department and, unless Lessee or the applicable sublessee(s) shall elect to exercise the right granted in Section 12.2(A)(4)(c) below, Lessee or the applicable sublessee(s) shall promptly commence and complete with due diligence (subject only to delays beyond its or their reasonable control), the restoration of the damaged or destroyed portion of the Improvements as nearly as reasonably practicable to the value and condition thereof immediately prior to such damage or destruction. In the event of such damage or destruction, the proceeds of all property insurance policies shall be used to restore the facility to make it functional for the uses permitted under Article 3. The Lessee and/or sublessees shall receive reimbursement from the proceeds of all property insurance policies for the Improvements and shall be obligated to provide any additional monies necessary for such restoration.
- (b) Anything in the foregoing to the contrary notwithstanding, in the event that any such damage or loss to any Improvement(s) shall occur during the last ten (10) years of the term of this Lease, then, subject to the provisions of Article 21.21 below, Lessee (and/or the applicable sublessee[s]) shall have the right to exercise one of the following three options: (1) proceed with the repair or restoration of the affected Improvement(s), (2) remove the damaged facilities from the Premises, restore the land to a scraped and seeded or paved condition, and perform all actions necessary to leave the premises and any utilities thereon in a safe condition, or (3) terminate this Lease either as to the entirety of the Premises in the case of a casualty affecting all or substantially all of the Improvements located on the Premises, or as to the portions thereof upon which such affected Improvements shall be located, following Lessee's removal of the damaged facilities and restoring the land to a seeded or paved condition as Lessor may direct. If Lessee or any sublessee exercises option #1 or #2 as to any portion of the Premises, Lessee shall continue to pay rent on such portion of the Premises. If Lessee exercises option #3 as to any

portion of the Premises, Lessee shall no longer be obligated to pay rent on such portion and Lessee shall have no further obligations as to such portion except for any obligations or liabilities that arose prior to the effective date of Lessee's exercise of the option.

(c) For avoidance of doubt, it is understood and agreed that if, in connection with damage or destruction occurring at any time during the Term of this Lease, Lessee or any sublessee(s) shall elect not to rebuild any damaged or destroyed Improvement(s), then Lessee or such sublessee(s) shall be required to promptly remove the damaged or destroyed Improvements and clear, grade and seed or pave over the area formerly occupied by such Improvement(s) and perform all actions necessary to leave the premises and any utilities thereon in a safe condition.

(d) If any damage or destruction to the Improvements shall occur prior to the Construction Deadline (as the same may have been extended from time to time) and prior to the date upon which substantial completion thereof shall have first been achieved, then such restoration/rebuilding of such partially completed Improvements in all instances must occur if necessary to satisfy the requirements of Article 5.8 above, relating to the Required Investment.

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

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

- (A) The Lessee or its sublessee(s) has/have obtained insurance in the types, amounts and classifications as required for strict compliance with this Article;
- (B) The policy cancellation notification provisions specify at least 30 days advance written notice of cancellation to the County;
- (C) The County is named as an additional insured with respect to the Lessee's commercial general liability policies; and
- (D) [Intentionally Deleted.]
- (E) On said insurance certificates, liability coverage shall include contractual liability and notification of cancellation.

12.4 Additional Insurance: In addition to the types and levels of coverage provided in Article 12.1 or as may be required by applicable law, the County reserves the right to

require the Lessee to (i) provide additional types of insurance coverages or (ii) increase (or cause its sublessees to increase) the policy limits of its various insurance coverages from time to time during this Agreement as the County through approval by the Board of County Commissioners reasonably requires of all other tenants similarly situated to Lessee (and if there shall be no similarly situated tenants at airports operated by the County, then the County may require Lessee to increase the policy limits of its various insurance coverages to amounts that other government-operated airports then customarily require of retail or commercial tenants at such airports whose facilities are located outside the AOA's at such other airports) upon issuance of notice in writing to the Lessee, which notice shall automatically amend this Agreement effective 90 days after such notice. The County further reserves the right, from time to time, to require Lessee to increase (or cause its sublessees to increase) such policy limits in the event that the businesses or activities of Lessee or any sublessee(s) at the Premises shall result in a significantly higher claims history that would otherwise be the case in the absence of such business or activity, provided, however, that the foregoing shall not apply to typical retail, restaurant, service and entertainment businesses and activities. If Lessee claims that such coverage is not commercially available, reasonable documentation with respect thereto shall be provided by Lessee to the County, and if the parties cannot mutually agree to the coverage level that is reasonably available, the parties shall refer the matter to an unrelated local insurance broker of at least ten (10) years' experience in commercial insurance to determine the type and coverage level of the insurance that is reasonably available in South Florida and that Lessee must obtain. An insurance broker shall not be deemed unrelated if, among other things, such broker is then acting for either party hereto, or such broker has acted for either party hereto during the immediately preceding five (5) years, or such broker is then soliciting an engagement or other business arrangement with either party hereto.

- 12.5 Compliance: Compliance with the requirements of this Article 12 (Insurance) shall not relieve the Lessee of its liability under any other portion of this Agreement or any other agreement between the County and the Lessee.
- 12.6 Right to Examine: The Department reserves the right, upon reasonable notice, to examine true copies of applicable portions of policies of insurance (including but not limited to binders, amendments, exclusions, riders and applications) to determine the true extent of coverage. The Lessee agrees to permit such inspection of such policies at the offices of Lessee or at the office of the Department, at the Department's option.
- 12.7 Personal Property: Any personal property of the Lessee or of others placed in the Premises and Improvements and Airport shall be at the sole risk of the Lessee or the owners thereof, and the County shall not be liable for any loss or damage, except to the extent such loss or damage was caused by the negligence or willful misconduct of the County, as limited by Section 768.28, Florida Statutes.
- 12.8 Blanket Policies: Lessee may carry all or a portion of the insurance coverage mandated under this Lease under a blanket policy covering the Improvements and Premises under this Lease and other properties of affiliates of Lessee, so long as the coverage provided is consistent with the requirements of this Article 12.
- 12.9 [Intentionally Deleted.]

12.10 [Intentionally Deleted.]

## ARTICLE 13

### USE OF PUBLIC FACILITIES

- 13.1 (A) In addition to the other rights and privileges granted to Lessee and its sublessees as elsewhere provided in this Lease, the County also grants to the Lessee, in common with all others desiring to use the Airport, and only to the extent necessary or reasonably desirable, so long as such use does not conflict with the County's operation of the Airport, to carry out the rights granted the Lessee hereunder, the nonexclusive privilege to use the roads of egress and ingress, service roads and such other facilities and improvements as may be now in existence or hereafter constructed for the use of persons lawfully using the Airport; provided, however, that such usage shall be subject to the payment of nondiscriminatory fees and other charges established by the County. For avoidance of doubt, it is expressly understood and agreed that no charge or fee shall be imposed upon Lessee for ingress to or egress from the Premises via any public road, including, but not limited to SW 137<sup>th</sup> Avenue, SW 128<sup>th</sup> Street and the Roadway constructed by Lessee in the vicinity of the S.W. 124<sup>th</sup> Street intersection at S.W. 137<sup>th</sup> Avenue as provided below. Nothing herein contained shall grant to the Lessee the right to use any leaseable space or area improved or unimproved which is leased to a third party, or which the County has not leased herein.

The County hereby grants Lessee the right and license, at Lessee's option and sole cost, to construct a 4-lane paved roadway (the "Roadway") commencing in the vicinity of the S.W. 124<sup>th</sup> Street intersection at S.W. 137<sup>th</sup> Avenue and extending westerly to a point (the "Turn Point") which shall be located not less than two hundred fifty feet (250') and not more than five hundred feet (500') from the westerly right of way line of S.W. 137<sup>th</sup> Avenue and then turning south and extending to Lessee's Premises. The location of the Roadway and the location of such Turn Point within said 250' - 500' zone shall be mutually agreed upon by Lessor and the County prior to the commencement of construction of the Phase I infrastructure Improvements (each party to negotiate in good faith with respect to the location of the Turn Point and neither party to unreasonably withhold, delay or condition its agreement with respect thereto), it being the intent of the parties that the precise location of the Turn Point within said 250' - 500' zone shall be determined so as not to materially compromise Lessor's ability to make use of or develop Lessor's adjoining property, as Lessor reasonably determines. Such Roadway shall not be and shall not be deemed to be an extension of S.W. 124<sup>th</sup> Street, and Lessee shall take no actions in regard to such Roadway or its use that constitute a dedication of such Roadway as a public road. Lessor, Lessee, and Lessee's sublessees and their respective employees, agents, contractors, suppliers, invitees, licensees, customers and patrons shall have the right and license to use such Roadway for ingress and egress to and from the Premises from SW 137<sup>th</sup> Avenue without charges. The rights and licenses granted by the County pursuant to this Section 13.1 and/or other provisions of this Lease shall be irrevocable during the term of this Lease, and the provisions of Article 5.17 shall also apply to Lessee's construction and use of the Roadway.



(B) The County further grants the right, without additional charge to Lessee or its sublessees, of ingress to and egress from the Premises over and across public roadways serving the Airport for the Lessee, its sublessees, agents and employees, patrons and invitees, suppliers of service and furnishers of materials. Said right shall be subject to such laws, rules, regulations and orders as now or may hereafter have application at the Airport.

- 13.2 To the extent that Lessee intends to connect to utility services located within the Airport, such connections will be performed in accordance with County's specifications, so that they will not conflict with the County's operation of the Airport.

## ARTICLE 14

### TERMINATION

- 14.1 Payment Defaults: Subject to the provisions of Article 14.4 below, failure of the Lessee to make all payments of rentals, fees, and charges required to be paid to the County herein when due shall constitute a default, and the County may, as its option, terminate this Agreement after ten (10) business days notice in writing to the Lessee unless the default is cured within the notice period.
- 14.2 Insurance Defaults: The County shall have the right, upon thirty (30) business days written notice to the Lessee, to procure any insurance required herein if the Lessee fails to provide evidence of insurance coverage in strict compliance with Article 12 hereof prior to commencement of operations, or fails to provide a renewal of said evidence upon its expiration; provided, however, that such right to procure such insurance shall not be effective if the Lessee provides the required evidence of insurance coverage within the notice period. In the event that the County shall exercise such right to procure required insurance not timely procured by Lessee, Lessee shall be required, within ten (10) business days following written demand by the County, to reimburse the County for all reasonable costs and expenses incurred by the County in procuring such required insurance for Lessee, failing which Lessee shall be deemed to have committed a Payment Default, within the meaning of Article 14.1 above.
- 14.3 Other Defaults: Subject to the provisions of Article 14.4 below, the County shall have the right, upon 30 calendar days written notice to the Lessee, to terminate this Agreement upon the failure of the Lessee to comply with any of its material covenants of this Agreement, including but not limited to Lessee's obligations under Article 2, Article 3.5 (relating to Unauthorized Purposes) and Exhibit "G" (relating to Prohibited Uses), other than the covenants to pay rentals, fees and charges when due, unless the same shall have been corrected within such period, or, if correction cannot reasonably be completed within such 30-day period, the Lessee has commenced good faith corrective steps within such 30-day period or within such other longer period if so directed by MDAD and diligently pursues same to completion.
- 14.4 (A) Except to the extent that Lessee has made an Assignment of this Lease either in whole or in part to a Qualified Assignee and as a result thereof, Lessee has been released from all further obligations hereunder, then Lessee shall comply (and/or cause compliance) with the terms of this Agreement as to the entirety of the Premises or as to the portion of

the Premises that was not affected by any partial Assignment(s) of this Lease to Qualified Assignee(s) and Lessor shall look to such Qualified Assignee(s) as relates to the portion(s) of the Premises that were affected by such partial Assignment(s) to such Qualified Assignee(s). Upon a breach by Lessee of its obligations hereunder as to any portion of the Premises, Lessor shall have the remedies set forth in Articles 14.1, 14.2, and 14.3 hereof as to the entirety of the Premises, subject however to the provisions of Article 14.4(B) below.

(B) The County specifically agrees that in the event of a Lessee default hereunder which shall not have been timely cured, the default shall apply only to the portion of the Premises to which the default relates, and the County will not disturb the Lessee's right hereunder or any sub-lessee's rights to occupy space subleased to it for which no default hereunder exists either as to Lessee or such sublessee, so long as Lessee is remitting applicable Rent to the County in respect of Lessee's or sublessee's non-defaulting portions of the Premises. Additionally, the County shall not disturb or evict Lessee from, or declare Lessee in default of this Lease in respect of, any portion of the Premises upon which Lessee continues to timely pay applicable Rent and comply with other Lease provisions in respect of such portion of the Premises, notwithstanding that the Lessee may otherwise be in default of this Lease in respect of other portions of the Premises, inclusive of the failure to pay all rentals due in respect of such other portions of the Premises, and regardless of whether the Lease has been terminated as to any other portion of the Premises as a result of a default by Lessee; provided, however, that nothing herein shall preclude Lessor from exercising its available remedies as to any portion of the Premises that is in default hereunder. Lessee may provide notice to Lessor at the time of the remittance of its Rent payments due under this Lease, for the portion(s) of the Premises as to which such Rent is being paid (or conversely the portion of the Premises for which Rent is not then being paid if the Rent remitted is not the full Rent then due, and the County agrees that such notice shall be binding on the County in respect of this Article 14. The remedies provided to Lessor in this Article 14 shall be limited as provided herein.

(C) All of the foregoing defaults specified in this Article 14 and the remedy of termination of this Lease as a result of any default that is not timely cured, or any other right of termination in this Agreement, shall relate only to the specific portion of the Premises, or, if a sublease exists, then only to the portion of the Premises that is the subject of that sublease, to which the alleged default applies, so that a default with regard to one portion of the Premises or one subleased portion, as the case may be, shall have no effect on this Lease as it relates to other portions of the Premises or other subleased portions thereof, nor shall any such default affect the remaining tenancy of Lessee or any other sublessee; provided, however, that nothing herein shall preclude the Lessor from exercising its available remedies as to any portion of the Premises that is in default hereunder.

(D) In the event of any notice of default given by the County to Lessee for the default of any sublessee, such sublessee shall have the right to cure said default, or Lessee may cure same. Further, any sublessee(s) or assignee(s) shall have the right to cure any default by Lessee hereunder that relates either (x) to the portion(s) of the Premises subleased to such sublessee(s) or (y) to the entire Premises. Any cure by Lessee shall be deemed to be a cure by the sublessee(s) in respect of the portion(s) of the Premises subleased to such sublessee(s) or in respect of the entire Premises, as the case may be. Any cure by a

sublessee shall be deemed to be a cure by Lessee in respect of the portion of the Premises then in default and occupied by the sublessee or in respect of the entire Premises, as the case may be.

(E) The County's remedies under this Lease in the event of a default by Lessee shall be strictly limited and governed by the terms, conditions and rights afforded Lessee as contemplated by this Article 14.4, and the County shall have no right to terminate this Lease in its entirety unless Lessee's default extends to the entirety of the Premises or the entirety of the Rent due in respect of the entire Premises.

#### 14.5 Actions at Termination:

- (A) Upon a default as to a portion of the Premises, or upon a default as to the whole of the Premises, or upon the expiration of the term of this Agreement, Lessee shall vacate, quit, surrender up and deliver to the County the portion of the Premises (in the case of a default as to a portion of the Premises) or the entirety of the Premises (in the case of a default as to the whole of the Premises or in the case of the expiration of the term of this Agreement) and the Improvements thereon, respectively, on or before the termination date of this Agreement, whether by lapse of time or otherwise. The Lessee shall surrender the portion or the entirety of the Premises and Improvements, as appropriate, in the condition required under Article 6 (Maintenance and Repairs) herein. All repairs for which the Lessee is responsible shall be completed prior to surrender. The Lessee shall deliver to the Department all keys to the portion or the entirety of the Premises and Improvements upon surrender. On or before the termination date of this Agreement, the Lessee shall remove all of its personal property from the portion or entirety of the Premises and Improvements, but excluding the vaults of any bank or financial facility. Any personal property of the Lessee not removed in accordance with this Article may be removed by the Department for storage at the cost of the Lessee. Failure on the part of the Lessee to reclaim its personal property within 30 days from the date of termination shall constitute a gratuitous transfer of title thereof to the County for whatever disposition is deemed to be in the best interest of the County.
- (B) The Lessee of any portion of the Premises shall, at its expense, take all actions required by Federal, State and local laws, regulations or codes to remove from such portion of the Premises and Improvements any Hazardous Material thereon, whether stored in drums, or found in vats, containers, distribution pipe lines, or the like, to the extent of Lessee's responsibility under Article 8.2. All such Hazardous Material shall be removed by the Lessee in a manner approved and authorized by such Federal, State or local laws, regulations or codes.
- (C) If within ninety (90) days prior to the termination of this Agreement as to all or any portion of the Premises, the County advises the Lessee thereof in writing that the County has reasonable grounds to believe that, during the term of this Agreement, any Hazardous Materials have been released by such Lessee or any sublessee within the Premises or such portion thereof or into the ground under the Premises or such portion thereof, then promptly following such written notice from the County, the Lessee of such portion of the Premises at its sole cost and expense shall retain an

approved environmental consultant to perform an environmental investigation of such portion of the Premises to determine whether any Hazardous Material has been released within the Premises and Improvements or into the ground under such portion of the Premises and Improvements during the Term or if a Recognized Environmental Condition exists which was not otherwise identified in (i) the Remedial Action, (ii) the Baseline Audit, (iii) any Tenant Audit, or (iv) the construction of Improvements during the first six months of this Agreement (all other Recognized Environmental Conditions and Hazardous Materials on the Premises that were not released by the County or its agents, employees or contractors and that were not in existence at the Premises on the Effective Date and that did not migrate from other properties onto the Premises referred to throughout this Agreement as the "Tenant Contamination"). If the assessment reveals any Tenant Contamination, the Lessee shall comply with the recommendations and conclusions of the County or its consultant regarding environmental clean-up efforts that may be required to comply with applicable clean-up requirements imposed on the Lessee by Federal, State or local law, regulations or codes. Lessee shall not be responsible for (i) any Hazardous Material that originated from an off-site discharge, disposal or release by a party other than Lessee, its employees, agents or contractors and that has migrated onto the Premises, or (ii) any Hazardous Material that originates from a discharge, disposal or release by the County or any of its employees, agents or contractors, or (iii) any Hazardous Materials that existed at the Premises on or prior to the Effective Date, or (iv) any Hazardous Materials that were released by any third party for whom Lessee is not otherwise responsible at law, and the existence of any such Hazardous Materials shall not constitute a default by Lessee under this Lease. Except as expressly provided below, any Environmental Condition or Hazardous Material that existed at the Premises on or prior to the Effective Date and/or that originated from an off-site discharge, disposal or release by a party other than Lessee or any of its employees, agents or contractors and the presence of which on, about, or beneath the surface of the Premises has been accelerated by virtue of, or resulted from, the construction of the Improvements will nevertheless be deemed to have migrated onto the Premises, rather than being brought on the Premises through intentional acts of Lessee or any of its employees, agents or contractors, and will not constitute Tenant Contamination. The limitation set forth in the preceding sentence will not apply to the extent that the presence of the Environmental Condition or the Hazardous Materials on, about, or beneath the surface of the Premises is attributable to Lessee's failure to comply with all requirements of any de-watering permit that an appropriate regulatory authority issues in connection with the construction of the Improvements.

- (C) Nothing in this Article or Agreement shall affect the Lessee's liability for environmental violations as separately provided for in any Federal, State, or local law, except to the extent that the County has agreed to assume liability for contamination existing as of the commencement of this Agreement under Article 8.2.

14.6 Right to Show Premises and Improvements: At any time after the Lessee has been given notice of termination or default, pursuant to Article 14 (Termination) hereof, and the

curative period established in respect of the default in this Article 14 has expired, the County shall have the right to enter on the Premises and Improvements or the applicable portion thereof (exclusive of bonded areas within the Improvements) for the purpose of showing same to prospective tenants or users.

14.7 County Defaults: This Agreement shall be subject to termination (and/or an action to recover damages and/or other relief) by the Lessee in the event of a default by the County in the performance of any material covenant or agreement herein required to be performed by the County and the failure of the County to remedy same within a reasonable period of time following receipt of written notice from the Lessee of such default. This right of termination is not an exclusive remedy and Lessee may, upon the County's default, exercise any other rights available to it at law or in equity, including, but not limited to, self-help and use of monies otherwise due the County by Lessee hereunder in application of the cure of said Lessor default.

14.8 [Intentionally Deleted.]

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

- (A) The permanent abandonment of the Airport which prevents or materially interferes with the continued operation of the Premises as then being operated.
- (B) The lawful assumption by the United States Government or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part or parts thereof which encompasses all or any material portion of the Premises or which in any other manner substantially restricts the Lessee from operating therefrom for a period in excess of 90 consecutive days, including pursuant to the exercise of any rights pursuant to Article 21.8 hereof, provided that nothing contained herein shall be deemed to constitute a waiver by the Lessee of any right it may have against the United States to just compensation in the event of any such assumption.
- (C) The issuance by any court of competent jurisdiction of any injunction or similar order in any way substantially preventing or restraining the use of the Airport, and the remaining in force of such injunction for a period in excess of 90 days; provided, however, that if such injunction does not preclude or materially and adversely affect the continued use of the Premises or any portion thereof, then termination of this Lease shall not occur as to the Premises or such portion thereof on account of such injunction or order.
- (D) The termination of this Agreement pursuant to Section 20.3 below.

Upon the occurrence of any of the events described in Section 14.9(A) or (C) above, Lessee may send a notice of termination to the County whereupon this Agreement shall terminate sixty (60) days from the date of receipt of such notice by the County, the Lessee shall have no further obligations hereunder and the County shall pay to the Lessee the "Termination Fee" (defined below) in order to compensate the Lessee for its economic loss of the use of

the Premises, Improvements and related amenities established and operated by Lessee as elsewhere set forth in this Agreement. The Termination Fee shall be paid to Lessee in full within one hundred and twenty (120) days of the receipt of the notice of termination of this Agreement and shall consist of the sum of (x) the unamortized balance of the costs incurred by Lessee and its sublessees in constructing the Improvements calculated in accordance with GAAP on a forty (40) year straight line basis from the DBO of each Improvement, at an interest rate of one percent (1%) above the one-year LIBO Rate that was in effect on the DBO for such improvement, plus (y) an amount equal to all other sums that would be payable to Lessee had this Lease been terminated in connection with a taking of Premises under power of eminent domain as contemplated in Article 2.12 above, but without duplication of any sums paid to Lessee pursuant to Clause (x) immediately above.

- 14.10 Anything in this Article 14 or elsewhere in this Lease to the contrary notwithstanding, it is expressly understood and agreed that all provisions of this Article 14 (including all rights and remedies granted to the County pursuant to this Article 14) are and shall be subject to, and qualified by, the provisions of Section 10.1(C)(4) above and in the event of any conflict between the terms of this Article 14 and the terms of Section 10.1(C)(4) above, the terms of said Section 10.1(C)(4) shall take precedence and shall control.

## ARTICLE 15

### SPECIAL CONDITIONS

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

15.2 Height Restrictions: The Lessee expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Premises to such a height so as to comply with Federal Aviation Regulations, Part 77 and with the Code of Miami-Dade County (including, but not limited to, the Airport Zoning Ordinance contained therein), whichever is more restrictive.

15.3 Compliance with FAA Requirements: To the extent the FAA has jurisdiction over the activities of Lessee, whether by law or by this Agreement, or to the extent the federal grant assurances or FAA regulations require Lessor to monitor the activities of the Lessee hereunder, the Lessee agrees to comply with such FAA or federal requirements or regulations if and to the extent that same shall be valid, legally enforceable and applicable to the Premises and/or the development, use and/or operation thereof. If compliance with such FAA requirements materially interferes with Lessee's abilities to develop and/or use the Premises or operate under this Agreement, Lessor and Lessee shall cooperate with each other in an attempt to effect reasonable alternative ways for Lessee to continue its operations without being in conflict with the FAA's requirements. Lessor shall provide reasonable assistance to Lessee in discussing such alternatives with the FAA. Nothing herein, however, shall preclude Lessee from contesting in good faith FAA's then existing regulations, requirements, or policies as they relate to construction or

reconstruction of the Improvements and/or the use or operation thereof and Lessee shall reserve all rights to bring whatever actions against the FAA for legal or equitable remedies may then be available to Lessee. Further, Lessee shall have the right to maintain actions against the FAA under any available theories, including but not limited to inverse condemnation, violation of constitutional rights or otherwise, to the extent such right is or shall be available to Lessee as a matter of law.

15.4 Cooperation of the Lessor and Lessee: The Parties agree that MDAD shall have the authority to execute any and all ancillary documents necessary to fully implement the terms of this Agreement and to amend, with agreement of Lessee, from time to time, any non-material provision of the Agreement which may be reasonably requested by Lessee for the purposes of the Parties effectuating the intent of this Agreement.

15.5 Residents First Training and Employment Program: Lessee shall comply with the requirements of Section 2-11.17 of the Code of Miami-Dade County and the provisions of Implement Order No. IO 3-61 of Lessor, as both may be amended from time to time.

15.6 Employ Miami-Dade Program: Lessee shall comply with the requirements of Miami-Dade County Implementing Order No. 3-63, as same may be amended from time to time during the term of this Lease. The Lessee is hereby notified that the County will consider whether the Lessee made its best reasonable efforts to promote Employ Miami-Dade under this Lease, as defined in such Implementing Order, as a part of the County's evaluation and responsibility review of the Lessee for new County awards.

## ARTICLE 16

### EQUAL EMPLOYMENT OPPORTUNITY, NONDISCRIMINATION AND AFFIRMATIVE ACTION

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

The Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the County setting forth the provisions of this Equal Employment Opportunity clause.

The Lessee shall comply with all applicable provisions of the Civil Rights Act of 1964, including but not limited to Title VI thereof, Executive Order 11246 issued September 24, 1965, as amended by Executive Order 113155, revised order No. 4 issued December 1, 1951, as amended, the Americans with Disabilities Act, the Age Discrimination in Employment Act effective June 12, 1968, Executive Order 13166 issued August 11, 2000, Improving Access to Services for persons with Limited English Proficiency (LEP), the rules, regulations and relevant orders of the Secretary of Labor, Florida Statutes §112.041, §112.042 and §112.043, and Section 11A1 through 13A1, Articles 3 and 4 of the Code of Miami-Dade County, as the foregoing may be amended from time to time.

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

**16.02 Nondiscriminatory Access to Premises:** The Lessee, for itself, its sublessees, successors in interest, and assigns (herein collectively for this Section 16.02 the "Lessee"), as part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of the Premises and improvements hereunder; (2) that in the construction of any improvements on, over, or under the Premises hereunder, and the furnishing of services therein or thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) that the Lessee will use the Premises and improvements in compliance with all other requirements imposed by or pursuant to the List of Nondiscrimination Acts and Authorities attached hereto as **Exhibit "I"**.

**16.03 Breach of Nondiscrimination Covenants:** In the event it has been determined that the Lessee has breached any enforceable nondiscrimination covenants contained in Section 16.01 Equal Employment Opportunity and Section 16.02 Nondiscriminatory Access to Premises above, pursuant to the complaint procedures contained in the applicable Federal Regulations, and the Lessee fails to comply with the sanctions and/or remedies which have been prescribed, the County shall have the right to deliver written notice of such violation to Lessee, and if Lessee fails to commence to cure said violation within 120 days of receipt of the notice and thereafter in good faith continue to do so, the County may bring an action in a court of competent jurisdiction to enjoin Lessee from continuing such conduct, Lessee hereby agreeing that such conduct, if proven and not incidental or isolated, constitutes harm to the County and Lessee's compliance with Section 16.01 and 16.02 may be subject to a specific enforcement action.

**16.04 Nondiscrimination:** During the performance of this Agreement, the Lessee agrees as follows: The Lessee shall, in all solicitations or advertisements for employees placed by or on behalf of the Lessee, state that all qualified applicants will receive consideration for employment without regard to age, sex, race, color, religion, marital status, place of birth or national origin, ancestry, physical handicap or disability. The Lessee shall furnish all information and reports required by Executive Order 11246 issued September 24, 1965, as amended by Executive Order 113155, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to The Lessee books, records, accounts by the County and Compliance Review Agencies for purposes of investigation to ascertain by the compliance with such rules, regulations, and orders. In the event of the Lessee's noncompliance with the nondiscrimination clauses of this



Agreement or with any of the said rules, regulations, and orders, MDAD shall be entitled to pursue its remedies as may be provided by such laws, including the remedy of specific performance and the remedy that the Lessee may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive Order 113155 and such sanctions as may be imposed and remedies invoked as provided in Executive Order 113155 and such sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 as amended or by rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

The Lessee will include Section 16.01 Equal Employment Opportunity and Section 16.02 Nondiscriminatory Access to Premises of this Article in the Lessee sub-contracts in excess of \$10,000.00, unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 issued September 24, 1965, as amended by Executive Order 113155, so that such provisions will be binding upon each sub-consultant. The Lessee shall take such action with respect to any sub-contract as the County may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Lessee becomes involved in, or is threatened with, litigation with a sub-consultant as the result of such direction by the County or by the United States, the Lessee may request the United States to enter into such litigation to protect the interests of the United States.

16.05 Disability Nondiscrimination Affidavit: By entering into this Agreement with the County and signing the Disability Nondiscrimination Affidavit, the Lessee attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. Subject to the provisions of Section 16.03 above, if the Lessee or any owner, subsidiary or other firm affiliated with or related to the Lessee is found by the responsible enforcement officer of the Courts or the County to be in violation of the Act or the Resolution and if Lessee or such owner, subsidiary or other firm affiliated with or related to Lessee shall fail to promptly cure such violation, then MDAD shall be entitled to pursue all remedies provided by such law and Resolution.

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

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

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

## ARTICLE 17

### SECURITY AND SPECIAL PROVISIONS

- 17.1 Security: The Lessee acknowledges and accepts full responsibility for the security and protection of the Premises and Improvements, its equipment and property on the Airport, and control of access to the Air Operations Area (AOA) through the Premises and Improvements by persons and vehicles. The Lessee fully understands and acknowledges that any security measures deemed necessary by the Lessee for the protection of said Premises and Improvements, equipment and property and access to the AOA through the Premises and Improvements shall be the sole responsibility of the Lessee and shall involve no cost to the County. All such security measures by the Lessee shall be in accordance with FAR 107 and the Airport Security Plan. The provisions of this Article 17.1 shall be applicable to Lessee and the Premises only if and to the extent that the Premises shall be located within the AOA or that Lessee desires access to the AOA (it being expressly understood and agreed that the portion of Southwest 128<sup>th</sup> Street located between Southwest 137<sup>th</sup> Avenue to the east and the rear property line of the Premises, to the west, shall not be deemed to be located within the AOA, and that by utilizing such portion of Southwest 128<sup>th</sup> Street, neither Lessee nor any of its sublessees, nor any of its, or their respective, employees, agents, contractors, invitees and customers shall be deemed to be having access to the AOA).
- 17.2 Security Identification Display Areas Access - Identification Badges: The Lessee shall be responsible for requesting the Department to issue identification (ID) badges to all employees who are authorized access to Security Identification Display Areas (SIDA) on the Airport, designated in the Airport's security program and shall be further responsible for the immediate reporting of all lost or stolen ID badges and the immediate return of the ID badges of all personnel transferred from Airport assignment or terminated from the employ of the Lessee or upon termination of this Agreement. Each employee must complete the SIDA training program conducted by the Department, before any ID badge is issued. The Lessee shall pay, or cause to be paid, to the Department such nondiscriminatory charges as may be established from time to time for lost or stolen ID badges and those not returned to the Department in accordance with this Article. The Department shall have the right to require the Lessee to conduct background investigations and to furnish certain data on such employees before the issuance of such ID badges, which data may include the fingerprinting of employee applicants for such badges. The provisions of this Article 17.2 shall be applicable to Lessee and the Premises only if and to the extent that the Premises shall be located within the SIDA or that Lessee operates within the SIDA (it being expressly understood and agreed that the portion of Southwest 128<sup>th</sup> Street located between Southwest 137<sup>th</sup> Avenue to the east and the rear property line of the Premises, to the west, shall not be deemed to be located within the SIDA, and that by utilizing such portion of Southwest 128<sup>th</sup> Street, neither Lessee nor any of its sublessees, nor any of its, or their respective, employees, agents, contractors, invitees and customers shall be deemed to be operating within the SIDA).

17.3 AOA - Driver Training: Before the Lessee shall permit any employee to operate a motor vehicle of any kind of type on the AOA, the Lessee shall require each employee to attend and successfully complete the AOA Driver Training Course conducted from time to time by the Department. The privilege of a person to operate a motor vehicle on the AOA may be withdrawn by the Department for any violation of AOA driving rules. Notwithstanding the above, the Lessee shall be responsible for ensuring that all such vehicle operators possess current, valid, appropriate Florida driver's licenses. The provisions of this Article 17.3 shall be applicable to Lessee and the Premises only if and to the extent that (i) the Premises shall be located within the AOA, or (ii) that any entrance to the AOA is accessible through the Premises, or (iii) Lessee operates within the AOA (it being expressly understood and agreed that the portion of Southwest 128<sup>th</sup> Street located between Southwest 137<sup>th</sup> Avenue to the east and the rear property line of the Premises, to the west, shall not be deemed to be located within the AOA, and that, although the AOA may be accessible by means of Southwest 128<sup>th</sup> Street, by utilizing such portion of Southwest 128<sup>th</sup> Street for ingress and egress to and/or within the Premises, neither Lessee nor any of its sublessees, nor any of its, or their respective, employees, agents, contractors, invitees and customers shall be deemed to be operating within the AOA or shall be required to comply with the requirements of this section).

17.4 [Intentionally Deleted.]

17.5 Special Programs: The Lessee shall ensure that all employees so required participate in such safety, security and other training and instructional programs, as the Department or appropriate Federal agencies may from time to time require. The provisions of this Article 17.5 shall be applicable to Lessee and the Premises only if and to the extent that the Premises shall be located within the AOA or the SIDA.

17.6 Vehicle Permit and Company Identification: The Lessee 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 Lessee in areas under the jurisdiction or control of such federal inspection agencies.

The provisions of this Article 17.6 shall be applicable only if and to the extent that any entrance to the AOA or SIDA is accessible through the Premises, such that Lessee or its employees will have access to international aircraft and/or facilities use by Federal Inspection Services agencies.

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

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

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

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

17.10 [Intentionally Deleted.]

17.11 Nuisance. The Lessee shall use all commercially reasonable efforts that other prudent landlords of similar projects would use to control the actions of its employees, agents, invitees and those doing business with it, so as to not unreasonably annoy, disturb or be offensive to others and to provide the services permitted hereunder in a manner that does not unreasonably create a nuisance or event which may unreasonably disturb the quiet enjoyment of any other users of the Airport. Nothing in this Article 17.11 shall reduce Lessee's obligations under Article 3 above, or Exhibit "G" hereto.

## ARTICLE 18

### CONTROL OF EMPLOYEES

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

## ARTICLE 19

### CIVIL ACTIONS

19.1 Governing law; Venue: This Agreement shall be governed and construed in accordance with the laws of the State of Florida. The venue of any action on this Agreement shall be

laid in Miami-Dade County, Florida.

- 19.2 Registered Office/Agent: Jurisdiction: The Lessee, if a corporation, shall designate a registered office and a registered agent, as required by Section 48.091, Florida Statutes, such designations to be filed with the Florida Department of State in accordance with Section 607.034, Florida Statutes. If the Lessee is a natural person, he and his personal representative hereby submit themselves to the jurisdiction of the Courts of this State for any cause of action based in whole or in part on an alleged breach of this Agreement.
- 19.3 Attorneys' Fees and Costs: In any action or proceeding between the parties hereto arising out of or under or relating to this Lease, the substantially prevailing party shall be entitled to recover from the other party the substantially prevailing party's reasonable costs and expenses in such action or proceeding, including reasonable attorneys' fees, costs and expenses.

## ARTICLE 20

### TRUST AGREEMENT AND BOND RESOLUTION

- 20.01 The parties acknowledge that the terms of the Lessor's 2002 Amended and Restated Trust Agreement shall not apply to Lessee's private development of the Premises with Lessee's private and non-public funds as the funding source for such development; provided, however, that to the extent any term herein is a defined term in the Trust Agreement, the definition of such term as set forth in the Trust Agreement shall apply.
- 20.2 [Intentionally Deleted.]
- 20.3 Lessee Right to Terminate: In the event the County within one year of the Effective Date does not make appropriate changes to its CDMP and any other land use document that may be required for Lessee's operations hereunder so that the development of the Premises as contemplated in this Agreement may go forward as set forth therein, or in the event that Lessee within one year of the Effective Date shall be unable to satisfy the DRI, Traffic Concurrence or Permitting requirements referred to above in this Lease or to secure any necessary rezoning, site plan approval or other approvals required for the development of the Premises as contemplated in this Agreement, then the Lessee, at any time within one year following the event giving rise to such right of termination may terminate this Agreement by giving ninety days written notice to the County, without liability by any party to any other party except as to any Lessee liabilities that may have arisen under Article 8.2. Nothing set forth above in this Section 20.3 shall be deemed to modify or diminish the rights of Lessee to exclude portions of the Premises from the Lease as contemplated in Article 2.16, which right remains in full force or effect. The parties further agree that in any circumstances set forth in this Lease in which Lessee is entitled to exclude, and does so exclude, portions of the Premises from this Lease, the Lease will be amended to remove such excluded area from the Premises and this Lease will be modified to exclude such portion of the Premises from this Lease for all purposes, including, but not limited to, the payment of Rent in connection with same, and the obligations for Annual Rent shall likewise be reduced appropriately.

## ARTICLE 21

### OTHER PROVISIONS

- 21.1 Reasonableness and Good Faith: Whenever this Agreement grants the County or Lessee the right to take action, exercise discretion, establish rules and regulations, make allocations, or other determinations, or otherwise exercise rights or fulfill obligations, the County and Lessee shall act reasonably and in good faith and take no action that might result in the frustration of the reasonable expectations of a sophisticated landlord and sophisticated tenant concerning the benefits to be enjoyed under this Agreement.
- 21.2 No Representation: Except as may be provided for in this Lease, the County makes no representation, warranty, guarantee, or averment of any nature whatsoever concerning the physical condition of the Premises and Improvements, and it is agreed that, except as may be provided for in Articles 2.2, 2.3, 2.4 and 8.2, County will not be responsible for any such physical condition.
- 21.3 Force Majeure: Except as provided below, any prevention, delay or stoppage attributable to strikes, lockouts, labor disputes, acts of God, civil commotion, fire or other casualty, unreasonable permitting delays and/or delays in obtaining required governmental inspections, but only to the extent that such delays are not caused by Lessee (whether due to Lessee's failure or to submit proper applications, or to provide proper supporting documentation to such permitting agencies, or otherwise) and other causes beyond the reasonable control of the party obligated to perform (collectively, the Force Majeure) will excuse the performance of that party for a period equal to the duration of the prevention, delay or stoppage. If, therefore, this Agreement specifies a time period for performance of an obligation of either party, a delay that a Force Majeure causes will extend the period within which the party must complete its performance. The foregoing provisions of this Section 21.3 will not apply to (1) the obligations imposed with regard to rent and other charges Lessee must pay in accordance with the terms of this Agreement and (ii) the obligations imposed upon the County to pay any amount becoming due to Lessee under the terms of this Agreement.
- 21.4 Headings: Any headings preceding the text of any articles, paragraphs or sections of this Agreement shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.
- 21.5 [Intentionally Deleted.]
- 21.6 [Intentionally Deleted.]
- 21.7 Binding Effect: The terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns. This provision shall not constitute a waiver of any conditions prohibiting assignment or subletting. Any provision of this Lease which obligates Lessee or the County to pay an amount or perform an obligation before the Effective Date or after the expiration of the Term shall be binding and enforceable notwithstanding that payment or performance is not within the Term, and the same shall survive the expiration of the Term.

- 21.8 Federal Subordination: This Agreement shall be subordinate to the provisions of any existing or future agreements between the County and the United States of America relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the Airport. In this regard, however, Lessor represents and warrants to Lessee that all of the material provisions of this Lease including, but not limited to, the provisions hereof relating to the development and use of the Premises, the rents, and/or any other fees or charges, if any, required to be paid hereunder, etc. are in conformity and compliance with such agreements and that no future agreement will be entered into by the County that shall materially alter any of such provisions or any of the rights of Lessee and/or its sublessees to use and enjoy the Premises as contemplated in this Lease. All provisions of this Agreement shall be subordinate to the right of the United States of America to lease or otherwise assume control over the Airport, or any part thereof, during time of war or national emergency for military or naval use and any provisions of this Agreement inconsistent with the provisions of such lease to, or assumption of control by, the United State of American shall be suspended.
- 21.9 Notices: All notices required or permitted to be given under the terms and provisions of this Agreement by either party to the other shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested facsimile, or by FedEx Priority Overnight Service (or other nationally recognized overnight courier service) or via email with a follow up copy by one of the other approved methods set forth above, in each case to the parties as follows:

As to the County or Aviation Department:

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

With a copy to:

County Attorney's Office  
Aviation Department  
PO Box 025504  
Miami, Florida 33102-5504

As to the Lessee:

WMD Tamiami LLC  
3200 North Military Trail, Suite 400  
Boca Raton, Florida 33431  
Email: dstiller@woolbright.net

With a copy to

David J. Wiener, Esq.  
David J. Wiener, P.A.  
3200 North Military Trail, Suite 400  
Boca Raton, Florida 33431  
Email: dwiener@woolbright.net

As to the Mortgagee:  
To be advised

and/or to such other party(ies) and/or address(es) as may hereafter be provided by the parties in writing. For avoidance of doubt, it is understood and agreed that Lessee shall have the right from time to time to designate additional parties, including Leasehold Mortgagees and sublessees to whom notices or notices of alleged defaults under this Lease shall be provided by the County, and in such event, the County shall deliver a copy of each such default notice to such designated party(ies) simultaneously with the delivery of same to Lessee. Notices by registered or certified mail shall be deemed received on the delivery date indicated by the U.S. Postal Service on the return receipt. Hand delivered notices shall be deemed received by the Lessee when presented to the local management representatives of the Lessee.

21.10 Reserved.

21.11 Rights of County at Airport: Subject only to the limitations that may be set forth elsewhere in this Agreement, the County shall have the absolute right to make any repairs, alterations and additions to any structures and facilities at any portion of the Airport not contained within the Premises. Except as may be provided to the contrary elsewhere in this Agreement, the County shall, in the exercise of such right, be free from any and all liability to the lessee for business damages occasioned during the making of such repairs, alterations and additions, except for property damages caused by the negligence or misconduct of the County, its employees, or contractors. The County shall use its best efforts to minimize any interference with the operations of Lessee at the Premises.

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

21.13 No Waiver: There shall be no waiver of the right of either party to demand strict performance of any of the provisions, terms and covenants of this Agreement nor shall there be any waiver of any breach, default or non-performance hereof by either party, unless such waiver is explicitly made in writing by the other party. Any previous waiver or course of dealing shall not affect the right of either party to demand strict performance of the provisions, terms and covenants of this Agreement with respect to any subsequent event or occurrence of any subsequent breach, default or nonperformance hereof by the other party. Unless expressly provided to the contrary in this Lease, each and every one of the rights, remedies and benefits provided by this Lease shall be cumulative and shall not be exclusive of any other such rights, remedies and benefits including those allowed by applicable law.



- 21.14 Right to Regulate: Nothing in this Agreement shall be construed to waive or limit the governmental authority of the County, in its capacity as a political subdivision of the State of Florida, to regulate the Lessee or its operations. Notwithstanding any provision of this Agreement, nothing herein shall bind or obligate the County, the Zoning appeals Board, the Building and Zoning Department (as it may be renamed from time to time), the Planning Department, or any department, board or agency of the County, to agree to any specific request of Lessee that relates in any way to the regulatory or quasi-judicial power of the County; and the County shall be released and held harmless by Lessee from any liability, responsibility, claims, consequential damages or other damages, or losses resulting from the denial or withholding of such requests; provided, however, that this provision shall not preclude any appeal from County action wherein the sole remedy sought is reversal of the County's action or injunctive relief, nor shall it preclude any action based on the County's bad faith, capricious behavior or arbitrary action.
- 21.15 Severability: If any provision of this Agreement or the application thereof to either party to this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions of this Agreement which can be given effect without the invalid provision, and to this end, the provisions of this Agreement are severable.
- 21.16 Inspections: Subject to satisfying any conditions to entry established elsewhere in this Agreement, the authorized employees and representatives of the County and of any applicable Federal or State agency having jurisdiction hereof shall have the right of access to the Premises and Improvements at all reasonable times for the purposes of inspection and testing to determine compliance with the provisions of this Agreement. This right of inspection and testing shall impose no duty on the County to inspect and shall impart no liability upon the County should it not make any such inspections.
- 21.17 Taxes. If Lessee fails to pay any taxes lawfully imposed on Lessee, Lessee shall not be deemed to be in default hereunder if Lessee institutes legal proceedings to determine the validity of such taxes and complies with all requirements of law applicable to such legal proceedings.
- 21.18 Quiet Enjoyment of Others: The Lessee shall make commercially reasonable efforts to control the actions of its employees, agents, invitees and those doing business with it, so as not to annoy, disturb or be offensive to others and to provide the service hereunder so as to not unreasonably create a nuisance or thing which may disturb the quiet enjoyment of any other users of the Airport. Nothing in this Article 21.18, however, shall diminish Lessee's obligations under Article 3 and Exhibit "G".
- 21.19 Radon Disclosure: In accordance with Section 404.056, Florida Statutes, the following discloser is hereby made:

"Radon Gas: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department."

- 21.20 Quiet Enjoyment: Subject to the terms of this Agreement, specifically including but not limited to the environmental remediation steps to be taken under Article 8 (Regulations, License and Permits), the County's right and obligation to make certain repairs, alternations, and additions under Articles 7 (Maintenance by County) and 21.11 (Rights of County at Airport), which, for purposes of this clause includes any and all demolition, in whole or in part, of buildings and runways, and roadway systems outside of the Premises and whether on or off the Airport, and the reservation of easement rights to the airspace under Article 17.9 (Right of Flight), all of which provisions and others in the Agreement the Lessee acknowledges may cause disruption and disturbance to the Lessee, and upon the observance by the Lessee of all the terms, provisions, covenants and conditions imposed upon the Lessee hereunder, the Lessee and its sublessees shall peaceably and quietly hold and enjoy the Premises and Improvements for the term of this Agreement; provided, however, that the County shall not be liable for any violation of this clause or for any disturbance or disruption in or to the Lessee's business, for acts or omissions of tenants, users of the Airport, third parties, or when any department or agency of the County is acting in its governmental capacity, or by Acts of God.
- 21.21 Damaged Improvements Prior to Construction Deadline. If such damage or destruction to such Improvements shall occur prior to the Construction Deadline (as the same may have been extended from time to time) and prior to the date upon which substantial completion thereof shall have first been achieved, then such restoration/rebuilding of such partially completed Improvements in all instances must occur if necessary to satisfy the requirements of Article 5.8 above, relating to the Required Investment.
- 21.22 Interpretation of Agreement: This Agreement is the result of negotiation between the parties hereto and has been typed/printed by one party for the convenience of both parties, and this Agreement shall not be construed in favor of or against any of the parties hereto.
- 21.23 No Agency: Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship between the parties hereto. It is understood and agreed that neither the method of computation of rentals, fees and charges, nor any other provisions contained herein, nor any acts of the parties hereto creates a relationship other than the relationship of landlord and tenant.
- 21.24 [Intentionally Deleted.]
- 21.25 Entirety of Agreement: The parties hereto agree that this Agreement sets forth the entire agreement between the parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except as may be specifically authorized herein or by written instrument executed by the parties hereto.
- 21.26 Counterparts: This instrument may be executed in several counterparts, each of which shall be deemed an original. The signatures to this instrument may be executed and notarized on separate pages, and when attached to this instrument, shall constitute one complete document.

21.27 No Waiver of Contest Rights; Limitation on New Fees and Costs. Anything in this Lease to the contrary notwithstanding, it is expressly understood and agreed that any provisions of this Lease which purport to require compliance with requirements imposed after the date of this Lease whether by MDAD, the County or the FAA, shall not deprive (or be construed as a waiver by) Lessee or any of its sublessees of any right to challenge such new requirements, nor shall same obligate Lessee or any of its sublessees for the payment of any fees or costs for such compliance, except as required by law, but subject, also to Lessee's challenge rights as noted above.

[Signature Page Follows]

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

Signed, Sealed and Delivered  
in the Presence of:

BOARD OF COUNTY COMMISSIONERS  
OF MIAMI-DADE COUNTY, FLORIDA

By: \_\_\_\_\_  
Mayor or Mayor's Designee

ATTEST: Harvey Ruvlin, Clerk

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

Approved for form and legal sufficiency:

\_\_\_\_\_  
Approved  
Legal Department

WMD TAMIAMI LLC, a Florida limited  
liability company

By: Woolbright Tamiami Member LLC, a  
Florida limited liability company, Managing  
Member

*Joann M. Paulson*  
*May Rorain*

By: *[Signature]*  
Print Name: *Soraya Tyriner*  
Title: Vice President

STATE OF FLORIDA

COUNTY OF MIAMI DADE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, as Mayor of Miami-Dade County Florida. S/He is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification and who did not take an oath.

(SEAL)

NOTARY PUBLIC

Print Name:

My Commission Expires:

My Commission No.:

STATE OF FLORIDA

COUNTY OF MIAMI DADE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, as Deputy Clerk of Miami-Dade County Florida. S/He is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification and who did not take an oath.

(SEAL)

NOTARY PUBLIC

Print Name:

My Commission Expires:

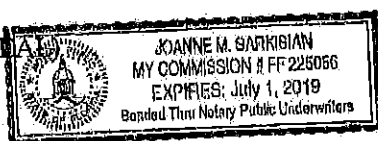
My Commission No.:

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 19 day of June, 2019, by Soraya Tyrone, as Vice President of Woolbright Tamiami Member LLC, a Florida limited liability company, managing member in WMD Tamiami LLC, a Florida limited liability company. She/he is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification and who did not take an oath.

(SEAL)



NOTARY PUBLIC

Print Name:

My Commission Expires:

My Commission No.:

TENANT AIRPORT CONSTRUCTION NON-REIMBURSABLE (TAC-N) PROJECTSPURPOSE

To provide details for the initiation and management of the Tenant Airport Construction Program non-reimbursable project to be completed by the Lessee under the Ground Lease Agreement.

DEFINITIONS

FAA	Federal Aviation Administration
A/E	Tenant's State Registered Architect or Engineer responsible for the design of the project
BCC	Board of County Commissioners
GSA	General Services Administration
MARC	Miscellaneous Asbestos Recovery Contract
MCC	Miscellaneous Construction Contract / Tenant Airport construction
MDAD	Miami Dade Aviation Department
NTP	Notice to Proceed
PM	Project Manager
TAC-N	Tenant Airport Construction Non-reimbursable projects
Tenant	Lessee

GENERAL INFORMATIONSummary of Department Process for Design and Construction of TAC-N Projects

When an airport tenant wishes to improve or expand a leasehold area, the tenant must contact assigned MDAD Manager of Properties and Commercial Operations to discuss the proposed improvement or expansion (hereafter in this TAC-N document referred to as the "Project"). The Manager of Properties and Commercial Operations or designee determines whether the proposed design and construction will be a reimbursable or a non-reimbursable project.

If the determination is that the proposed design and construction are non-reimbursable, the Tenant must submit a letter to MDAD requesting approval to design and construct the Project, detailing the proposed construction.

The Manager of Properties and Commercial Operations or designee prepares a Quick Check Form and forwards it to MDAD's Manager of Planning, MDAD's TAC Project Manager, MDAD's Manager of Maintenance Engineering, and others as appropriate, for review and approval (which shall be based on Articles 1.05 (1) of the Ground Lease Agreement (hereafter in this TAC-N document referred to as "Lease")). The following documents, at a minimum, are attached to the Quick Check Form:

- Tenant's Letter to MDAD requesting MDAD to approve the Project shall include the following attachments:
- Conceptual drawings/sketches
- Completed Tenant Project Information Sheet providing the following information:
  - ✓ Project Name
  - ✓ Scope of Work (Project description)
  - ✓ Project Cost estimate broken down between design and construction (such information to be provided only at the ready-to-apply-for permit stages, in accordance with Article 4.02(C)(1) of the Lease).

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- ✓ Tenant's Name and Contact Person's name, telephone numbers, and e-mail address.
- ✓ A/E of Record Name and Contact Person's name, telephone numbers, and e-mail address.
- ✓ Contractor's Name and Contact Person's name, telephone numbers, and e-mail address.
- ✓ Verification that the Tenant has been instructed on Insurance responsibilities under the Ground Lease Agreement and MDAD TAC-N procedures herein

The Manager of Planning ensures that the Project is assigned a Project Number in accordance with Facilities Division Procedure FD1-020.E

If the listed Managers or designees approve the Quick Check Form, the Manager of Properties and Commercial Operations issues a Concept Approval Letter to the Tenant, advising the Tenant to proceed with the Project and addressing compliance with the Lease requirements and these TAC-N design and construction procedures. The Manager of Properties and Commercial Operations forwards copies of the letter to the Assistant Aviation Director for Facilities Development, the Manager of Planning, and the TAC-N Project Manager, with a copy of all attachments to the TAC-N Project Manager.

### PROCEDURES for DESIGN and CONSTRUCTION

Upon receipt of the copy of the letter from Properties to the Tenant, the TAC-N Project Manager shall prepare a New Project Memorandum providing details and requirements of the Project and designating a TAC-N Project Manager.

1. The TAC-N Project Manager shall contact the Tenant to review the design and construction process.
2. It is the responsibility of the Tenant through its Architect/Engineer (A/E) and/or Contractor to:
  - Obtain copies of relevant as-built drawings from MDAD Technical Support Division (305-876-7067)
  - Verify field conditions, including but not limited to electrical, mechanical, HVAC, plumbing, water, sewer, structural, and connecting points for all utilities, HVAC, fire protection, and smoke evacuation systems.
  - Ensure that if the Project is in compliance with the terms of the Lease.
  - Obtain an MDAD Miscellaneous Asbestos Recovery Contract Status Report for the Project from MDAD Environmental Engineering Division (305-876-8328).
  - Coordinate schedules and locations for material deliveries to MIA with MDAD Landside Operations Division (305-876-7086).
  - Coordinate schedules and construction activities at MIA with MDAD Terminal Operations Division (305-876-7082).
  - Coordinate airside access at MIA with MDAD Airside Operations Division (305-876-7482).
  - Coordinate MIA identification badging and security orientation requirements with MDAD Safety and Security Operations Division (305-876-4028).
  - Coordinate utility information and issues, including shutdown procedures, with MDAD Maintenance Engineering (305-876-7477).
  - Coordinate requirements and specific procedures for obtaining Miami-Dade Department of Environmental Resources Management (DERM) and Florida Department of Environmental Protection (FDEP) permits and for dewatering, excavating, trenching, stockpiling, maintenance and disposal of contaminated material activities with the MDAD Environment and Airport Engineering Division (305-869-1063).
3. Each sheet of the construction plans shall be identified with a title box that includes the following information:

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PROPERTY OWNER:	<u>MIAMI-DADE AVIATION DEPARTMENT</u>	
ADDRESS:	<u>P.O. BOX 026504, MIAMI, FLORIDA 33102-5504</u>	
TAC-N PROJECT MANAGER:	_____	
TAC-N PROJECT MANAGER PHONE:	_____	FAX No. _____
PROJECT OWNER / LESSEE:	_____	
ADDRESS:	_____	
TENANT PROJECT MANAGER:	_____	
TENANT PROJECT MANAGER PHONE:	_____	FAX No. _____

4. The TAC-N Project Manager shall determine at both the approximately 30% design phase and the ready-to-apply-for-permit phase, how many sets of Plans and Specifications ("Documents") shall be submitted for review, which shall in no event exceed (15) sets.
5. The Tenant or its A/E shall submit the number of sets of Documents determined by the TAC-N Project Manager to the TAC-N Project Manager.
6. The TAC-N Project Manager shall forward Documents to pre-determined reviewers. The Documents shall be attached to a TAC-N Design Review Memorandum (Facilities Division Form FD3-061). The memorandum shall identify at what percent completion the drawings are and by what date review comments must be returned.
7. Concurrently with sending the review package, the TAC-N Project Manager shall forward by email to the reviewers TAC Project Manager Review Transmittal (Facilities Division Form FD3-009), notifying them of the review process.
8. The TAC-N Project Manager shall submit the Documents to Consultants and MDAD staff for in-house Design Review. In accordance with Article 4.02 of the Lease, the Review process has a duration of ten (10) business days. The Reviewers will fax or e-mail any issues/comments directly to the Tenant and to the TAC-N Project Manager within ten (10) business days from the date Documents were submitted by Tenant to the TAC-N Project Manager. The Tenant shall confirm receipt of all Review Comments with the TAC-N Project Manager.
9. The TAC-N Project Manager shall ensure that comments and issues introduced by reviewers are discussed and resolved as set forth in Lease Articles 4.02 (C) and 4.02 (C) (2).
10. The Tenant must submit for back-check, three sets of ready-to-apply-for-permit Documents with all reviewer-required changes, as may have been discussed and resolved, incorporated. Two of these sets must have the A/E of Record's Signature and seal on every design sheet. If the Tenant requests reconsideration of the reviewer-required changes, the Tenant and MDAD shall proceed in accordance with Article 4.02(C)(2) of the Lease.
11. The Documents submitted for back-check must be accompanied with notarized letter to the TAC-N Project Manager on the A/E's company's letterhead requesting a TAC-N Letter of Concurrence to be provided to the Tenant (Facilities Division Form FD5-017). The A/E's letter must contain the following two paragraphs verbatim:

This letter will serve as our request for the issuance of your TAC-N Letter of Concurrence for the above referenced Project that will allow the Tenant to apply for a Building Permit.

As the Tenant's Architect/Engineer of Record, we have satisfied all comments and issues originating from the TAC-N Design Review process by means of revisions to the ready-to-apply-for-permit stage Documents. These revisions will produce a Project in compliance with all requirements of Lease Article 4.02 (A) and FAA requirements. Further, we realize that the final responsibility for the design and compliance with all applicable codes, standards, and ordinances rests solely with the Tenant's Architect/Engineer of Record.

12. The TAC-N Project Manager shall advise the Tenant of the Lessor's insurance requirements. Prior to commencing construction, Tenant shall provide copies of all of the contractor's certificates of



Insurance to the TAC-N Project Manager who shall request MDAD Risk Management to review them.

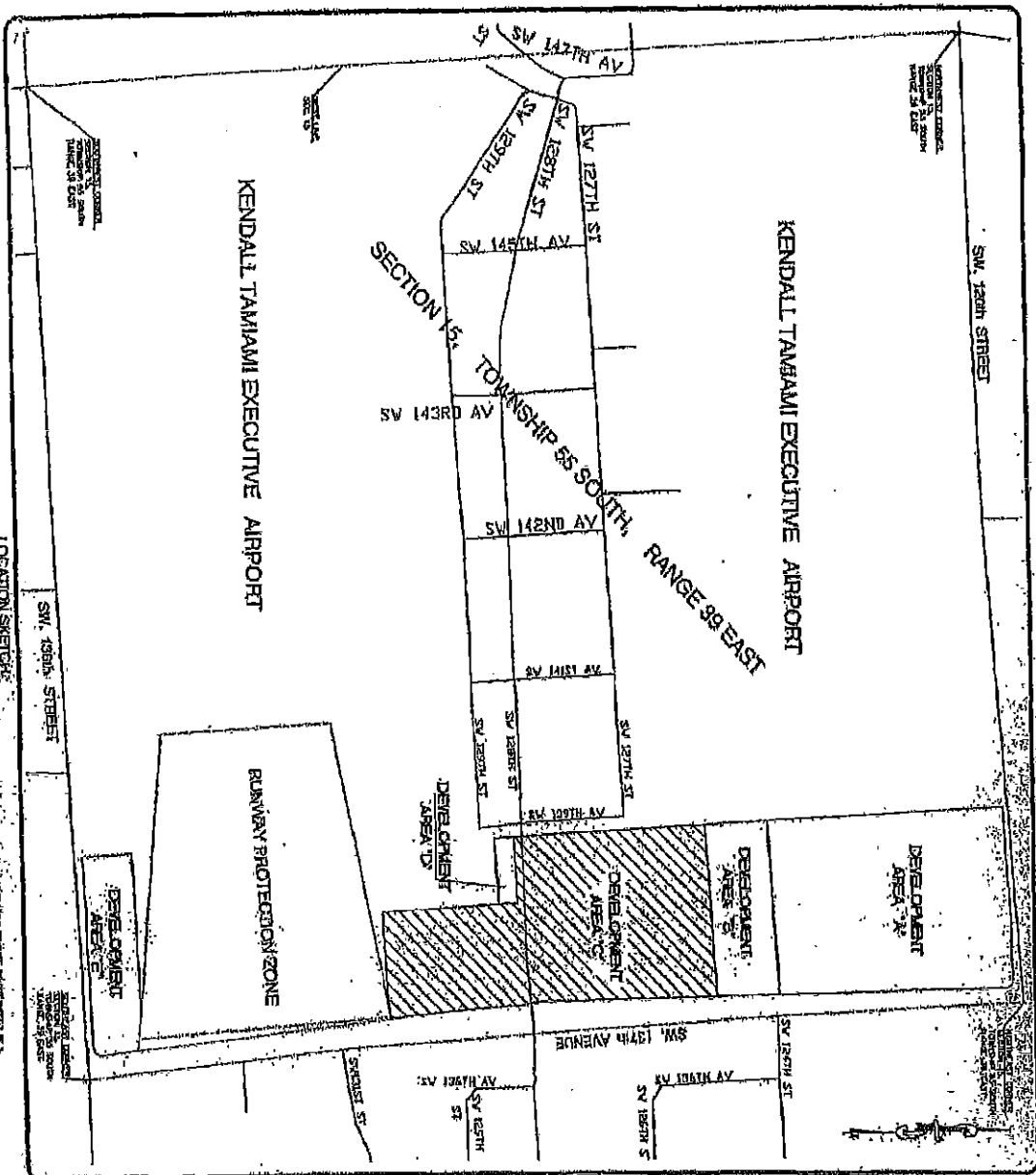
13. The TAC-N Project Manager shall review the back-check Documents. The reviewers will be asked to sign a TAC-N Design Review Back-Check Form (Facilities Division Form FD3-062) indicating that their comments have been complied with and incorporated into the ready-to-apply-for-permit documents. It is the responsibility of the Tenant's consultants to obtain the reviewers' signatures on the Back-Check form.
14. Not Used
15. Should the Department fail to submit comments on the ready-to-apply-for permit Documents in accordance with the scope of the Department review and timing set forth in Lease Article 4.02 (C), the TAC-N Project Manager shall immediately issue a Letter of Concurrence (Facilities Division Form FD5-017) enabling the Tenant to apply for a building permit. In the event the Department does submit timely comments on the ready-to-apply-for permit Documents in accordance with the scope of the Department review and timing set forth in Lease Article 4.02 (C), once all reviewers have signed the TAC-N Design Review Back-Check, the TAC-N Project Manager shall issue a Letter of Concurrence (Facilities Division Form FD5-017) enabling the Tenant to apply for a building permit. If the Tenant or Tenant's consultants have failed to secure the reviewers' signatures on the back check form indicating incorporation of the reviewers' comments in the back check drawings, the Letter of Concurrence shall not be issued. The Letter of Concurrence will be valid for sixty (60) calendar days from date of issue. If the tenant or A/E of Record has not applied for a building permit within sixty (60) calendar days, a new Letter of Concurrence will have to be issued. The Tenant must request the new Letter of Concurrence from the TAC-N Project Manager.
16. The Tenant shall complete a Building Permit Application and submit it to the appropriate Miami-Dade Building Department Office. The Letter of Concurrence, a copy of the Miscellaneous Asbestos Recovery Contract (MARC) report, if required, and two (2) signed and sealed permit sets of the ready-to-apply-for-permit documents (and thereafter, of the 100% design stage documents, for any Building Permit Application applicable to the 100% design stage documents) must be attached to the application.
17. If the Tenant has not already done so, the Tenant shall select a contractor to perform the work.
18. If applicable, the TAC-N Project Manager shall complete a Wrap-Up Insurance Program Notification of Contract Award.
19. Facilities Division Form FD5-031, if applicable) and forward it to the Wrap-Up Insurance Program Broker, the Manager, Properties and Commercial Operations, MDAD Risk Management. Thereafter the TAC-N Project Manager issues a Notice to Proceed.
20. Prior to commencement of construction, the Tenant shall submit copies of the summary level construction schedule, the cost estimate, and the Building Permit to the TAC-N Project Manager. The Tenant must also provide any revisions to the summary level construction schedule and Building Permit as they are issued.
21. The TAC-N Project Manager shall determine, based on the complexity and magnitude of the Project, if a pre-construction meeting should be held and if regularly scheduled construction meetings are required. If such meetings are required, the frequency of the meetings will be based on the complexity and duration of the Project. The Tenant's A/E and contractor, the TAC-N Project Manager, or designee, and others, as may be required, will attend the construction meetings.
22. The TAC-N Project Manager, or designee, shall periodically visit the jobsite. The permit set of drawings must be available on the construction site at all times.
23. Based on the Project's complexity, at project completion a walk-through will be scheduled and coordinated by the TAC-N Project Manager.
24. Unless otherwise agreed, the Tenant must submit to the TAC-N Project Manager copies of the following documents at project completion:
  - Signed off Building Permit Inspection (within twenty-four hours of issue)

- Certificate of Occupancy or Certificate of Completion (within twenty-four hours of issue)
  - Warranties, manuals, instructions, etc. for any equipment that will be maintained by MDAD
  - Two (2) complete sets of as-built construction drawings that contain a stamp by the contractor or design-builder with the following statement: "to the best of our knowledge and based on the information received from the subcontractors, these as-built drawings represent the as-built conditions" and two (2) AutoCad files of the as-built construction drawings in a compact disk format or other format designated by the Department, including all pertinent shop and working drawings and such other as-built drawings as the Department may reasonably require, all of which must be submitted within sixty (60) business days from issuance of the Certificate of Occupancy or Certificate of Completion.
25. When the Certificate of Occupancy has been issued and all As-Built Records have been transferred to MDAD Technical Support Division, the TAC-N Project Manager and Tenant shall close the Project.
26. Should conflicts, ambiguities or discrepancies exist between the Ground Lease Agreement and this TAC-N Exhibit (including any forms, documents or procedures referenced but not specifically attached hereto), the Ground Lease Agreement shall prevail.

**ASSOCIATED FORMS**

- |                                     |  |
|-------------------------------------|--|
| 1. Facilities Division Form FD3-009 | Design Review Transmittal                                |
| 2. Facilities Division Form FD3-061 | TAC-N Design Review Memorandum                           |
| 3. Facilities Division Form FD3-062 | TAC-N 100% Back Check Sign-off Sheet                     |
| 4. Facilities Division Form FDS-017 | TAC-N Concurrence Letter                                 |
| 5. Facilities Division Form FDS-031 | Wrap-Up Insurance Program Notification of Contract Award |

# MAP OF BOUNDARY SURVEY KENDALL TAMAMI EXECUTIVE AIRPORT DEVELOPMENT AREA 'C'



LOCATION SKETCH

SW 149th STREET

SW 149th STREET

SW 149th STREET

SW 149th STREET

SW 149th STREET

**DEVELOPMENT AREA 'C'**

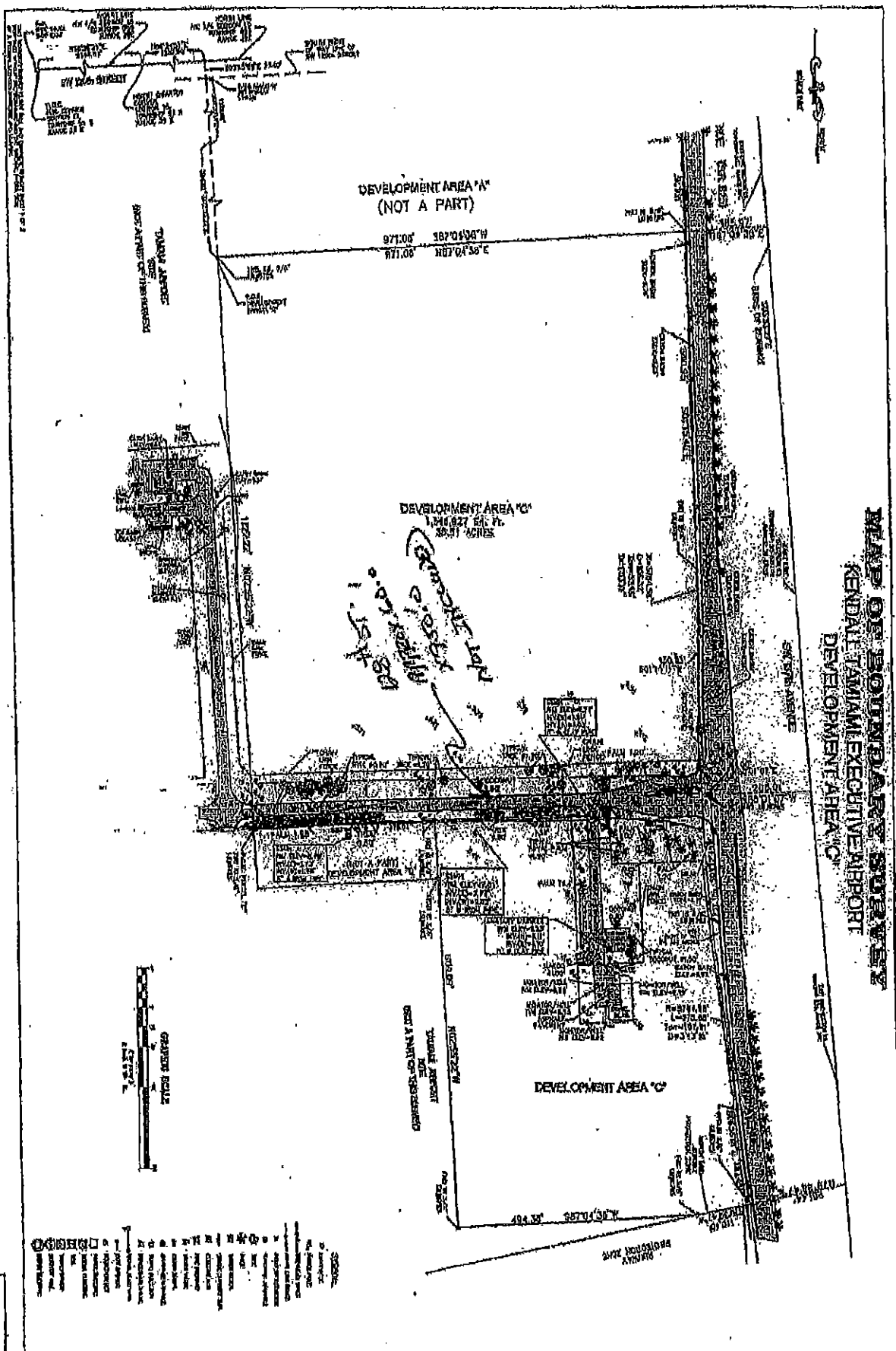
DEVELOPMENT AREA 'C' is located within the Runway Protection Zone of the Kendall Tamami Executive Airport. The area is bounded by SW 142nd St to the north, SW 143rd St to the south, SW 144th St to the east, and SW 145th St to the west. The area is divided into several lots, each of which is subject to a separate survey. The survey shows that the area is currently used for agricultural purposes, and it is proposed that the area be developed for residential use. The survey also shows that the area is subject to various easements and encumbrances, which must be taken into account in the development plan.

**DEVELOPMENT AREA 'D'**

DEVELOPMENT AREA 'D' is located within the Runway Protection Zone of the Kendall Tamami Executive Airport. The area is bounded by SW 146th St to the north, SW 147th St to the south, SW 148th St to the east, and SW 149th St to the west. The area is divided into several lots, each of which is subject to a separate survey. The survey shows that the area is currently used for agricultural purposes, and it is proposed that the area be developed for residential use. The survey also shows that the area is subject to various easements and encumbrances, which must be taken into account in the development plan.

**DEVELOPMENT AREA 'E'**

DEVELOPMENT AREA 'E' is located within the Runway Protection Zone of the Kendall Tamami Executive Airport. The area is bounded by SW 150th St to the north, SW 151st St to the south, SW 152nd St to the east, and SW 153rd St to the west. The area is divided into several lots, each of which is subject to a separate survey. The survey shows that the area is currently used for agricultural purposes, and it is proposed that the area be developed for residential use. The survey also shows that the area is subject to various easements and encumbrances, which must be taken into account in the development plan.



**MAP OF BOUNDARY SURVEY  
KENDALL TAMPA MI EXECUTIVE AIRPORT  
DEVELOPMENT AREA 'C'**

Exhibit "B"  
Survey Legal  
(See Section 2.2)

DEVELOPMENT AREA "C"

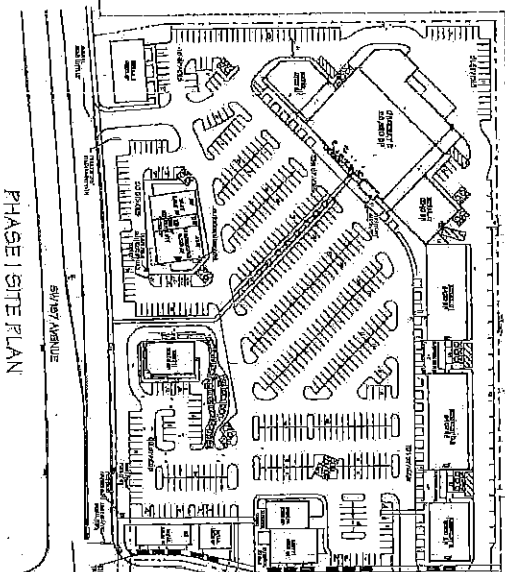
A PARCEL OF LAND LYING AND BEING IN SECTION 15 TOWNSHIPS 55 SOUTH RANGE 39 EAST, MIAMI-DADE COUNTY, FLORIDA MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT NORTHWEST CORNER OF SAID SECTION 15, TOWNSHIP 55 SOUTH, RANGE 39 EAST, THENCE NORTH  $86^{\circ}36'29''$  EAST ALONG THE NORTH LINE OF THE NORTH WEST ONE QUARTER (NW 1/4) OF SAID SECTION 15 FOR A DISTANCE OF 2686.54 FEET TO THE NORTH QUARTER CORNER OF SAID SECTION 15; THENCE NORTH  $86^{\circ}34'55''$  EAST ALONG THE NORTH LINE OF THE NORTHEAST ONE QUARTER (NE 1/4) OF SAID SECTION 15 FOR A DISTANCE OF 1582.50 FEET; THENCE SOUTH  $03^{\circ}25'05''$  EAST FOR DISTANCE OF 35.00 FEET TO ITS INTERSECTION WITH THE SOUTH RIGHT OF WAY LINE OF SW. 120th STREET; THENCE SOUTH  $02^{\circ}58'11''$  EAST FOR 1375.66 FEET; THENCE SOUTH  $02^{\circ}55'22''$  EAST FOR 366.61' TO THE POINT OF BEGINNING OF THE HEREAFTER DESCRIBED PARCEL OF LAND; THENCE NORTH  $87^{\circ}04'38''$  EAST, FOR 971.06 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE OF SW. 137th AVENUE; THENCE ALONG SAID WEST RIGHT OF WAY LINE OF SW. 137th AVENUE FOR THE FOLLOWING EIGHT (8) DESCRIBED COURSES: 1) THENCE SOUTH  $01^{\circ}15'40''$  EAST, FOR 660.95 FEET TO A POINT OF CURVATURE WITH A CURVE CONCAVE TO THE NORTHEAST, SAID CURVE HAVING A RADIUS DISTANCE OF 5784.58 FEET; 2) THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE A CENTRAL ANGLE OF  $1^{\circ}03'11''$  AND ARC LENGTH OF 106.32 FEET; 3) THENCE TANGENT TO LAST DESCRIBED SOUTH  $01^{\circ}14'11''$  WEST FOR 150.93 FEET; 4) THENCE SOUTH  $03^{\circ}12'45''$  EAST FOR 188.79 FEET; 5) THENCE NORTH  $88^{\circ}01'07''$  EAST FOR 11.00 FEET; 6) THENCE SOUTH  $03^{\circ}12'45''$  EAST FOR 251.18 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHEAST, SAID CURVE HAVING A RADIUS DISTANCE OF 5784.58 FEET; 7) THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, A CENTRAL ANGLE OF  $3^{\circ}43'16''$  AND AN ARC LENGTH OF 375.68 FEET; 8) THENCE TANGENT TO LAST DESCRIBED SOUTH  $06^{\circ}56'01''$  EAST, FOR 187.45 FEET TO THE NORTH LINE OF A RUNWAY PROTECTION ZONE; THENCE ALONG SAID NORTH LINE OF RUNWAY PROTECTION ZONE SOUTH  $78^{\circ}32'47''$  WEST FOR 110.10 FEET; THENCE SOUTH  $87^{\circ}04'38''$  WEST FOR 494.36 FEET; THENCE NORTH  $02^{\circ}55'22''$  WEST FOR 809.09 FEET; THENCE SOUTH  $87^{\circ}04'45''$  WEST FOR 376.04 FEET; THENCE NORTH  $02^{\circ}55'22''$  WEST FOR 1127.22 FEET TO THE POINT OF BEGINNING.

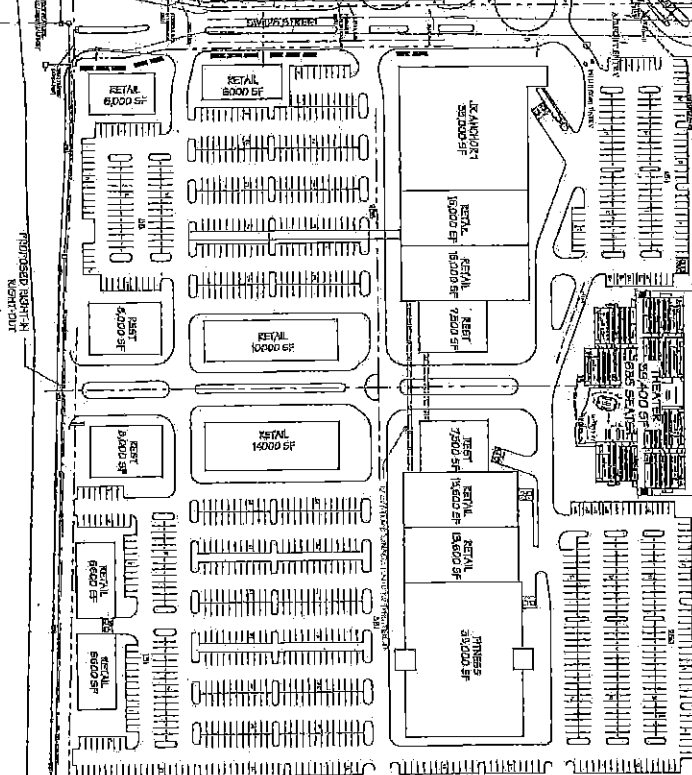
CONTAINING 1,546,927 SQUARE FEET, EQUIVALENT TO 35.51 ACRES MORE OR LESS.

LESS AND EXCEPTING THEREFROM THE STRIP OF LAND KNOWN AS "SW 128 STREET" SAID STRIP HAVING DIMENSIONS OF APPROXIMATELY 60 FEET IN WIDTH (MEASURED IN AN NORTHERLY TO SOUTHERLY DIRECTION) AND APPROXIMATELY 950 FEET IN LENGTH (MEASURED IN AN EASTERLY TO WESTERLY DIRECTION), THE PRECISE LEGAL DESCRIPTION OF SAID STRIP TO BE DETERMINED BY FINAL SURVEY.

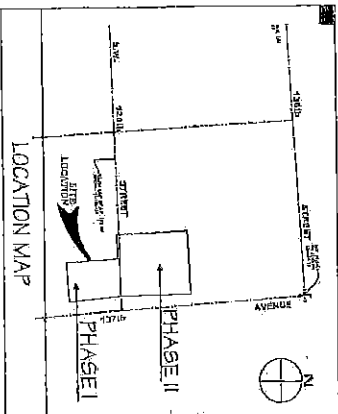
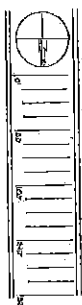
PHASE I SITE PLAN



FUTURE PHASE II SITE PLAN

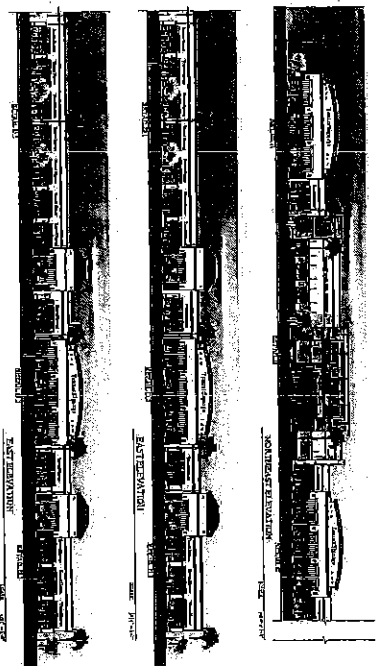
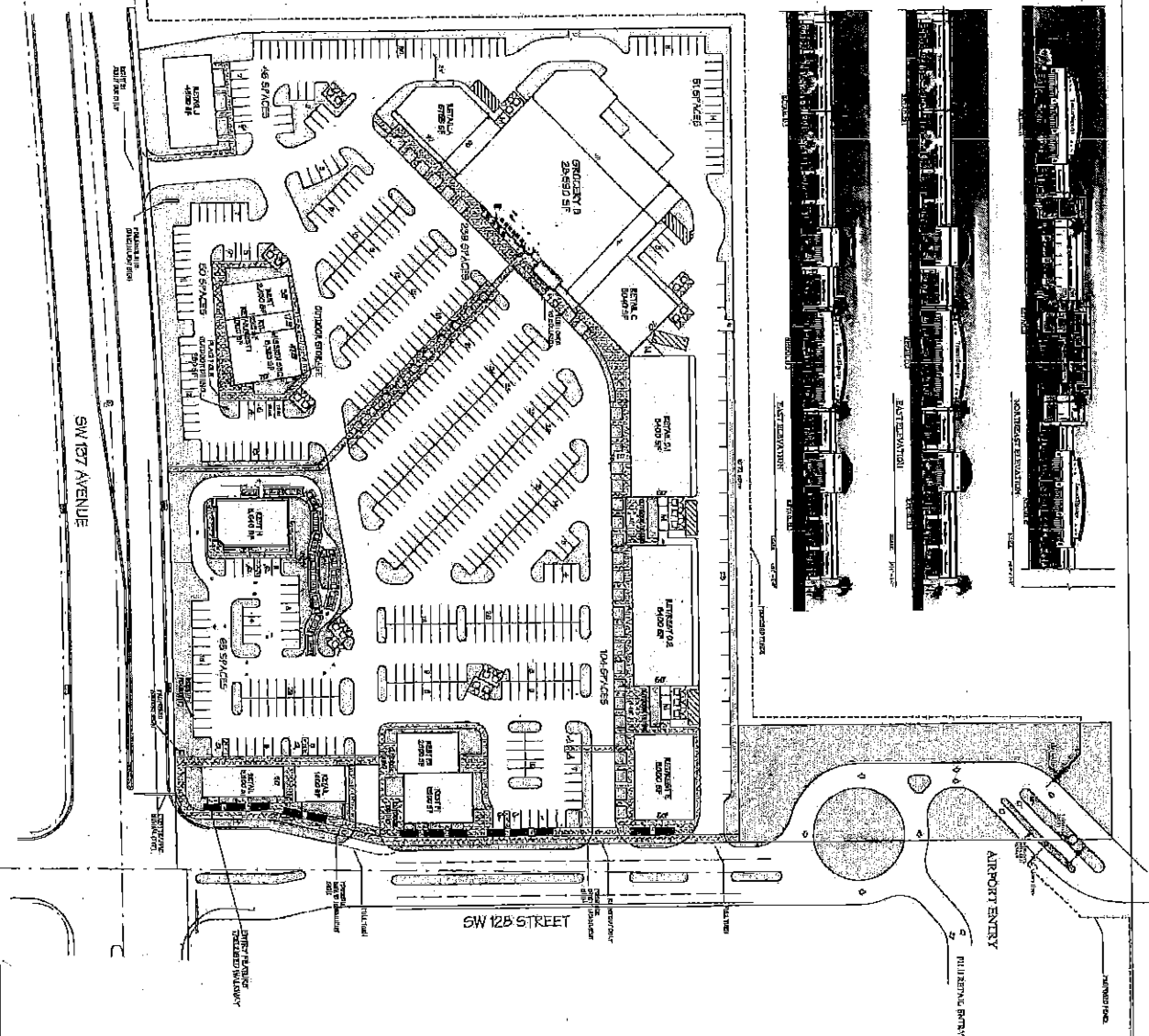


PHASE I & PHASE II SITE PLAN

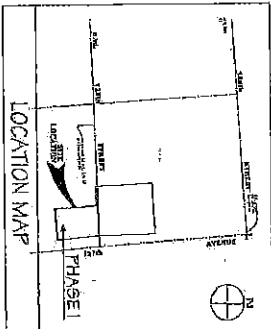
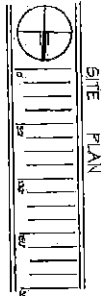


<p>AVIATION SQUARE                  MIAMI-DADE COUNTY, FLORIDA</p>	<p>2201 N. MYRTLE TRL                  Suite 100                  Miami, FL 33156</p>	<p>WOODBRIDGE</p>	<p>ARCHITECTURE PLANNING                  AS &amp; ASSOCIATES                  1111 Brickell Ave, Suite 1000                  Miami, FL 33131                  Tel: 305.375.1111                  Fax: 305.375.1112</p>	<p>DATE: 10/20/20                  DRAWN BY: [Name]                  CHECKED BY: [Name]                  APPROVED BY: [Name]</p>	<p>SCALE: 1" = 100'</p>	<p>PHASE I                  PHASE II</p>	<p>AVIATION SQUARE                  MIAMI-DADE COUNTY, FLORIDA</p>	<p>2201 N. MYRTLE TRL                  Suite 100                  Miami, FL 33156</p>	<p>WOODBRIDGE</p>	<p>ARCHITECTURE PLANNING                  AS &amp; ASSOCIATES                  1111 Brickell Ave, Suite 1000                  Miami, FL 33131                  Tel: 305.375.1111                  Fax: 305.375.1112</p>	<p>DATE: 10/20/20                  DRAWN BY: [Name]                  CHECKED BY: [Name]                  APPROVED BY: [Name]</p>	<p>SCALE: 1" = 100'</p>	<p>PHASE I                  PHASE II</p>	<p>AVIATION SQUARE                  MIAMI-DADE COUNTY, FLORIDA</p>
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2966



PHASE I			
TOTAL AREA			
GROSS LOT AREA			
BUILDING AREA BREAKDOWN (S.F.)			
TOTAL			
TOTAL			



AVIATION SQUARE

MIAMI-DADE COUNTY, FLORIDA

2000 N. Military Trail

Room 1000

MIAMI, FL 33131

AVIATION SQUARE

MIAMI-DADE COUNTY, FLORIDA

2000 N. Military Trail

Room 1000

MIAMI, FL 33131

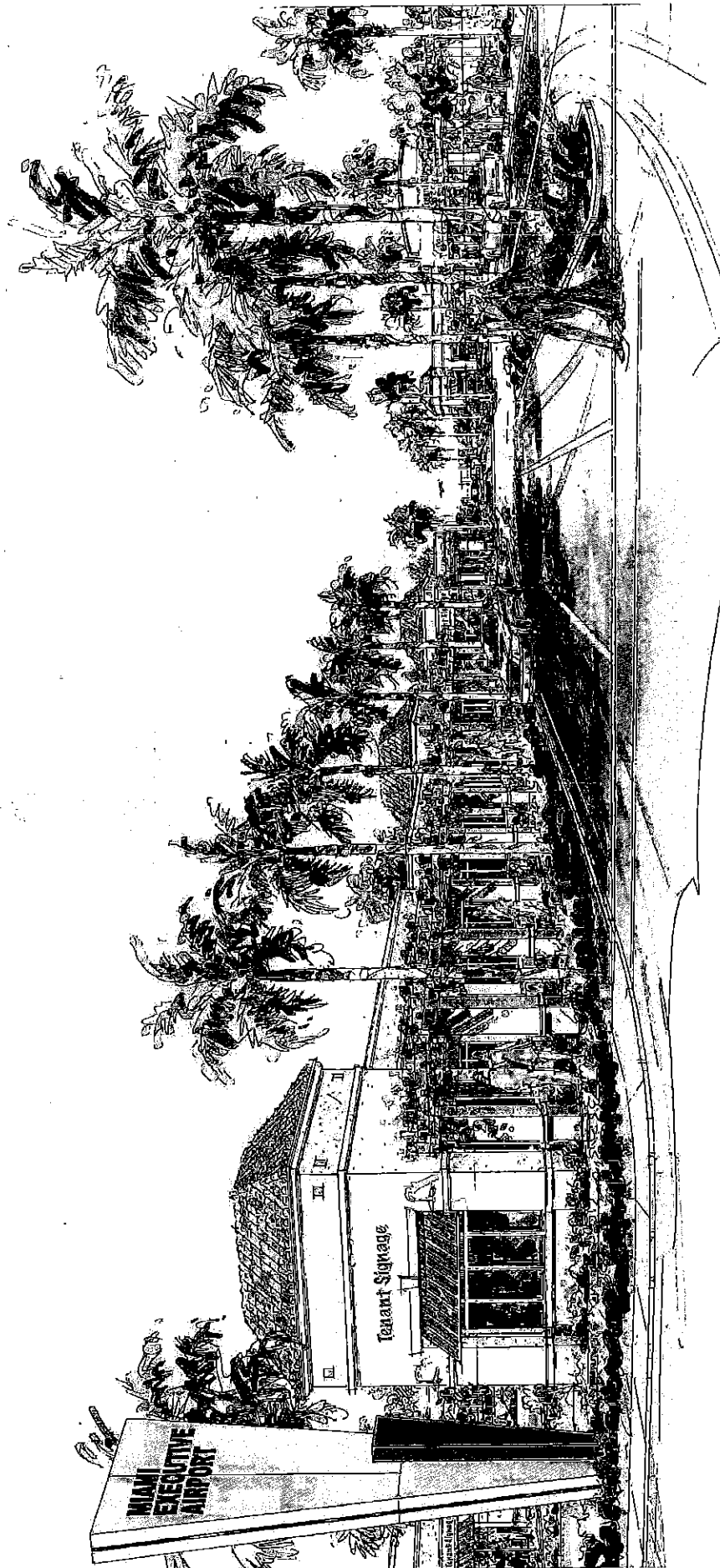


Exhibit "C"



EXHIBIT "D"  
FORM OF MEMORANDUM OF LEASE  
[Fifty Year Lease]

THIS INSTRUMENT WAS PREPARED BY  
AND SHOULD BE RETURNED TO:  
DAVID J. WIENER, ESQ.,  
DAVID J. WIENER, P.A.  
2240 Northwest 19<sup>th</sup> Street, Suite 801  
Boca Raton, FL 33431

**MEMORANDUM OF LEASE**

This Memorandum of Lease is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and between **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida ("Lessor"), and **WMD TAMiami LLC**, a Florida limited liability company ("Lessee")

Article 1. **LEASE; DEMISE.**

LESSOR and LESSEE have entered into that certain Lease dated the \_\_\_\_ day of \_\_\_\_\_, 201\_\_ (the "Lease") between MIAMI-DADE COUNTY (as "Lessor") and WMD TAMiami LLC (as "Lessee"), pursuant to the terms of which Lessor has leased and demised to Lessee, and Lessee has leased and hired from Lessor that certain parcel of real property (the "Premises") more particularly described on **Exhibit "A"** annexed hereto and incorporated herein by this reference.

Article 2. **TERM.**

The term of the Lease shall commence on the "Effective Date" (as hereinafter defined) and shall end at 11:59 p.m. (Eastern Time) on the Fiftieth (50<sup>th</sup>) anniversary of the Effective Date, subject to any extension(s) of such Term pursuant to any provision(s) of the Lease.

As used herein the term "Effective Date" shall mean and refer to the calendar day immediately following the last day of the term of that certain Three Year Development Lease Agreement dated as of the \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and between Lessor and Lessee, a Memorandum of which has been recorded in Official Records Book \_\_\_\_\_, at Page \_\_\_\_\_, of the Public Records of Miami-Dade County, Florida. The Effective Date of the Lease will be confirmed in writing by the parties promptly following the determination of the Effective Date.

Article 3. **CONSTRUCTION LIENS.**

LESSOR's interest and estate in the Premises shall not be subject to any construction, mechanic's, equitable or other lien by, for, benefiting or filed for the account of, any person, firm or entity for any work, labor, services or materials claimed to have been performed or furnished for or on behalf of LESSEE, its sublessees or any of their respective contractors, agents or employees or anyone holding any part of the Premises through or under LESSEE. Nothing contained in the Lease shall be deemed, construed or interpreted to imply any consent or agreement on the part of LESSOR to subject LESSOR's interest or estate to any liability under any construction, mechanic's or other lien law.

Article 4. **INCORPORATION OF LEASE TERMS.**

This Memorandum of Lease is executed pursuant to the provisions of the Lease. All of the terms, covenants and conditions of the Lease are hereby incorporated into this Memorandum of Lease and made a part hereof as if set forth at length herein. Unless otherwise indicated, capitalized terms used herein shall have the meanings, respectively, ascribed to them in the Lease. This Memorandum of Lease is executed and is to be recorded for the sole purpose of giving notice of the Lease and is in no way intended to supersede or vary any of the terms or conditions of the Lease, which shall, at all times, control.

[Signatures appear on the following page(s)]

269

IN WITNESS WHEREOF, LESSEE and LESSOR have caused these presents to be duly executed as of the day and year first above written.

Signed, Sealed and Delivered  
in the Presence of:

LESSOR:

BOARD OF COUNTY COMMISSIONERS  
OF MIAMI-DADE COUNTY, FLORIDA

By: \_\_\_\_\_  
Mayor or Mayor's Designee

ATTEST: Harvey Ruvln, Clerk

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

Approved for form and legal sufficiency:

\_\_\_\_\_  
Approved  
Legal Department  
\_\_\_\_\_

LESSEE:

WMD TAMMIAMI LLC, a Florida limited liability  
company

By: Woolbright Tamiami Member LLC, a  
Florida limited liability company, Managing  
Member

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: Vice President

STATE OF FLORIDA

COUNTY OF MIAMI DADE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by \_\_\_\_\_, as Mayor of Miami-Dade County Florida. S/He is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification and who did not take an oath.

(SEAL)

NOTARY PUBLIC

Print Name:

My Commission Expires:

My Commission No.:

STATE OF FLORIDA

COUNTY OF MIAMI DADE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by \_\_\_\_\_, as Deputy Clerk of Miami-Dade County Florida. S/He is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification and who did not take an oath.

(SEAL)

NOTARY PUBLIC

Print Name:

My Commission Expires:

My Commission No.:

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by \_\_\_\_\_, as Vice President of Woolbright Tamiami Member LLC, a Florida limited liability company, managing member in WMD Tamiami LLC, a Florida limited liability company. She/he is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification and who did not take an oath.

(SEAL)

NOTARY PUBLIC

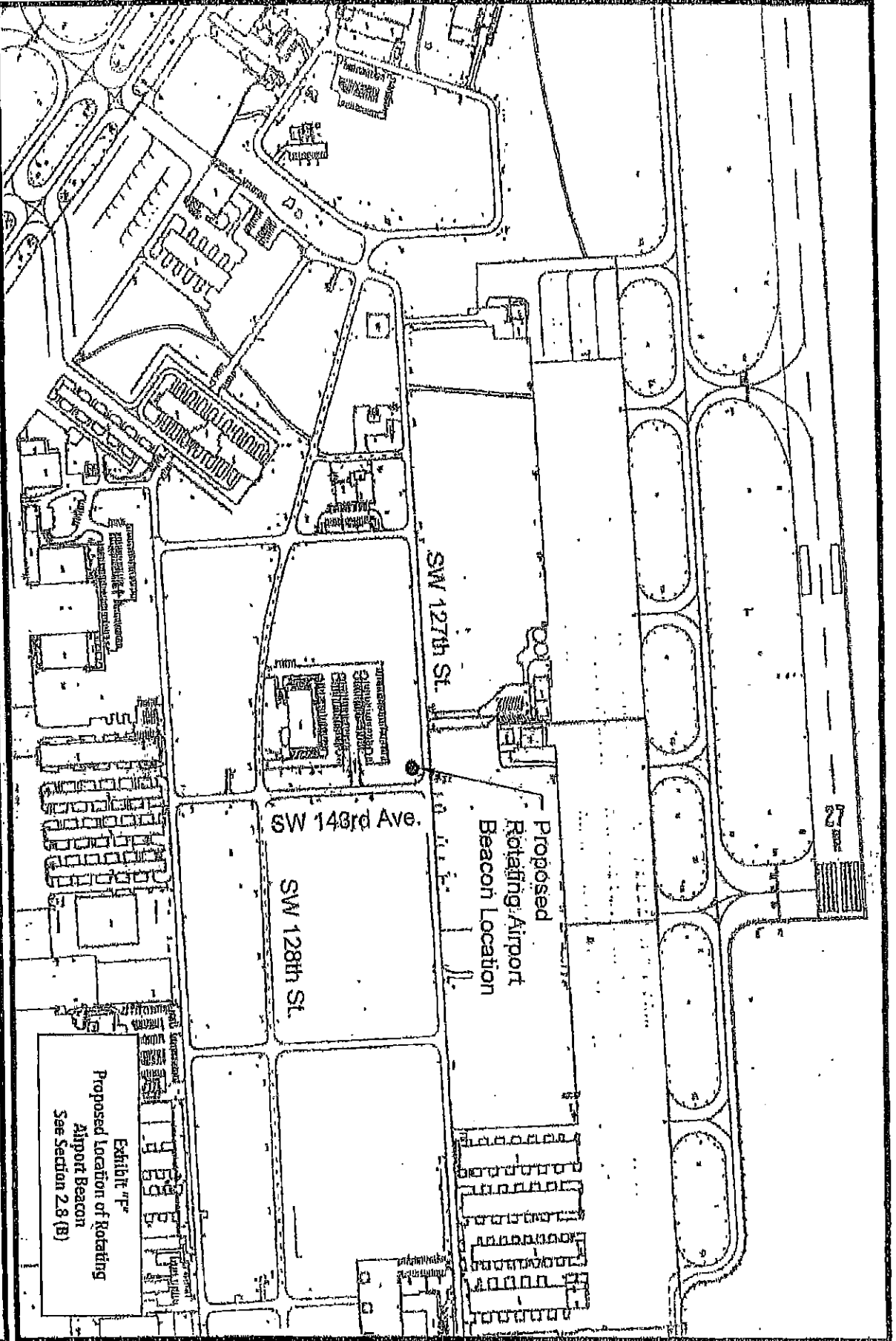
Print Name:

My Commission Expires:

My Commission No.:

EXHIBIT "E"

[RESERVED]



Proposed Location of Rotating Airport Beacon

Kendall-Tamiami Executive Airport

Scale: 1" = 400'

May 29, 2012

Exhibit "F"  
Proposed Location of Rotating  
Airport Beacon  
See Section 2.8 (B)

## **EXHIBIT "G"**

### **PROHIBITED USES**

**(SEE ARTICLE 3.5)**

Notwithstanding the permissible uses that may arise under Article 3.1, Lessee shall not engage in, conduct, or use the premises, or authorize its sublessees or any other party to use the Premises for any of the following purposes without prior approval from MDAD:

1. Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as black-jack or poker; slot machines; video poker/black-jack/keno machines or similar devices; or bingo hall.
2. Any use that generates lighting or smoke that interferes with the safety of aircraft or the movement of aircraft in or about the Airport or that emits or results in strong, unusual or offensive odors, fumes, dust or vapors, or that emits noise or sounds which are audible outside of the building in question and are objectionable due to intermittence, beat, frequency, shrillness or loudness, or that creates a hazardous condition.
3. Any use that is established by Florida law to be a nuisance.
4. Any use that is otherwise prohibited by the Agreement.
5. Any church or other place of religious worship that involves the congregation of users within such buildings to be in violation of the FAA's policies.
6. Any facility for the co-generation of electrical power, or any utility not specifically approved by MDAD, such approval not to be unreasonably withheld, it being expressly understood and agreed that this restriction shall not be deemed to apply to or prohibit the installation of solar panels and/or other devices or equipment designed to supplement, supplant and/or replace, either in whole or in part, electric supply and/or other utility services otherwise provided by public utilities, or to generate surplus energy that may be re-sold to public utilities.
7. Any operation or use unacceptable to the Consulting Engineers and Traffic Engineers (i.e., the professionals charged with monitoring airport passenger traffic, as differentiated from vehicular or pedestrian traffic to, from and within the Premises) under Section 707 of Lessor's 2002 Amended and Restated Trust Agreement, it being expressly understood and agreed that the development and use of the Premises in the manner permitted by this Lease shall not be deemed to violate this covenant.
8. Any operation primarily involving any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining.

9. Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance).
10. Any dumping, disposing, incineration, or reduction of garbage (exclusive of trash compactors or trash containers located near the rear of any building).
11. Any dry cleaning plant (except that a dry cleaner that either (i) utilizes so called "green" technology, or (ii) performs all dry cleaning outside the Shopping Center shall be permitted).
12. Any living quarters, sleeping apartments, or lodging rooms.
13. Any mortuary or funeral home.
14. Any "Pornographic Use", which shall include, without limitation: (x) a store displaying for sale or exhibition books, magazines or other publications containing any combination of photographs, drawings or sketches of a sexual nature, which are not primarily scientific or educational [provided, however, that the sale of books, magazines and other publications by a national or regional bookstore of the type normally located in similar shopping centers in the State in which the Shopping Center is located (such as, for example, Borders and Barnes & Noble, as said stores currently or may in the future operate on a national or regional basis) shall not be deemed a "pornographic use" hereunder]; or (y) a store offering for exhibition, sale or rental video cassettes or other medium capable of projecting, transmitting or reproducing, independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which has been rated or advertised generally as NC-17 or "X" or unrated by the Motion Picture Rating Association, or any successor thereto, or the content of which would meet the federal or state definition of pornography; or (z) massage parlor (except for therapeutic massages given in connection with the operation of a medical facility [including but not limited to an orthopedics office, physical therapy office, etc.], day spa, reputable massage business [such as "Massage Envy"] or health club]).
15. Any so-called "head shop", or other establishment primarily selling or exhibiting drug-related paraphernalia.
16. Any flea market.
17. Any pawn shop or tattoo parlor.
18. Any carnival, amusement park or circus (excluding marketing events but not more frequently than twice per year, for a period of not more than 3 days on each occasion, and providing that the FAA does not object thereto).

19. Any abortion clinic, methadone or other drug treatment facility, psychiatric rehabilitation or treatment facility, or any other facility not in keeping with medical services commonly found in similar shopping centers in Miami-Dade County; for the purpose of clarity, neither Lessee nor its sublessees shall operate any medical facility that places its patients under full anesthesia for more than two (2) hours at a time and which thereby prevents such patients thereafter from being ambulatory and able to respond to emergency evacuation announcements and directions.

20. Any hotel/motel.



## **EXHIBIT "G"**

### **PROHIBITED USES**

**(SEE ARTICLE 3.5)**

Notwithstanding the permissible uses that may arise under Article 3.1, Lessee shall not engage in, conduct, or use the premises, or authorize its sublessees or any other party to use the Premises for any of the following purposes without prior approval from MDAD:

1. Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as black-jack or poker; slot machines; video poker/black-jack/keno machines or similar devices; or bingo hall.
2. Any use that generates lighting or smoke that interferes with the safety of aircraft or the movement of aircraft in or about the Airport or that emits or results in strong, unusual or offensive odors, fumes, dust or vapors, or that emits noise or sounds which are audible outside of the building in question and are objectionable due to intermittence, beat, frequency, shrillness or loudness, or that creates a hazardous condition.
3. Any use that is established by Florida law to be a nuisance.
4. Any use that is otherwise prohibited by the Agreement.
5. Any church or other place of religious worship that involves the congregation of users within such buildings to be in violation of the FAA's policies.
6. Any facility for the co-generation of electrical power, or any utility not specifically approved by MDAD, such approval not to be unreasonably withheld, it being expressly understood and agreed that this restriction shall not be deemed to apply to or prohibit the installation of solar panels and/or other devices or equipment designed to supplement, supplant and/or replace, either in whole or in part, electric supply and/or other utility services otherwise provided by public utilities, or to generate surplus energy that may be re-sold to public utilities.
7. Any operation or use unacceptable to the Consulting Engineers and Traffic Engineers (i.e., the professionals charged with monitoring airport passenger traffic, as differentiated from vehicular or pedestrian traffic to, from and within the Premises) under Section 707 of Lessor's 2002 Amended and Restated Trust Agreement, it being expressly understood and agreed that the development and use of the Premises in the manner permitted by this Lease shall not be deemed to violate this covenant.
8. Any operation primarily involving any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining.

9. Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance).

10. Any dumping, disposing, incineration, or reduction of garbage (exclusive of trash compactors or trash containers located near the rear of any building).

11. Any dry cleaning plant (except that a dry cleaner that either (i) utilizes so called "green" technology, or (ii) performs all dry cleaning outside the Shopping Center shall be permitted).

12. Any living quarters, sleeping apartments, or lodging rooms.

13. Any mortuary or funeral home.

14. Any "Pornographic Use", which shall include, without limitation: (x) a store displaying for sale or exhibition books, magazines or other publications containing any combination of photographs, drawings or sketches of a sexual nature, which are not primarily scientific or educational [provided, however, that the sale of books, magazines and other publications by a national or regional bookstore of the type normally located in similar shopping centers in the State in which the Shopping Center is located (such as, for example, Borders and Barnes & Noble, as said stores currently or may in the future operate on a national or regional basis) shall not be deemed a "pornographic use" hereunder]; or (y) a store offering for exhibition, sale or rental video cassettes or other medium capable of projecting, transmitting or reproducing, independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which has been rated or advertised generally as NC-17 or "X" or unrated by the Motion Picture Rating Association, or any successor thereto, or the content of which would meet the federal or state definition of pornography; or (z) massage parlor (except for therapeutic massages given in connection with the operation of a medical facility [including but not limited to an orthopedics office, physical therapy office, etc.], day spa, reputable massage business [such as "Massage Envy"] or health club)].

15. Any so-called "head shop", or other establishment primarily selling or exhibiting drug-related paraphernalia.

16. Any flea market.

17. Any pawn shop or tattoo parlor.

18. Any carnival, amusement park or circus (excluding marketing events but not more frequently than twice per year, for a period of not more than 3 days on each occasion, and providing that the FAA does not object thereto).

19. Any abortion clinic, methadone or other drug treatment facility, psychiatric rehabilitation or treatment facility, or any other facility not in keeping with medical services commonly found in similar shopping centers in Miami-Dade County; for the purpose of clarity,

neither Lessee nor its sublessees shall operate any medical facility that places its patients under full anaesthesia for more than two (2) hours at a time and which thereby prevents such patients thereafter from being ambulatory and able to respond to emergency evacuation announcements and directions.

20. Any hotel/motel.

EXHIBIT "H"

[RESERVED]

EXHIBIT "T"

[RESERVED]

**EXHIBIT "J"**

**LIST OF COUNTY ENVIRONMENTAL REPORT(S)**

PPIP Area #7, Miami International Airport, New Lease Baseline Audit prepared by Westhorp and Associates, Inc., dated June 9, 2008. Copies of the report can be obtained from MDAD Civil Environmental Engineering Division.

**Exhibit "J"**  
**List of County Environmental Report(s)**  
**See Section 8.2 (B)**

THIS INSTRUMENT WAS PREPARED BY,  
AND WHEN RECORDED MAIL TO:

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

## SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

1  
2  
3 This Subordination, Nondisturbance and Attornment Agreement (the "Agreement")  
4 is effective this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Miami-Dade County, a political  
5 subdivision of the State of Florida (the "County"), \_\_\_\_\_, a  
6 ("Sublessee") and WMD Tamiami, LLC, a Florida limited liability  
7 company ("Sublessor").

### RECITALS

8  
9 A. Under that certain Development Lease Agreement, dated \_\_\_\_\_ (the  
10 "Master Lease"), the County is the lessor and Sublessor is the lessee with respect to the real property  
11 described in Exhibit A attached hereto and by this reference incorporated herein. The Exhibit A  
12 property and improvements thereon are hereinafter collectively referred to as the "Project".

13 B. Sublessee has executed, or will execute, a certain sublease with Sublessor dated for  
14 reference purposes on \_\_\_\_\_, for all or a portion of the Project, which portion  
15 (the "Premises") is more particularly set forth in said sublease. Said sublease and all amendments  
16 and modifications thereto are herein collectively referred to as the "Sublease." Capitalized terms  
17 used herein without definition shall have the meaning ascribed to them in the Sublease.

18 C. Sublessee has requested that the County agree not to disturb Sublessee's possessory  
19 rights under the Sublease in the event that Sublessor defaults under the Master Lease and the  
20 County becomes the landlord under the Sublease, provided that Sublessee is not in default under the  
21 Sublease.

22 D. The parties desire to establish certain rights and obligations with respect to their  
23 respective interests by means of this Agreement.

Exhibit "K"  
Subordination, Nondisturbance  
and Attornment Agreement  
See Section 10.1 (C)(1)

1 AGREEMENTS

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

4 1. Subject to the terms and conditions of this Agreement, the Sublease shall be, in  
5 accordance with the terms and conditions hereof, subordinate to the Master Lease.

6 2. the County represents and warrants to Sublessee that: (i) the County is the "Lessor"  
7 under the Master Lease; (ii) the County is the sole holder of fee simple title to the Project; (iii) the  
8 County has the full right and authority to enter into this Agreement; (iv) the Master Lease is in full  
9 force and effect and represents a valid lease of the entire Project; (v) a copy of the fully executed  
10 Master Lease and each of the amendments thereto referred to above in the Recitals hereto are true  
11 and correct, and there are no other amendments, modifications or additions to the Master Lease,  
12 written or oral; (vi) neither the County nor Sublessor are in default under any terms or conditions of  
13 the Master Lease; (vii) the current term of the Master Lease expires by its own terms on [TBD]; and  
14 (viii) Sublessor currently has [TBD] options of [TBD] years each to extend the term of the Master  
15 Lease.

16 3. The County consents to the Sublease and the leasing of the Premises to Sublessee.  
17 Further, the County (i) consents to Sublessee's construction of the improvements reflected in  
18 Exhibit \_\_\_ of the Sublease and all alterations and modifications required in connection therewith;  
19 and (ii) consents to Sublessee's erection and maintenance, at its sole expense (except as otherwise  
20 provided in the Sublease), of all signage reflected in Exhibit \_\_\_ of the Sublease, including the  
21 locations thereof as depicted in such Exhibit.

22 4. The County and Sublessee agree that neither of them has any liability to the other by  
23 reason of any default by Sublessor under the Master Lease, and that their only liability to each other  
24 with respect to Sublessee's use of the Premises is as expressly provided herein. Furthermore,  
25 Sublessee has no liability to the County under the Sublease or otherwise until the expiration or  
26 earlier termination of the Master Lease and the County's assumption of the Sublease, pursuant to  
27 Paragraph 5 of this Agreement. Nothing contained herein or in the Sublease shall release Sublessor  
28 from its obligations under the Master Lease.

29 5. Provided that Sublessee is not in default so as to permit Sublessor to terminate the  
30 Sublease or Sublessee's right to possession of the Premises, and notwithstanding any contrary  
31 provisions in the Master Lease, the County (i) shall not disturb or deprive Sublessee in or of its use,  
32 quiet enjoyment and possession (or its right to use, quiet enjoyment and possession) of the Premises,  
33 or of any part thereof, or any right, benefit or privilege granted to or inuring to the benefit of  
34 Sublessee under the Sublease (including any right of renewal or extension thereof); (ii) shall not  
35 terminate or affect the Sublease; (iii) shall recognize Sublessee's rights, benefits and privileges under  
36 the Sublease; and, (iv) shall recognize the leasehold estate of Sublessee under all of the terms,  
37 covenants, and conditions of the Sublease for the remaining balance of the Term of the Sublease  
38 with the same force and effect as if the County were the Sublessor under the Sublease. The County  
39 hereby covenants that any sale by the County of the Project pursuant to the exercise of any rights  
40 and remedies under the Master Lease or otherwise, shall be made subject to the Sublease and the  
41 rights of Sublessee thereunder. However, in no event shall the County be:



1 (a) Liable for any act or omission of Sublessor arising prior to the date the  
2 County takes possession of Sublessor's interest in the Sublease except to the extent such act or  
3 omission is of a continuing nature, such as, for example, a repair obligation;

4 (b) Liable for any offsets or deficiencies which Sublessee might be entitled to  
5 assert against Sublessor arising prior to the date the County takes possession of Sublessor's interest  
6 in the Sublease, except to the extent that the County has received the benefit of the act of Sublessee  
7 giving rise to the right of deduction, such as, for example, relief of an obligation that would  
8 otherwise have been paid by the County as Sublessor;

9 (c) Bound by any payment of rent or additional rent made by Sublessee to  
10 Sublessor for more than one (1) month in advance, which payment was not required under the  
11 terms of the Sublease;

12 (d) Bound by any amendment or modification of the Sublease executed after the  
13 date of this Agreement which: (i) materially increases Sublessor's obligations or materially reduces  
14 Sublessee's obligations under the Sublease; and, (ii) is made without the County's prior written  
15 consent (except to the extent that the Sublease may specifically contemplate any amendment or  
16 modification thereof).

17 6. In the event of the termination of the Master Lease for any reason whatsoever, and if  
18 Sublessee is not in default under the terms and conditions of the Sublease so as to permit the  
19 Sublessor thereunder to terminate the Sublease, Sublessee shall not be made a party in the action or  
20 proceeding to terminate the Master Lease. Further, Sublessee shall not be evicted or moved or its  
21 possession or right to possession of the Premises under the terms of the Sublease be disturbed or in  
22 any way interfered with. Subject to the provisions of this Agreement, Sublessee will attorn to the  
23 County or any other party which retains or obtains title to the Project (without the encumbrance of  
24 the Master Lease) pursuant to any remedy provided for by the Master Lease or otherwise. Such  
25 attornment shall be effective and self-operative without the execution of any other instruments on  
26 the part of any party, provided that the County notifies Sublessee thereof, and, in all events, the  
27 Sublease shall continue in full force and effect, subject to the terms of this Agreement, as a direct  
28 Lease between the County (or such party) and Sublessee under all of the exact and verbatim terms  
29 and provisions of the Sublease (including any rights of Sublessee to renew or extend the Term  
30 thereof), without the necessity for executing any new lease. In the event of such attornment, the  
31 County shall be deemed to have assumed and shall assume the performance of all of the affirmative  
32 covenants of Sublessor occurring under the Sublease from and after the time the County becomes  
33 the landlord and until such time as such obligations are assumed by a bona fide purchaser, if any.

34 7. Sublessee hereby confirms that the Sublease is in full force and effect.

35 8. Nothing contained in this Agreement shall be deemed to reduce or abrogate any  
36 rights of Sublessee to cure any default of Sublessor under the Sublease in accordance with and  
37 subject to the provisions of the Sublease and/or to deduct from rental such amounts which  
38 Sublessee may be entitled to so deduct under the provisions of the Sublease.

39 9. Unless and until the County or any subsequent purchaser succeeds to the interest of  
40 Sublessor under the Sublease, Sublessor shall continue to perform Sublessor's obligations and duties  
41 under the Sublease. Sublessor shall also perform Sublessor's obligations and duties and shall comply

1 with all of the terms, covenants and conditions of the Master Lease which are binding upon  
2 Sublessor. The County, Sublessor and Sublessee agree that, in the event of a default by Sublessor  
3 under the Master Lease, Sublessee shall have the right, but not the obligation, to cure Sublessor's  
4 default under the Master Lease, and to pursue against Sublessor any remedies available under the  
5 Sublease, and at law or in equity.

6 10. If, under the provisions of the Master Lease or the Sublease, the County is entitled to  
7 receive rent due under the Sublease in the event of a default by Sublessor under the Master Lease,  
8 but subject, always, to the terms of any leasehold mortgage encumbering the Project or any part  
9 thereof containing the Premises, Sublessee agrees that after receipt of notice from the County to  
10 Sublessee (at the address set forth below) that rents under the Sublease should be paid to the  
11 County, Sublessee shall thereafter pay to the County all monies thereafter due to Sublessor under the  
12 Sublease. In such event, Sublessee shall be entitled to rely solely upon such notice, and Sublessor  
13 and the County hereby indemnify and agree to defend and hold Sublessee harmless from and against  
14 any and all expenses, losses, claims, damages or liabilities arising out of Sublessee's compliance with  
15 such notice or performance of the obligations under the Sublease by Sublessee made in good faith in  
16 reliance on and pursuant to such notice. Sublessee shall be entitled to full credit under the Sublease  
17 for any rents paid to the County in accordance with the provisions hereof. Any dispute between the  
18 County (or any other purchaser) and Sublessor as to the existence of a default by Sublessor under  
19 the provisions of the Master Lease, shall be dealt with and adjusted solely between the County (or  
20 any subsequent purchaser) and Sublessor, and Sublessee shall not be made a party thereto.

21 11. On and after the date of the Sublease, and throughout the Term of the Sublease, the  
22 County and Sublessor shall not enter into any cancellation, termination, or material amendment or  
23 modification of the Master Lease (a "Master Lease Amendment") without Sublessee's prior written  
24 consent, which consent shall not be unreasonably withheld. However, Sublessee's withholding of  
25 such consent shall be deemed reasonable, among other reasons, if the proposed Master Lease  
26 Amendment will: (i) conflict with the provisions of the Sublease; or (ii) increase Sublessee's  
27 obligations and/or reduce Sublessor's obligations under the Sublease; or (iii) reduce Sublessee's  
28 rights and/or increase Sublessor's rights under the Sublease; (iv) reduce Sublessee's rights under the  
29 Master Lease which Sublessee is privileged to enjoy by reason of its tenancy and rights under the  
30 Sublease; or (v) materially and adversely affect Sublessee's use of the building or other improvements  
31 constructed on the Premises or Sublessee's use of the common areas of the Project.

32 12. No modification, amendment, waiver or release of any provision of this Agreement  
33 or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for  
34 any purpose whatsoever unless in writing and duly executed by the party against which the same is  
35 brought to be asserted.

36 13. This Agreement shall be binding upon and shall inure to the benefit of the parties  
37 hereto and their respective heirs, legal representatives, successors and assigns, including, without  
38 limitation, the covenants of the County herein shall be specifically binding upon any purchaser of  
39 the Project.

40 14. In the event any one or more of the provisions contained in this Agreement shall for  
41 any reason be held to be invalid, illegal or unenforceable in any respect, said provision(s) shall be  
42 void and of no further force or effect.

1           15.    This Agreement shall be governed and construed according to the laws of the State  
2 of Florida.

3           16.    Provided that Sublessee is not in default under the Sublease, the County shall not  
4 institute any litigation naming Sublessee as a defendant or otherwise terminating Sublessee's  
5 subleasehold interest in the Project or the Premises unless Sublessee is required to be named in such  
6 litigation by law, and only so long as Sublessee's failure to defend against any such action shall not  
7 result in a waiver of its rights to continued possession under the Sublease as set forth in this  
8 Agreement. The term "County" as used herein shall include any successor-in-interest to the County.

9           17.    To be effective, any notice or other communication given pursuant to this  
10 Agreement must be in writing and sent by postage paid by United States registered or certified mail  
11 with return receipt requested. Rejection or other refusal to accept, or inability to deliver because of  
12 a changed address of which no notice has been given, will constitute receipt of the notice or other  
13 communication.

14           For purposes hereof, the County's address is:

15 \_\_\_\_\_  
16 \_\_\_\_\_  
17 \_\_\_\_\_  
18 \_\_\_\_\_

19  
20           and Sublessee's address is:

21 \_\_\_\_\_  
22 \_\_\_\_\_  
23 \_\_\_\_\_  
24 \_\_\_\_\_

25  
26           and Sublessor's address is:

27           WMD Tamiami LLC  
28           c/o Woolbright Development Inc.  
29           3200 N. Military Trail, 4th Floor  
30           Boca Raton, FL 33431  
31           Attn.: \_\_\_\_\_  
32

33           At any time(s), each party may change its address for the purposes hereof by giving  
34 the other party a change of address notice in the manner stated above.

35           18.    If the County or Sublessor delivers a notice to the other party of the other party's  
36 default under the Master Lease, the notifying party shall also concurrently deliver a copy of such  
37 notice to Sublessee.

38           19.    This Agreement (a) contains the entire understanding of the County, Sublessor and  
39 Sublessee regarding the matters dealt with herein (any prior written or oral agreements between  
40 them as to such matters being superseded hereby), (b) can be modified or waived in whole or in part  
41 only by a written instrument signed on behalf of the party against whom enforcement of the

1 modification or waiver is sought, and (c) will bind and inure to the benefit of the parties hereto and  
2 their respective successors and assigns.

3 20. In the event of any litigation arising out of the enforcement or interpretation of any  
4 of the provisions of this Agreement, the unsuccessful party shall pay to the prevailing party its  
5 reasonable attorneys' fees, including costs of suit, discovery and appeal. The "prevailing party" shall  
6 be that party who obtains substantially the relief sought in the action.

7 21. In the event the Sublease is terminated as a result of Sublessor's bankruptcy or  
8 reorganization, whereby the County retains or obtains fee title to the Project (without the  
9 encumbrance of the Master Lease), the County agrees that the Sublease shall remain in effect as  
10 between the County (as landlord) and Sublessee, subject to the terms of this Agreement, and, upon  
11 Sublessee's written request, the County and Sublessee agree to execute a reinstatement agreement  
12 documenting that the Sublease has been reinstated as between the County (as landlord) and  
13 Sublessee and that the terms and conditions thereof shall be as stated in the Sublease, subject to the  
14 provisions of this Agreement.

15 22. The parties hereto covenant and agree that they shall execute such other and further  
16 documents as are or may become necessary to carry out the objectives of this Agreement.

17 [SIGNATURES APPEAR ON THE NEXT PAGE]

1 IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day  
2 and year first written above.

TENANT:

\_\_\_\_\_  
a \_\_\_\_\_

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

Its: \_\_\_\_\_

Witness: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Witness: \_\_\_\_\_

Printed Name: \_\_\_\_\_

THE COUNTY:

\_\_\_\_\_  
a \_\_\_\_\_

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

Its: \_\_\_\_\_

Witness: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Witness: \_\_\_\_\_

Printed Name: \_\_\_\_\_

LANDLORD:

a \_\_\_\_\_

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

Its: \_\_\_\_\_

Witness: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Witness: \_\_\_\_\_

Printed Name: \_\_\_\_\_

3

4

5

6 Add Notary Acknowledgements

## EXHIBIT "L"

(See Section 16.02)

### Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities, including but not limited to:

- \* Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- \* 49 CFR part 21 (Non-discrimination in Federally-Assisted Programs of The Department of Transportation--Effectuation of Title VI of The Civil Rights Act of 1964);
- \* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- \* Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- \* The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- \* Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- \* The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "program or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- \* Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12111 - 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- \* The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- \* Executive Order 12896, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- \* Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- \* Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

Required Contract Provisions  
AP Grants and Obligated Sponsors

Issued on January 25, 2016  
Airports (ARP)