

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

Amended  
Agenda Item No. 8(A)(1)(K)  
09-04-07

**OFFICIAL FILE COPY  
CLERK OF THE BOARD  
OF COUNTY COMMISSIONERS  
MIAMI-DADE COUNTY, FLORIDA**

RESOLUTION NO. 955-07

RESOLUTION RELATING TO MIAMI INTERNATIONAL AIRPORT; APPROVING DEVELOPMENT LEASE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND CENTURION AIR CARGO, INC. (CENTURION), FOR THE CONSTRUCTION OF A CARGO WAREHOUSE FACILITY ON THE NORTHEAST CORNER OF MIAMI INTERNATIONAL AIRPORT; APPROVING CENTURION'S ASSIGNMENT OF THE AGREEMENT TO AERO MIAMI III, LLC (AERO MIAMI) IN ORDER FOR AERO MIAMI TO CONSTRUCT THE FACILITY AND LEASE THE COMPLETED FACILITY BACK TO CENTURION, WITH BOTH CENTURION AND AERO MIAMI BEING LIABLE TO THE COUNTY UNDER THE AGREEMENT AS LESSEES; APPROVING THE LESSEES' DEMOLITION OF EXISTING AIRPORT FACILITIES AND LESSEE'S USE OF EXISTING BUILDING 5A IN PHASE II IF LESSEES EXERCISE THEIR OPTION TO USE SUCH BUILDING; APPROVING LESSEES' CONSTRUCTION OF AN EXTENSION TO EXISTING TAXIWAY K WITH THE COSTS THEREOF TO BE REIMBURSED TO THE LESSEES BY THE AVIATION DEPARTMENT IN AN AMOUNT NOT TO EXCEED \$6.4 MILLION EXCEPT FOR UNKNOWN ENVIRONMENTAL CONDITIONS; APPROVING THE SALE OF BUILDINGS 890 AND 891 TO THE LESSEES FOR THE LESSEES' USE DURING THE LEASEHOLD PERIOD FOR THE SUM OF \$6.4 MILLION, SUCH PURCHASE PRICE PROCEEDS TO BE USED AS AN OFFSET TO THE COUNTY'S OBLIGATION TO REIMBURSE LESSEES FOR THEIR CONSTRUCTION OF THE TAXIWAY K EXTENSION; AUTHORIZING MAYOR OR HIS DESIGNEE TO EXECUTE SUCH AGREEMENT AND ALL DOCUMENTS REQUIRED IN CONNECTION THEREWITH AND TO EXERCISE THE TERMINATION PROVISIONS THEREIN

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

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA,** that this Board hereby (a) approves the attached Development Lease Agreement between Miami-Dade County and Centurion Air Cargo, Inc. ("Centurion"), an air carrier currently operating at Miami International Airport, for an initial term of 30 years with two 5-year extension terms exercisable by the Lessee, with (i) Centurion having the right to assign the Agreement to Aero Miami III, LLC, ("Aero Miami") for the purpose of allowing Aero Miami to construct a cargo warehouse facility on the Centurion leasehold located on a portion of the former Eastern Air Lines leasehold premises in the northeast corner of the Airport, (ii) Aero Miami having the right to lease the completed cargo warehouse facility back to Centurion for the duration of the lease term for Centurion's use and occupancy, and (iii) both Centurion and Aero Miami being liable to the County as lessees as a result of such assignment for the duration of the lease term, such approval by this Board being made expressly conditional upon the County's receipt from the principal of Centurion of a personal guarantee of payment of all rental charges arising out of the use of the airport by Centurion and Centurion's affiliates, including Cielos and Uno Handling; (b) approves the Lessees' demolition of existing airport facilities and Lessees' use of existing Building 5A in Phase II if Lessees exercise their option to use such building; (c) approves Lessee's construction of an extension to existing Taxiway K at an estimated cost of \$6.4 million, with the costs thereof to be reimbursed to the Lessees by the Aviation Department in an amount not to exceed \$6.4 million except for unknown environmental conditions; (d) approves the sale of Buildings 890 and 891 to Lessees for the Lessees' use during the leasehold period for the sum of \$6.4 million, such purchase price proceeds to be used as an offset to the County's obligation to reimburse Lessees for their construction of the Taxiway K extension; (e) authorizes the Mayor or designee

to execute such Agreement on behalf of the County and to execute all other documents necessary or reasonably required to effect the purposes of the Agreement and this Board's approval thereof, upon review by the County Attorney, and to exercise the termination provisions contained therein.

The foregoing resolution was offered by Commissioner **Jose "Pepe" Diaz**, who moved its adoption. The motion was seconded by Commissioner **Carlos A. Gimenez** and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman	<b>aye</b>		
Barbara J. Jordan, Vice-Chairwoman	<b>aye</b>		
Jose "Pepe" Diaz	<b>aye</b>	Audrey M. Edmonson	<b>aye</b>
Carlos A. Gimenez	<b>aye</b>	Sally A. Heyman	<b>absent</b>
Joe A. Martinez	<b>aye</b>	Dennis C. Moss	<b>aye</b>
Dorrian D. Rolle	<b>aye</b>	Natacha Seijas	<b>aye</b>
Katy Sorenson	<b>aye</b>	Rebeca Sosa	<b>absent</b>
Sen. Javier D. Souto	<b>aye</b>		

The Chairperson thereupon declared the resolution duly passed and adopted this 4<sup>th</sup> day of September, 2007. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.



Approved by County Attorney as to form and legal sufficiency.

*TJA*

Thomas P. Abbott

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

HARVEY RUVIN, CLERK

By: **KAY SULLIVAN**  
Deputy Clerk



U.S. Department of Transportation  
Federal Aviation Administration

Orlando Airports District Office  
5950 Hazeltine National Dr., Suite 400  
Orlando, FL 32822-5003  
Phone: (407) 812-6331  
Fax: (407) 812-6978

June 6, 2007

Mr. Miguel Southwell  
Director of Business Development  
Miami Dade Aviation Department  
P.O. Box 02504  
Miami, Florida

OPTIONAL FORM 92 (7-90)

**FAX TRANSMITTAL** # of pages ▶

To <i>Greg Owen</i>	From <i>Krystal Hudson</i>
Dept./Agency <i>MDAD</i>	Phone # <i>407-812-6331</i>
Fax # <i>305-876-8091</i>	Fax #

NSN 7540-01-311-7308 5000-101 GENERAL SERVICES ADMINISTRATION

Dear Mr. Southwell:

RE: Review of Lease Agreement

The proposed lease agreement received in this office on May 15, 2007 between Miami-Dade County, Florida and Centurion Air Cargo, Inc. for the lease of an area in the northeast corner of Miami International Airport that consists of undeveloped land and certain facilities (buildings 918, 919, 906, 6, 907, 900, 896, 890, 891, and 28) at Miami International Airport has been reviewed. We interpose no objections provided all lease revenues are used exclusively for the operation and maintenance of the airport.

This review does not extend to any proposed construction, which requires notice under Federal Aviation Regulation Part 77.

Sincerely,

Original Signed By

Krystal G. Hudson, P.E.  
Program Manager

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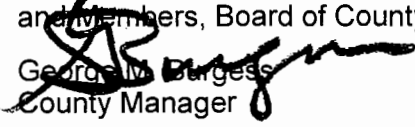
# Memorandum



Amended

**Date:** September 4, 2007

**To:** Honorable Chairman Bruno A. Barreiro  
and members, Board of County Commissioners

**From:**   
George M. Burgess  
County Manager

**Subject:** Development Lease Agreement with Centurion Air Cargo, Inc./Aeroterm  
R#955-07

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

**This item was amended at the July 19, 2007, Airport & Tourism Committee to reflect assurance of payment from the company principal and to reflect that approval by the Board of the attached Centurion Development Lease Agreement will be conditional upon MDAD's receipt of such a personal guarantee.**

## **Recommendation**

It is recommended that the Board approve the Development Lease Agreement between Centurion Air Cargo Inc. (Centurion) and Miami-Dade County for Centurion's construction of a cargo warehouse facility on the northeast corner of Miami International Airport (MIA). The Agreement provides for Centurion's assignment of the lease to Aero Miami III, LLC (Aeroterm), for Aeroterm to construct the facility and then lease the completed facility back to Centurion for its use and occupancy during the term of the Agreement. The lease must be assigned because Aeroterm is not an airline. In order for Aeroterm to develop on behalf of an airline, it must have an airline as a sponsor.

## **Scope**

Miami International Airport (MIA) is located within Commission District Six; however, the impact of this agenda item is countywide as MIA is a regional asset.

## **Fiscal Impact/Funding Source**

This is a revenue-generating item. The annual rent associated with Phase I of the development is estimated at \$3.0 million. The additional annual rental under Phase II of the lease agreement is estimated at \$500,000, for a combined estimated total annual revenue of \$3.5 million.

## **Track Record/Monitor**

Centurion and its affiliates Cielos and UNO Handling have operated at MIA for several years. While the companies are presently current in their obligations to the County, there have been periods of delinquency. However, Aeroterm, to whom the lease will be assigned and who leases the cargo area known as the "Eastern U" (the Lan Chile facility), has an excellent payment history. MDAD Properties Division Director Greg Owens will monitor the agreement.

## **Background**

MIA is experiencing growth in the total cargo handled at the airport. For the 12 months ending December 2006 over the same period for 2005, MIA's total cargo increased by 81,523 tons or 4.30 percent. International cargo saw an even larger growth for the same period of 95,013 tons or 6 percent.

In order for the Miami-Dade Aviation Department (MDAD) to keep pace with this growth and due to the size of the Capital Improvement Program that consumes the Airport's funding capacity, it is necessary for MDAD to seek airlines and developers to invest in the development of such cargo facilities. Centurion is willing to provide MDAD with this type of development through its own funding sources.

Centurion has long been an air carrier and tenant at MIA and about a year ago approached MDAD with its desire to develop the northeast portion of MIA into cargo facilities. The site that Centurion selected is a 46-acre site partially on the former Eastern Airlines leasehold and consists mostly of vacant land with some existing facilities that will be developed in two phases.

The term of this lease is for 30 years with two five-year options. The lease includes a "Failure to Develop" clause, which gives the County the ability to reduce the acreage or withdraw the two five-year extensions in the event the lessee does not meet the investment requirement or develop within the stated time period. If the lessee decides in the future to sell its leasehold rights to a third party, the lease provides for the payment to the County to be the greater of (i) 5% of the Net Profit resulting from the sale or (ii) \$1 million.

The lease requires Centurion's investment of not less than \$110 million for facilities within Phase I. The Phase I facilities will include the development of a 250,000-square-foot warehouse, the rehabilitation of 65,000 square feet of office space, rehabilitation of 140,000 square feet of hangar space, the construction of 350,000 square feet of paved aircraft ramp and ground services equipment storage, and the completion of the Taxiway "K" Project.

In order for Phase I to move forward, several current facilities will require demolition including (i) Building 906 (a metal plating shop currently occupied by Wings Aviation, Inc., with Centurion being responsible for the first \$250,000 of relocation expenses incurred by Wings), (ii) Building 6 (a ground-service equipment facility currently used by MDAD), (iii) Building 900 (a large maintenance facility formerly occupied by the General Electric Co.), and (iv) Building 28 (a guardhouse structure currently used by MDAD). Also in Phase I, Centurion will renovate Buildings 890 and 891, which consist of hangar and office space.

Centurion must complete the Taxiway "K" Project for safety reasons associated with aircraft operations and is comprised of an actual extension of the taxiway to the east along with associated ramp space. Centurion will construct the Taxiway "K" Project and be entitled to a credit not to exceed \$6.4 million, based on an audit of the costs associated with this development.

MDAD currently uses the Centurion site as a means of allowing contractors and users of the airport to gain access to the North Terminal Development project. The lease provides that MDAD shall continue to have that right for the duration of the NTD project.

The lease provides for Centurion to purchase and pay the County for Buildings 890 and 891 (excluding the underlying land) based on their current Fair Market Value (FMV) of \$6.4 million, for Centurion's use of these building for the duration of the lease term. Because the buildings only and not the underlying land will be purchased, Centurion will not be required to pay rent on the buildings but will pay MDAD fair market rents for the land and pavement underlying Buildings 890 and 891. However, if Centurion purchases Buildings 890 and 891 prior to the completion of the Taxiway "K" Project, the purchase price proceeds will be held in escrow pending the release to Centurion of the eligible project costs of the Taxiway "K" Project, up to a maximum of \$6.4 million.

MDAD currently uses a portion of Building 891 for the storage of records. After the lease Commencement Date, Lessee will issue a license to the County for continued use of this space. When Lessee is ready to occupy this space it must send a written notice to MDAD allowing for a 90-day period before MDAD is required to vacate and return the facility.

All Phase I Improvements must be completed the sooner of 30 months from the Lease Commencement Date or 36 months from the Commencement Date if this development is subject to a development of regional impact requirement (DRI).

The Phase II Development, if Centurion proceeds with this phase or a portion of its leasehold phase, requires Centurion to notify MDAD prior to the 24-month anniversary after the lease Commencement Date (called the "Drop Dead Date") of its desire to develop that site. This Phase II will be an extension to its cargo warehouse in Phase I and may require the premises associated with Building 5A. MDAD staff and Dade Aviation Consultants (DAC) currently occupy Building 5A. If Centurion decides to make use of the Building 5A site, it will be required to (i) provide at its sole cost a replacement facility to the Department of equal size on or off the Airport or (ii) lessee may purchase Building 5A based on FMV, plus reasonable relocation costs for any tenant of Building 5A. If lessee develops Phase II but not the Building 5A site then the Building 5A site will not be part of the Development Lease.

Phase II must be completed within 60 months from the Commencement Date.

A tenant by the name of Commercial Jet currently occupies Building 896. Centurion will have the right of first refusal to occupy Building 896 if Commercial Jet decides to vacate the facility.

In order to assure payment to the Aviation Department of all amounts owed to MDAD by Centurion or its affiliates doing business at MIA, MDAD has required the principal of Centurion and such affiliates to sign a personal guarantee of the payment to MDAD of such amounts. Accordingly, approval by the Board of the attached Centurion Development Lease Agreement will be conditional upon MDAD's receipt of such a personal guarantee.

The Federal Aviation Administration (FAA) has reviewed this lease for compliance with grant assurances and issued its approval in a June 6, 2007 letter addressed to MDAD.

  
Assistant County Manager

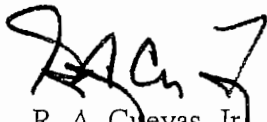


# MEMORANDUM

(Revised)

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

DATE: September 4, 2007

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

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

Please note any items checked.

- "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review



April 13, 2007

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

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

DEVELOPMENT LEASE AGREEMENT BETWEEN  
MIAMI-DADE COUNTY, FLORIDA, AS LESSOR, AND  
CENTURION AIR CARGO, INC., AS LESSEE, MIAMI  
INTERNATIONAL AIRPORT

*Sent to  
FAA  
electronically  
4/16/07*

THIS DEVELOPMENT LEASE AGREEMENT is made and entered into as of the \_\_\_\_\_ day of April, 2007 by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida ("County"), and CENTURION AIR CARGO, INC., a Florida corporation whose address is 1751 NW 68 Avenue, Bldg 706, Suite 214, Miami, FL 33126 ("LESSEE").

WITNESSETH:

WHEREAS, Lessee is a cargo airline currently providing scheduled air freight service at Miami International Airport ("Airport," or sometimes "MIA") and operating on the Airport in the business of transporting property, cargo and mail to and from the Airport by aircraft; and

WHEREAS, County owns and operates MIA through its Aviation Department ("MDAD"); and

WHEREAS, MIA has an area of land in its northeast corner that consists of undeveloped land and certain facilities including (i) existing Building 918/919 (two adjoining buildings commonly known as Building 5A and currently used by MDAD and Dade Aviation Consultants ("DAC") as an administrative and office facility for both users)("Building 5A"), (ii) Building 906 (a metal plating shop currently occupied by Wings Aviation, Inc.), (iii) Building 6 (a ground support equipment ("GSE") facility currently being used by MDAD), (iv) Building 907 (a facility currently used by MDAD), (v) Building 900 (a large maintenance facility formerly occupied by General Electric), (vi) Building 896 (a hangar and maintenance facility currently occupied in part by Commercial Jet, Inc.), (vii) Buildings 890 and 891 (two buildings attached to each other, with Building 890 consisting of a hangar and maintenance facility formerly occupied by Commodore Aviation and Building 891 consisting of a smaller structure currently being used by MDAD for storage purposes), and (viii) Building 28, a guardhouse structure used by MDAD; and

WHEREAS, Lessee desires to cause to be constructed or rehabilitated, at the Airport for Lessee's use and occupancy, a new office, warehouse and hangar facility (henceforth referred to as the "Improvements,") as generally described on Exhibit "A" attached hereto, such Improvements to be constructed in two phases, Phase I and Phase II ; and

WHEREAS, "Phase I" consists of a cargo handling and warehouse facility with office, aircraft hangar and aircraft parking capability sufficient to handle up to eight

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wide-body cargo jets, with Phase I to be constructed on largely undeveloped land but requiring the demolition of Buildings 900, 906, 907, and 6 at Lessee's cost; and

WHEREAS, "Phase II", if Lessee does not exercise its right to delete from the Premises (defined below) all of the Phase II property, will consist of a cargo warehouse extension facility and may require the use of the premises now occupied by Building 5A (for which Lessee will be required to compensate the County as set forth herein); and

WHEREAS, under certain circumstances, Lessee may be interested in making use of Building 896 as more specifically described on Exhibit "B" attached hereto ("Building 896"), and the County is willing to provide Lessee with the right of first refusal to make use of such facilities following the decision of the current tenant of Building 896, Commercial Jet, to no longer occupy Building 896, provided such use by Lessee is consistent with the County's then-existing plans for the use of such facilities and their occupancy by existing tenants; and

WHEREAS, the parties are, therefore, willing for Lessee to enter into this land lease with the right and obligation of the Lessee to assign this land lease to Aero Miami III, LLC, or its affiliate ("Aeroterm"), which will in turn fully fund and construct certain facilities and lease those facilities back to Lessee, on the terms and conditions set forth herein;

WHEREAS, to expedite the process of review of this Lease by the Federal Aviation Administration, Lessee has executed this Lease prior to completing its due diligence on the Premises, and therefore, the County agrees to work in good faith with the Lessee to resolve any issues that may arise in the course of Lessee's due diligence prior to execution of this Lease by the County.

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 I**

**DEFINITIONS**

- 1.1 Agreement or Lease: This written Lease Agreement between the County and the Lessee, including the Exhibits attached hereto and all amendments issued by the County hereunder.
- 1.2 Alterations: Any alterations to the Premises and Improvements after completion of the Improvements.
- 1.3 Airport: Miami International Airport.
- 1.4 Building 5A: The administrative and office building located on the Phase II Premises including all associated parking space reasonably allocated to such building by MDAD and currently as depicted on Exhibit "G" attached hereto.
- 1.5 Centurion: Centurion Air Cargo, Inc., a Florida corporation.

- 1.6 Certificate of Occupancy or C.O.: Any certificate of occupancy issued under the South Florida Building Code.
- 1.7 Commencement Date: The date that is referenced on the top of the first page of this Agreement.
- 1.8 County: Miami-Dade County acting through the Department. The County as used in this Agreement shall mean the Miami-Dade County Board of County Commissioners of the Aviation Department, but it excludes the regulatory departments that include, but are not limited to, Planning, Development and Regulation (Building and Zoning); Department of Environmental Resources Management (DERM); Public Works; and Water and Sewer or their successors.
- 1.9 Date of Beneficial Occupancy (DBO): The earliest of: (i) the date on which Substantial Completion of the Work associated with the Phase I Improvements has occurred and the appropriate code enforcement agency has issued a C.O. or Temporary C.O. so the Lessee can occupy or utilize the Phase I Improvements for their intended use, (ii) the date on which Substantial Completion of the Work associated with the Phase I Improvements would have occurred and on which the appropriate code enforcement agency would have issued a C.O. or Temporary C.O. for work associated with the Phase I Improvements, but for the occurrence of Lessee Delays, or (iii) the date on which Lessee commences any use of the Phase I Improvements for their intended use.
- 1.10 Department: Miami-Dade County Aviation Department, a department of Miami-Dade County Government, sometimes referred to as MDAD or County, represented by and acting through the Director or designee(s).
- 1.11 Developer: Aeroterm to whom Centurion will assign this Agreement and who will undertake the design and construction of the Phase I Improvements as assignee of Centurion's interests under this Agreement and as landlord to Centurion of the completed Improvements.
- 1.12 Director: The director of the Miami-Dade County Aviation Department, or his designee.
- 1.13 [Intentionally Omitted]
- 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 is confirmed by Lessee's making of the final payment of the fee of its contractor for the completion of the completed Improvements unless otherwise stipulated at the time of making such payment.

- 1.15 Impact Fees: Those impact fees payable to the County's Department of Planning, Development and Regulation (Building and Zoning) or to another jurisdiction by the Lessee when making permit application for the construction of the Improvements.
- 1.16 Improvements: Those facilities that the Lessee 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.
- 1.17 Lessee: Centurion Air Cargo, Inc. and its assignees.
- 1.18 Lessee Delay: Any delay in the design or construction of the Improvements that occurs by reason of acts or omissions on the part of Lessee or those acting for or under the direction of Lessee. If a delay occurs by reason of an act or omission on the part of Lessee or those acting for or under Lessee's direction and if concurrently a delay occurs for a reason other than an act or omission on the part of Lessee or those acting for or under Lessee's direction, the period in which an overlap in the delays occurs will not constitute a Lessee Delay.
- 1.19 MDAD: Miami-Dade County's Aviation Department, as operator of Miami International Airport.
- 1.20 MDAD Offices: The office building known as Building 5A and currently occupied by the Department and Dade Aviation Consultants and located on the premises on which some Phase II facilities may be constructed.
- 1.21 Phase I Improvements: Those improvements that are generally depicted on the attached Exhibit "C" that are further described in Article 5.1 and that Lessee shall construct, or cause to be constructed, on the Phase I Premises.
- 1.22 Phase II Improvements: Those improvements that are generally depicted on the attached Exhibit "D" that are further described in Article 5.1, and that Lessee shall construct or cause to be constructed on the Phase II Premises, unless the parties amend this Agreement to remove the Phase II Premises from this Agreement.
- 1.23 Plans and Specifications: The drawings and specifications prepared by the Lessee's or assignee's architect/engineer that show the locations, characters, dimensions and details of the Work to be done.
- 1.24 Record Drawings (As-built Drawings): Reproducible drawings showing the final completed improvements as built, including any changes to the improvements performed by Lessee's contractor that Lessee's architect/engineer considers significant, based on marked-up as-built prints, drawings and other data furnished by Lessee's contractor.
- 1.25 Risk Management Division: A Division of MDAD, with offices located at MIA.

- 1.26 **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 so that Lessee 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 contractor in 60 days or less.
- 1.27 **Temporary C.O.:** Any temporary or partial C.O. issued under the building code then applicable to construction in Miami-Dade County.
- 1.28 **Work:** All labor, materials, tools, equipment, services methods, procedures, etc., necessary or convenient to performance by Lessee or by the Lessee's contractor for the fulfillment of Lessee's obligation to construct improvements in accordance with the terms of this Agreement.

## ARTICLE 2

### **TERMS AND PREMISES AND COUNTY BUY-OUT RIGHTS**

- 2.1 **Term:** The County hereby leases to the Lessee, and the Lessee hereby leases from the County, effective on the Commencement Date, the area described in Article 2.2 (Premises) with the right to construct, or cause to be constructed, and occupy the improvements described in Article 5 (Improvements) hereof for an initial term (the "Initial Term") that commences on the Commencement Date and that ends at 11:49 p.m. (E.S.T. time) on the thirtieth anniversary of the Date of Beneficial Occupancy of the first facility constructed on Phase I. Provided however, that, in addition to the grounds for termination set forth in Article 14 hereof, this Agreement may be terminated if Lessee fails to obtain a CO or a Temporary CO on the Phase I Improvements on or before the thirtieth (30<sup>th</sup>) month anniversary of the Commencement Date ("Phase I Completion Deadline") (unless the Improvements are subject to development of regional impact requirements under Florida Statutes ("DRI") or require material traffic mitigation measures under applicable Florida "concurrency" statutes ("Traffic Concurrency")), in which case the Phase I Completion Deadline to obtain a CO or Temporary CO on the Phase I Improvements shall be extended beyond the thirty (30) month development period 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 requirements.
- If Lessee chooses to retain the Phase II Premises, and Lessee fails to substantially complete the construction of the Phase II Improvements on or before the sixtieth (60<sup>th</sup>) month anniversary of the Commencement Date (regardless of whether a DRI is required for either the Phase I or Phase II Improvements), then County may terminate this Agreement by delivering written notice to Lessee prior to the substantial completion of the Phase II Improvements, without obligation by the County to pay Lessee any compensation for work performed and funds expended prior to such termination, provided the County delivers written notice to Lessee at least 90 days in

advance of the date of termination specified on that notice and provides Lessee with the opportunity to cure within such 90 day period.

Lessee shall follow reasonable directions from the County regarding Improvements not completed within the time periods set forth in this paragraph (which may include demolition or bringing them to an acceptable state of completion) and be held liable to the County for monetary damages sustained by the County for Lessee's failure to comply with the foregoing. The Initial Term and any Renewal Term with respect to which Lessee exercises its renewal option set forth in Article 2.5 are collectively called the "Term" in this Agreement, and the conditions applicable to the Initial Term or the Renewal Term shall be as set forth in this Agreement.

2.2 Premises: (A) The Premises leased herein for Phase I and Phase II are located in the northeast corner of the Airport, consisting of approximately 2 million square feet or approximately 46 acres of land ("Land"), as described and as shown on Exhibit "E" attached hereto and made a part hereof (the land along with related improvements, the "Premises"), with Phase I Premises defined as shown on Exhibit F("Phase I Premises") and the Phase II Premises defined as shown on Exhibit G ("Phase II Premises").

(B) For the period of time required by the County to complete the Airport project known as the North Terminal Development Project, Lessee hereby agrees to provide the County with whatever reasonable truck and car access is required across the Premises from time to time by the County and its invitees with respect to the construction of the North Terminal Development Project ("NTDP") to access N.W. 36<sup>th</sup> Street. The County shall not be required to pay any compensation for such use. Such access road shall initially make use of paved areas already existing on the Premises. If Lessee desires to change the location of such access road for use in connection with the NTDP, the change shall be reasonably acceptable to the County and Lessee shall be required to pay the costs for such change. Following completion of the North Terminal Development Project, Lessee and County shall work in good faith to attempt to provide reasonable access across the Premises to N.W. 36<sup>th</sup> Street and Building 5A (provided in no event shall such access unreasonably interfere with the operations of users of the Premises or impose a material cost on Lessee).

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

(D) Prior to the Commencement Date, the County shall be responsible for removing from the Premises all tenants and other occupants, except for the occupants of Building 5A and Wings (as defined below). The Premises shall be for the exclusive use of the Lessee except as otherwise provided herein, including the County's right to allow the County's and invitee's vehicles to access the North

Terminal Development Project. Upon the amendment of this Agreement in accordance with either of Articles 2.2, 2.3 or 2.4, Article 4.1 and Exhibit "E" shall be revised to also reflect and include the removal/addition (as applicable) of the actual square footage and rental rates of Phase II Premises (if then known) and the rates for Building 896 leased by Lessee pursuant to either Article 2.3 or Article 2.4.

(E) As an appurtenance to Lessee's leasehold estate, Lessee may make connections to the utility lines installed adjacent to the Premises and will have the right to install, inspect, maintain, repair, and replace underground utility lines extending from those connections to the improvements. In exercising the foregoing right, Lessee must coordinate with MDAD and must satisfy all requirements that MDAD and the utility service provider having control over those utility lines for the connections Lessee wishes to make.

(F) The County currently uses a portion of Building 891 for the storage of records. Following the Commencement Date, the County shall have a license to use this space and such other space within Building 891 as reasonably required by MDAD from time to time (with reasonable access thereto) and shall vacate Building 891 in broom swept condition 90 days after receipt of written notice from Tenant requesting the County to vacate Building 891.

2.3 Phase II Premises. (A) Deletion. Lessee shall have the right to elect to delete all portions or just the Building 5A portion of the Phase II Premises (as described below) from this Agreement at anytime prior to the twenty-fourth (24<sup>th</sup>) monthly anniversary of the Commencement Date ("Drop Dead Date") by providing MDAD with written notice of such election to delete the Phase II Premises, or the Building 5A portion thereof. Such 24<sup>th</sup> month anniversary shall be a fixed date and shall not be subject to any extensions for any reason whatsoever, including but not limited to delays in removing existing tenants or events of force majeure. Upon MDAD's receipt of the notice, Lessee shall no longer have any responsibility or obligation for the Phase II Premises (or portion thereof if applicable), except as to any responsibilities or obligations that arose therefrom prior to the notice, and the exhibits to this Agreement shall be amended to reflect the deletion of the Phase II Premises (or portion thereof if applicable) from the Premises, and the County shall offer to Lessee an amendment to this Agreement that deletes the Phase II Premises (or portion thereof if applicable) from the Land and Premises described under the terms of this Agreement, and Lessee's use and occupancy of the Phase II Premises (or portion thereof if applicable) shall terminate.

(B) Lessee's Election as to Building 5A. Located on the Phase II Premises is Building 5A. At any time prior to the Drop Dead Date, Lessee shall have the right to amend the scope of the Phase II Improvements set forth herein upon written notice to the Department setting forth Lessee's election to make use of Building 5A or to permit MDAD to continue using it. If Lessee elects to continue having MDAD occupy Building 5A, the Phase II Premises associated with Building 5A as such premises are reasonably determined by MDAD shall be excluded from the Premises

effective as of the date MDAD receives the written notice. Upon the effective date of such notice, Lessee shall no longer have responsibility or obligation for the Building 5A Premises, except as to any responsibility or obligation therefrom that arose prior to the date of the notice. If Lessee desires to make use of Building 5A as part of its Phase II Improvements, then at least 270 days prior to the Drop Dead Date Lessee must notify MDAD in writing of such election and MDAD will be required to vacate Building 5A at the end of the 270-day period provided that (i) Lessee provides at its sole cost replacement facilities to Department of equal size, utility and function on the Airport or off the Airport at a site acceptable to MDAD solely in MDAD's determination, and Lessee provides adequate assurance of performance that it will reimburse MDAD for the reasonable relocation costs of all tenants and users of Building 5A to their new facility or facilities, or (ii) Lessee, at its option, shall purchase Building 5A for the fair market value ("FMV") of the building and related improvements on the date that is 90 days prior to the date MDAD is required to vacate the MDAD Offices, plus reasonable relocation costs to MDAD and any other tenants of Building 5A. For purposes of this Article, the FMV shall be calculated based on the use of the building and improvements by the Department as an office building and in accordance with the MDAD appraisal policies then in effect. If Lessee elects to relocate MDAD from Building 5A but (i) fails to provide replacement facilities to MDAD in a timely manner so that MDAD may move into such facilities at the end of the 270-day period, or (ii) MDAD reasonably determines that the replacement facilities will not be completed and available within the applicable 270 period, then Lessee shall not have the right to make use of Building 5A and MDAD may send written notice to Lessee of MDAD's intent to remain in Building 5A, in which case the portion of the Phase II Premises associated with Building 5A shall not be part of the Premises hereunder for the duration of this Agreement. Notwithstanding any provision of this Article to the contrary, in no event shall Lessee be permitted to demolish Building 5A or to rehabilitate Building 5A as provided hereunder for the purpose of leasing or subletting Building 5A or any portion thereof to any party other than AeroTerm, Centurion, or any of their respective affiliates, subsidiaries or corporate parents (herein, the "Eligible Building 5A Users"). Provided, however, MDAD recognizes the legitimate need for Lessee to be able to lease or sub-lease space to parties other than the Eligible Building 5A Users in the event of vacancies in the building, and the Lessee acknowledges that MDAD has a legitimate need to avoid Lessee's serving as a landlord in competition with MDAD for office space on the Airport. Therefore, Lessee shall be permitted to lease or sub-lease space in Building 5A to others than the Eligible Building 5A Users, provided Lessee receives MDAD's written approval, which approval shall not be unreasonably withheld.

(C) Amendment of Phase II Improvements. Lessee shall have the right at anytime to amend the definition of Phase II Improvements hereunder upon 30 days prior written notice to the County, provided in all events such Phase II Improvements comply with all applicable provisions of this Lease, including the use and minimum investment clauses hereunder, and the improvements are not inconsistent with then-current MDAD requirements and policies.



2.4 Right of First Refusal for Building # 896: If at any time during the Term, Commercial Jet is no longer occupying all or a portion of Building 896, MDAD shall immediately notify Lessee in writing ("Right of First Refusal Notice") of the material terms on which the County is willing to lease Building 896, or a portion thereof vacated by Commercial Jet, to Lessee, or in the event of a bona fide offer to lease Building 896 from a third party, the material terms of the offer MDAD has received. If Lessee decides to lease Building 896 Lessee shall notify the County within thirty (30) days after receipt of the Right of First Refusal Notice and the County shall lease the Building 896 to Lessee on the same material terms stated in the Right of First Refusal Notice, except as to any additional terms MDAD reasonably determines are necessary because of Lessee's proposed use of the facility or because of any requirements of the federal grant assurances applicable to the Airport; provided, however, that the term of the lease for Building 896 shall in no event extend beyond the term of this Agreement. If Lessee does not indicate its agreement within the thirty (30) day period, the County thereafter shall have the right to lease Building 896 to a third party on the same material terms stated in the notice. The phrase "material terms" used throughout this section shall refer all material economic and legal terms of the proposed sale or lease transaction

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

2.6 Taxiway K: (A) The County has furnished to Lessee concept drawings showing the scope of the improvements it wishes to be made to Taxiway K and related service road at the Airport (collectively, "Taxiway K Project") in connection with the Phase I Improvements. Lessee is willing, in conjunction with Lessee's construction of the Phase I Improvements, to undertake the design and construction of the Taxiway K Project reflected in those concept drawings. If the County determines that Lessee may design and construct Taxiway K, based on a bid (or bids) for such work as obtained by Lessee in advance of MDAD's consideration as to whether to allow Lessee to complete the work, Lessee shall be permitted to recover the costs Lessee reasonably incurs in connection with the Taxiway K Project to the extent set forth in this Article 2, such costs to be recovered by means of an offset against the Lump Sum Payment (as defined below in Article 4.1(B)(3)), but in no event shall the recovered cost exceed the amount of the Lump Sum Payment, unless such excess cost is due to

subsurface conditions (environmental or otherwise) not reasonably foreseeable by the Lessee. In the event that Lessee is permitted by MDAD to complete the Taxiway K Project, the parties agree that the County will have no obligation to make any improvements to Taxiway K in conjunction with Lessee's construction of the Phase I Improvements and Lessee shall undertake the Taxiway K Project in accordance with the terms, and subject to the conditions, set forth below. Lessee shall proceed to design and construct the Taxiway K Project, in accordance with the design and construction procedures set forth by the Department from time to time, and in accordance with review of the design and construction plans by the Federal Aviation Administration. Lessee acknowledges that Lessee's obligation to complete the construction of the Improvements on Phase I and Phase II is independent of the construction of Taxiway K, and that regardless of whether County or Lessee constructs Taxiway K, Lessee's obligation to complete the Improvements in a timely manner shall not be affected or extended by reason of any delays associated with the construction of Taxiway K.

(B) Lessee will design the Taxiway K Project in the same manner as is required in Article 5.3, "Design of Improvements", of the Agreement with respect to the Phase I Improvements. At MDAD's discretion, Lessee shall submit to the County for review and approval proposed Plans and Specifications for the Taxiway K Project when they are ninety percent (90%) and one hundred percent (100%) complete, or at such other percentage completion stage as reasonably determined by the County. Once the County has approved the Plans and Specifications for the Taxiway K Project, Lessee shall construct the Taxiway K Project in accordance with the approved Plans and Specifications. To the extent applicable, the provisions of the Agreement governing the process of constructing the Phase I Improvements will also govern the construction of the Taxiway K Project. At or prior to the time of its approval of the Plans and Specifications for the Taxiway K Project, the County may reasonably establish additional requirements governing the process of constructing the Taxiway K Project. In addition, all work on the Taxiway K Project shall comply with applicable MDAD Tenant Airport Construction Reimbursable Project procedures.

(C) For all contracts applicable to the Taxiway K Project, Lessee shall assure that each contract provides that the County is a third party beneficiary of such contract and that the contract shall automatically be assigned to the County, in the event the County takes over the work under the contract as set forth herein. In the event the County desires to complete the work on the Taxiway K Project (after the County has authorized the Lessee to do the work), the County shall (i) provide Lessee at least 30 days advance written notice of its election to complete the work, and (ii) reimburse Lessee for all costs and fees incurred or earned up to the date of the written notice (with Lessee to provide the County such documentation as the County reasonably requests).

(D) Within ninety (90) days after the completion of the Taxiway K Project, Lessee shall submit to the Department a certified accounting of the monies actually expended in the design and construction of the Taxiway K Project in accordance with the

requirements of this Article, which accounting will be prepared by an independent certified public accounting firm that MDAD approves in advance (the "Auditor"). MDAD may not unreasonably withhold, delay or condition that approval. In order for a project cost that Lessee incurs to be eligible for reimbursement by of an offset against the Lump Sum Payment, Lessee must document for the Auditor that it expended the monies and that the project cost is true, correct and eligible for reimbursement in accordance with the terms of this Article. Eligible project costs, subject to Article 2.6(b), shall include reasonable (i) costs for project management, including, without limitation, a reasonable development fee, (ii) design and engineering costs, (iii) costs attributable to compliance with the County's Art in Public Places Program, (iv) costs of materials, labor, supervision and other goods and services used in the construction of the Taxiway K Project in accordance with the approved Plans and Specifications and any changes to those Plans and Specifications that Lessee requests and the Department approves, (v) the amount of the increase in the costs of bonds and insurance that Developer maintains in force in connection with the construction of the Phase I Improvements that becomes necessary by reason of the enlargement of the scope of that project to include the Taxiway K Project, (vi) the cost of environmental assessments conducted with respect to the land within which the Taxiway K Project work is performed, (vii) the cost of the certification the Auditor performs, and (viii) the amount of any increase in any financing fee or other associated expenses that Developer or Lessee pays in connection with its construction or permanent financing for the Phase I Improvements that becomes necessary by reason of the enlargement of the scope of that project to include the Taxiway K Project. Eligible project costs, however, shall not include any interest charges on the project costs, and MDAD shall not be liable to Lessee for payment of any interest charges on the eligible project costs expended by Lessee.

(E) Lessee will be entitled to a credit against the Lump Sum Payment in an amount equal to the aggregate amount of the eligible project costs reflected in the Auditor's cost certification report, such amount, however, not to exceed \$6.4 million (except as otherwise set forth in Article 2.6(A)). To the extent such costs are less than the amount of the Lump Sum Payment, Lessee shall within 30 days after delivery to the County of the Auditor's cost certification report, subject to Article 4.1(B)(3), pay County the difference between the Lump Sum Payment and the eligible costs.

(F) Lessee shall obtain, and maintain in force throughout the construction of the Taxiway K Project performance and payment bonds and insurance policies issued with respect to that Taxiway K Project and otherwise satisfying the requirements of Article 5.5 of the Agreement.

(G) At the conclusion of the construction of the Taxiway K Project, Lessee shall provide the Department with all warranties provided by contractors or subcontractors in connection with that construction and all as-built drawings, Mylars and other forms of final drawings and documents prepared in connection with that construction and reasonably required by the Department, and the Department shall be fully responsible for the repair and maintenance of the Taxiway K Project.

2.7 Existing Tenants: Wings Aviation Services, Inc. ("Wings") currently occupies space in Building 906 ("Wings Space") on the Premises pursuant to a lease ("Wings Lease") that expires October 31, 2007 ("Wings Lease Termination Date"). The County hereby assigns its interest in the Wings Lease to Lessee, and Lessee hereby accepts and agrees to perform all of the terms, covenants and conditions of the Wings Lease on the part of the landlord therein required to be performed, from and after the Commencement Date, but not prior thereto. In the event Wings fails to vacate the Wings Space on or before the Wings Lease Termination Date (notwithstanding Lessee's commercially reasonable efforts to convince Wings to do so), the time for Lessee's performance hereunder (including the payment of rent) shall be extended by the time that Lessee is reasonably delayed because of the failure of Wings to vacate the Wings Space on or before the Wings Lease Termination Date (provided in all instances Lessee is taking commercially reasonable steps to obtain possession of the Wings Space from Wings). Lessee shall be responsible for the first \$250,000 of costs and expenses Lessee reasonably incurs in connection with efforts to obtain possession of the Wings Space from Wings. Lessee will be entitled to a credit against the land rent payable hereunder for the costs and expenses Lessee reasonably incurs in connection with efforts to obtain possession of the Wings Space from Wings above the \$250,000, together with interest accruing on a declining balance basis at the rate of seven percent (7%) per annum, provided the County has consented to such cost or expense which consent shall not be unreasonably withheld, delayed or denied. In addition, if Wings has not vacated the Wings Space on the Wings Lease Termination Date, (i) the Rent Commencement Date shall be extended by the number of days after the Wings Lease Termination Date that Wings remains in possession of the Wings Space, but in no event shall the Rent Commencement Date be extended for more than one year, and (ii) Lessee shall have the right to terminate this Lease at anytime prior to the first anniversary of the Commencement Date. The County and the Lessee waive any and all claims for damages against the other for the failure of Wings to vacate the Wings Space on or before the Wings Lease Termination Date.

2.8 Suitability of Premises: Except as provided in Article 8.2, the County makes no representation, warranty, guarantee, or averment of any nature whatsoever concerning the physical condition of the Premises. Except as expressly provided in Article 8 of this Agreement, the County will not be responsible for any loss, damage or costs that may be incurred by the Lessee by reason of any such physical condition. The Lessee acknowledges that, upon the County's performance of the obligations it undertakes in Article 8.2, the Premises will be suitable for the Lessee's proposed use and the County has no further obligation to perform, or cause to be performed, any maintenance, repairs, site work, nor any tasks to enable the Lessee to obtain any permits, including, but not limited to, Certificates of Occupancy, which tasks shall remain the Lessee's exclusive obligation to perform. The County hereby authorizes Lessee, at its cost and expense, to demolish all buildings on the Land, including without limitation, Buildings 900, 907, and 906 currently located on the Premises,

and, if applicable, Building 5A subject to the provisions hereof.

- 2.9 Use of Improvements Prior to Certificate of Occupancy (C.O.) Prohibited: If Lessee may lawfully occupy or use any portion of the Improvements only upon the issuance of a temporary or permanent Certificate of Occupancy, Lessee may not occupy or use that portion of the Improvements prior to that issuance.
- 2.10 [Intentionally Omitted].
- 2.11 Investment: The Lessee shall make, or cause Developer to make, a minimum investment of one hundred and ten million dollars (\$110,000,000) ("Minimum Investment") for the design and construction of the Improvements, including without limitation, the site development required in connection with that construction. In determining the amount of Lessee's investment in design and construction of the Improvements, Lessee may include all reasonable hard and soft costs including architectural and engineering fees, and labor and material costs, and acquisition fees, subject to the requirement that all such costs are properly capitalizable under generally accepted accounting principles.
- 2.12 Eminent Domain: County shall have the right to exercise its power of condemnation in accordance with Florida law in whatever manner and to whatever extent is provided by Florida law. All compensation due to Lessee and its sublessees with respect to such condemnation shall be governed by Florida law. If County exercises its right to condemn any portion of the Improvements and then permits Lessee to occupy any portion of the condemned improvements, Lessee shall be obligated to pay rentals on such Improvements all in the manner and at the times then applicable to the facilities occupied by Lessee.
- 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 condemnation law at the time of 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.

### 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 of the following purposes only:

(A) The aircraft and cargo-handling of Lessee's aircraft and those of permitted third parties, administrative and servicing and routine maintenance activities associated with an airport/trucking operation; customer drop-off facilities; the staging, loading, unloading and servicing and maintenance of vehicles and aircraft, (including without limitation the stripping and painting of aircraft); the maintenance of ground support equipment and sort and material handling equipment; the parking of vehicles and ground support equipment; Customs clearance activities; Customs brokerage activities; or associated office uses; and any other permissible uses on the Airport. Any such use by Lessee or those permitted hereunder to use the facilities for such purposes shall at all times be in accordance with MDAD policies, as they may be amended from time to time.

The Lessee shall not permit these activities to interfere with designated service roads or lanes or so as to interfere with the activities of others.

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

(C) Inoperable Aircraft: The Lessee agrees that the aircraft left in its possession in non-flyable condition shall not be parked or stored on the Premises for a period in excess of sixty (60) days without the prior written approval of the Department. The Lessee shall not move any nonflyable aircraft from its leasehold to nonleased areas of the Airport without the express written approval of the Department.

(D) Services (A) can also be performed by Lessee for all-cargo aircraft of third party airlines being handled by the Lessee, but only to the extent permitted by MDAD's cargo handling and other policies, as they may be amended from time to time, including the payment of any fees applicable thereto.

- 3.2 Aircraft Parking Positions Outside the Premises: Lessee shall pay to County the standard charges that the County establishes for the use of aircraft parking positions on the Airport. The aircraft parking positions may be used by the Lessee for the following purposes only:
- (A) For loading and unloading of all-cargo aircraft owned or leased and operated by the Lessee or aircraft that are owned or leased and operated by other carriers, but that are carrying cargo on behalf of Lessee.
  - (B) For the performance of transit or turnaround aircraft maintenance on all cargo aircraft owned or leased and operated by the Lessee or aircraft that are owned or leased and operated by other carriers, but that are carrying cargo on behalf of Lessee.
  - (C) For the fueling and servicing of all-cargo aircraft owned or leased and operated by the Lessee or aircraft that are owned or leased and operated by other carriers, but that are carrying cargo on behalf of Lessee.
- 3.3 Vehicular Parking:
- (A) As part of the Improvements, vehicular parking on the Premises shall consist of at least 400 automobile spaces and at least 80 truck bays for the exclusive use of the Lessee as shown on Exhibit "C".
  - (B) Parking of any type (i.e. employees, public or business guest, trucks, etc.) on any landscaped or grass area is prohibited.
- 3.4 Cargo Handling and Maintenance Service to Others: The handling of air cargo of other airlines, cargo handlers and freight forwarders that are handled by Lessee under a handling contract as well as the provision of maintenance service to others that are not carrying cargo on behalf of Lessee on or from the Premises and/or Improvements is specifically permitted, subject to the limitations and provisions of MDAD's policies, including but not limited to the cargo handling policy, as they may be amended from time to time.
- 3.5 Authorized Uses Only: The Lessee shall not use the Premises, Improvements or the Airport, or permit the use of the Premises or Improvements by anyone other than agents, employees or contractors of County, for any illegal or unauthorized Airport, or permit the use of the Premises or Improvements by anyone for any illegal or unauthorized purpose or for any purpose that would increase the premium rates paid by the County on, or invalidate, any insurance policies of the County of that would invalidate any policies of insurance written on behalf of the Lessee under this Agreement.
- 3.6 No Right to Use of Airport Facilities. Other than the Premises, nothing herein contained shall be construed to grant to the Lessee, the Lessee's sublessees, permitted users of the Premises, or their respective agents and employees, contractors and subcontractors, patrons and licensees, invitees, suppliers of services and furnishers of materials the right to use any other space or area which is leased by the Lessor to a third party, other Airport facilities, improved or unimproved, or any area which the Lessor has not specifically leased or granted specific rights to the Lessee, other than the use of airport facilities, in common, available to users of the Airport similarly situated to the Lessee (e.g., taxiways and runways for planes).

3.7 No Interference With Use of Airport. The Lessee shall prevent the use of the Premises or Improvements that would interfere with or adversely affect the operation or maintenance of the Airport or otherwise constitute an Airport hazard, including, but not limited to, the effectiveness or accessibility of the Airport's navigational aids or the drainage, sewage, water, electrical, communication, fire protection, or other systems installed or located at the Airport, it being acknowledged, however, that changes in operation, maintenance of the Airport, or regulations related to same shall not cause the cessation of then-existing uses of the Premises or Improvements.

**ARTICLE 4**

**RENTALS AND PAYMENTS**

4.1 Annual Rental

(A) Rental: As annual rental for the lease of the Phase I Premises, the Lessee shall pay to the County all land and pavement rents on the Phase I Premises in their entirety (except for pavement constructed by Lessee), commencing ("Rent Commencement Date") on the earlier of the Date of Beneficial Occupancy of the first facility constructed thereon (other than a construction trailer), or the first day of the twenty-fifth (25<sup>th</sup>) month from the Commencement Date. Such rent shall be payable in twelve equal monthly installments, and although the rental rates applicable to the Premises as of the Commencement Date are those indicated below, the rental payable as of the Rent Commencement Date shall be the rental rates then in effect for the Airport. Such rent payments 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). Such rates shall be subject to review as set forth in Article 4.4. The rentals payable for the first month shall be prorated if less than a full month.

DESCRIPTION	SQ. FT.	RATE	ANNUAL	MONTHLY
Land	**	\$1.70/sqft	**	**
Pavement (vehicle)	**	\$0.25/sqft	**	**
Pavement (aircraft)	**	\$0.70/sqft	**	**

plus applicable state sales taxes, as required by law.  
 \*\* to be inserted upon completion of the ALTA survey on the Premises.

Lessee shall not be required to pay any rent on the Phase II Premises up to the Drop Dead Date described above in Article 2.3. If Lessee deletes the Phase II Premises (or Building 5A) from this Agreement prior to the Drop Dead Date, Lessee shall have no rental obligation for the Phase II Premises (or Building 5A if applicable). If Lessee elects not to delete the Phase II Premises prior to the Drop Dead Date, then upon the earlier of



the DBO for the first facility constructed on the Phase II Premises or the first day of the twenty-fifth (25<sup>th</sup>) month from the Commencement Date (or the thirty-seventh (37<sup>th</sup>) month in the event a DRI or Traffic Concurrency is required for the Phase II Improvements), Lessee shall pay the rent at the square foot rate then in effect hereunder for the Phase I Premises; provided, however, that if Lessee further elects to delete only Building 5A from the Phase II Premises, then Lessee shall not be required to any rent on the Building 5A.

(B) Improvement Rental: (1) In recognition that the Lessee is constructing or rehabilitating the improvements, or causing the Improvements to be constructed or rehabilitated, at its sole cost and expense and is obligated to pay the property taxes, insurance, and other costs that become payable in respect of the improvements, no rental shall be paid by the Lessee for the improvements during the initial thirty (30) year term of this agreement, except as may otherwise be provided in this Agreement.

(2) If Lessee exercises its Renewal Option under Article 2.5, Lessee shall be obligated to pay rental in respect of the Improvements in the amount of 5% of the gross rentals collected by Aeroterm (or its assigns if applicable) during the renewal periods, including gross rentals collected from the use or occupancy of Building 890/891.

(3) As to Building 890/891, notwithstanding the foregoing, and in lieu of any Improvement rentals on Building 890/891, Lessee shall pay to the County the amount of \$6.4 million ("Lump Sum Payment") on the earlier of earlier of (i) completion of construction of the Taxiway K Project under Article 2.6(D) or (ii) The Phase I Completion Deadline, less any deductions from such \$6.4 million to be made for Lessee's eligible project costs as determined under Article 2.6(D) or as otherwise agreed to by MDAD prior to such final determination. Such payment of the Lump Sum Payment reflects the parties' agreement as to the fair market value of Building 890/891 and shall reflect Lessee's full payment for the purchase of and exclusive right to the use of Building 890/891 for the term of this Agreement (including Renewal Terms), except for the license rights of the County to use portions of Building 891 as set forth herein. Such purchase price represents Lessee's purchase of the Building 890/891 facility in its "as-is" condition, and the provisions of Article 2.8 apply to Lessee's purchase of Building 890/891. Such purchase price does not, however, include the purchase of the land or pavement underlying Building 890/891, title to which remains with the County at all time (but subject to this Agreement, including ground rent and pavement rent payments). If the Lump Sum Payment is required to be made by Lessee before the Taxiway K Project is completed, then the \$6.4 million (or such lesser amount, if specifically approved in writing by MDAD) shall be held in escrow, with accrued interest to be for the benefit of Lessee, pending the determination of eligible project costs under Article 2.6(D). Upon such determination, eligible project costs up to \$6.4 million shall be paid to the Lessee from the escrow, and any positive balance of the \$6.4 million, shall be paid to the County. The County shall not be liable for any eligible project costs in excess of \$6.4 million (except as otherwise set forth in Article 2.6(A) and shall not be liable for any interest costs on the eligible project costs.

- 4.2 **Security Deposit:** Prior to occupancy of the Premises, the Lessee shall pay to the County an amount equal to two times the required total monthly rental as determined pursuant to Article 4.1 above, plus applicable state sales tax thereon, as security for the payment of the Lessee's obligations hereunder. Said deposit shall be in addition to any rental payments required hereunder, and the Department shall be entitled to apply such payment to any debt of the Lessee to the Department that may then exist, as permitted by law, including but not limited to the rentals required hereunder. In lieu of the security deposit being made in cash, the Lessee may provide an Irrevocable Letter of Credit, in a form provided by the Department, in like amount. The amount of the security deposit is subject to adjustment by the Department at any time there is a change in the annual or monthly rentals pursuant to the terms of this Agreement; provided further, that the Department shall have the right to demand an increase in the security deposit requirement of up to an additional four months rental to provide the Department with adequate assurance of the Lessee's payment of its obligations, which assurance is required because of the Lessee's defaults in the timely payment of rents, fees and charges due hereunder.
- 4.3 **Common Use Service Charges:** In addition to the monthly rentals required herein, the Lessee shall pay each month during the term of this Agreement an applicable portion of the costs incurred by the County in providing certain common use services for the benefit of the Lessee, including, but not necessarily limited to, security, servicing of dumpsters provided by the Department pursuant to Article 6.2 (Removal of Trash), compressed air, emergency power, and industrial waste system, as applicable and actually used by or provided to the Lessee. Such costs, including administrative costs, shall be determined by the Department and billed periodically. These service charges shall be adjusted and billed retroactively from time to time based on changes in usage and in costs to the County. The County will be reasonable in the calculation of its common use service charges.
- 4.4 **Rental Rate Review:** The rental rates under this Agreement are subject to periodic review and adjustments as approved by the Board of County Commissioners. The rental rates stated in Article 4.1(A) (Annual Rental) above shall be subject to review and adjustment as set forth hereafter. When such rental rate adjustments are approved by the Board of County Commissioners, and new or revised rental rates applicable in whole or in part to the Premises and Improvements are established by said Board, the Department shall notify the Lessee in writing of such rates and this Agreement shall be considered and deemed to have been administratively amended to incorporate the revised rental rates effective at the time of approval by the Board of County Commissioners. Payments for any retroactive rental adjustments shall be due upon billing by the Department and payable within ten calendar days of same.
- 4.5 **Rental Rates for the Premises and Improvements During any Holdover Tenancy:** In the event the Lessee remains in possession of the Premises and Improvements, as a holdover tenant after the expiration of the Term or the earlier termination of this Agreement and the County has not made a demand for the surrender and return of the Premises and Improvements, the Lessee shall pay, in addition to all other rentals, fees and charges specified in this Article 4, as applicable, whatever rentals, fees and charges are then in effect for the Premises and Improvements and portions thereof that have been established by the

County, including, but not limited to the following rentals for the Improvements calculated on the basis of the following annual rates:

- (1) Building Rent - An annual amount equal to the rental rate per square foot then in effect for the Improvements as determined by the County from time to time multiplied by the square footage of the building(s) then being used of under the control of Lessee; such annual amount shall be payable monthly, unless otherwise established by the County.
- (2) Aircraft Parking Ramp Rent - An annual amount equal to the rental rate per square foot then in effect as determined by the County from time to time multiplied by the square footage of the aircraft ramp(s) then being used or under the control of Lessee; such annual amount shall be payable monthly, unless otherwise established by the County.
- (3) Automobile Parking Rent - An annual amount equal to the rental rate per square foot then in effect as determined by the County from time to time multiplied by the square footage of the automobile parking areas then being used or under the control of Lessee; such annual amount shall be payable monthly, unless otherwise established by the County.
- (4) Ground Support Equipment (GSE) Area Rent - An annual amount equal to the rental rate per square foot then in effect as determined by the County from time to time for GSE area or facility rent, multiplied by the square footage of the ground support equipment staging or building area then being used or under the control of Lessee; such annual amount shall be payable monthly unless otherwise established by the County.

4.6 Double Rental: In the event that the Lessee remains in possession of the Premises and Improvements beyond the expiration of the Term of 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 the return of the Premises and Improvements, the Lessee shall be liable for double rentals for so long as the Lessee remains in possession after such demand, such rentals to be based upon the rental rates as computed under Article 4.5 in whole or in part to the Premises and Improvements.

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

Miami-Dade County Aviation Department  
Accounting Division  
PO Box 592616  
Miami, Florida 33159

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

Miami-Dade County Aviation Department

4200 N.W. 36 Street  
Miami, Florida 33122.

- 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 rate established from time to time by the Board of County Commissioners of Dade County, Florida shall accrue against the delinquent payment(s) from the original due date until the Department actually receives payment. The right of the County to require payment of such interest and the obligation of the Lessee to pay same shall be in addition to and not in lieu of the rights of the County to enforce other provisions herein, including termination of this Agreement, and to pursue other remedies provided by law.
- 4.9 **Dishonored Check or Draft:** In the event that the Lessee delivers a dishonored check or draft to the County in payment of any obligation arising under the terms of this Agreement, the Lessee shall incur and pay a service fee of TWENTY-FIVE DOLLARS, if the face value of the dishonored check or draft is \$50.00 or less; THIRTY DOLLARS if the face value of the dishonored check or draft is more than \$50.00 and less than \$300.00; and FORTY DOLLARS if the face value of the dishonored check or draft is \$300.00 or more, or FIVE PERCENT of the face value of such dishonored check or draft, whichever is greater. Further, in such event, the Department may require that future payments required pursuant to this Agreement be made by cashier's check or other means acceptable to the Department.
- 4.10 **Utilities:** This Agreement is a net lease in all respects and therefore the rentals paid by the Lessee for the lease of the Premises and improvements hereunder do not in any manner cover the cost for any electrical, water and sewer, storm drainage and other utilities consumption. The Lessee shall be solely responsible for the payment, to the appropriate billing entities, whether it be the Department or others, for all utilities usage and shall not permit any liens to be filed against the Premises and Improvements for failure to pay such utility charges.
- 4.11 **Other Fees and Charges:** The Lessee acknowledges that the Board of County Commissioners has or will establish or direct the establishment, from time to time, of various fees and charges for the use of various facilities, equipment and services provided by the County and not leased to or specifically provided to the Lessee hereunder, and procedures relating to the payment of same. The Lessee shall pay upon billing, for its use of such facilities, equipment and services those fees and charges which are billed monthly. For other fees and charges which are based on usage, the Lessee shall, unless otherwise directed by the Department in writing, report its uses of applicable facilities, equipment and services and pay the applicable fees and charges at such frequency and in such manner as may be prescribed by the Department. For other fees and charges based on the nature of work performed by Lessee for other parties, Lessee shall pay such fees and charges in accordance with any Operational Directive or policy statement of MDAD, as may be amended from time to time.
- 4.12 **Art in Public Places.** In accordance with County Ordinance 94-12, as amended, establishing the Art in Public Places program, the Lessee shall pay to the Department the percentage of the cost of design and construction as applicable pursuant to the Ordinance.

## ARTICLE 5

### **IMPROVEMENTS**

- 5.1 **Improvements:** The Lessee hereby agrees to design, rehabilitate and/or construct on the Premises the Phase I improvements consisting of (i) construction of a new warehouse containing not less than 250,000 square feet of space under roof; (ii) rehabilitation of the +/- 65,000 square feet of existing office, (iii) rehabilitation of the +/- 140,000 square feet of hangar, and (iv) construction of not less than 350,000 square feet of paved aircraft ramp and ground support equipment (GSE) staging area; Unless the parties amend this Agreement in accordance with Article 2.3 to remove all or a portion of the Phase II Premises from the Premises, Lessee shall become obligated to design and construct on the Phase II Premises, the Phase II Improvements (as may be amended as set forth herein).

The Lessee shall bear and be solely responsible for the cost of the design and construction of the Improvements including the costs of required financing, construction bonding and insurance, building permit, impact and concurrency fees, construction audits (as may be required elsewhere herein), costs of any consultant(s), accountant fees, financing charges, legal fees, furnishings, equipment and other personal property of the Lessee, demolition costs of Airport Buildings #884, #900, #901, #906, and, if applicable, the MDAD Offices, or any other indirect cost associated with the design, construction and financing of the improvements (other than the cost to remediate Recognized Environmental Conditions not caused by Lessee as provided in Article 8.2).

- 5.2 **Improvements Free and Clear:** All the improvements shall become part of the Premises and 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 the earlier termination date of this Agreement.

- 5.3 **Design of Improvements:** Within one hundred and twenty (120) days after the date of this Agreement, the Lessee shall proceed with the design of the Phase I Improvements. The design of the Phase I Improvements and all later Improvements shall be in accordance with all applicable laws, codes, regulations, or other requirements of authorities, including but not limited to County, State and/or Federal, having jurisdiction over the construction of the Improvements by law or by contract with the County. The design of the Improvements need not, however, comply with the Department's Design Guidelines Manual. Lessee intends to "fast-track" the construction of the Phase I Improvements; accordingly, Lessee will be causing certain segments of the Work to be commenced in advance of the preparation of 100 percent complete Plans and Specifications for later segments of the Work.

- (A) Before commencing any segment of the Work, Lessee must submit to the Department for its review Lessee's Plans and Specifications at the percentage levels of completion then reasonably required by MDAD, for the relevant portion of the improvements prepared by an architect or engineer registered in the state of Florida. The Lessee shall continue to be

held responsible for substantially completing the construction of the Phase I Improvements within thirty (30) months (or 36 months in the case of a DRI or Traffic Concurrency) after the Commencement Date and for substantially completing the construction of the Phase II Improvements, if applicable, within five years after the Commencement Date and shall be subject to the County's remedies specified herein for not meeting said deadlines. The County shall in no way be held responsible for delays resulting from the failure of the Lessee to meet all submittal requirements continued herein. The Department's review will be limited to determining whether any aspect of the improvements reflected in the Plans and Specifications under review will materially interfere with any operations conducted elsewhere on the Airport, and whether the Improvements reflected in the Plans and Specifications under review will likely have a useful life in excess of the remainder of the Term.

- (B) Upon review of each submission of any Plans and Specifications, the Department shall review and/or comment upon, in writing, that submission within the time period established in Article 5.3(D). Except to the extent that Lessee requests reconsideration of the Department's comments, Lessee must incorporate the Department's comments into the Plans and Specifications prior to the next review submittal. The Lessee may request reconsideration of any of the Department's comments. Such request shall include documentation supporting the Lessee's position. The Department shall review the request for reconsideration and shall either approve or disapprove the request or alter its initial comments in light of the reconsideration.
- (C) The Lessee shall similarly submit Plans and Specifications at the 100% stages of completion. The same manner of review and/or comment as described in the paragraphs above shall be employed for the reviews at these design completion stages. Unless Lessee's later submissions reflect a material change in the scope of the Improvements depicted in its earlier submission, the Department's review will be limited to confirming that Lessee has addressed the concerns underlying the comments the Department made in respect of Lessee's prior submissions. The Lessee shall not proceed with the construction of the segment of the improvements depicted and described in Lessee's submission until and unless the Department has approved, in writing, the 100 percent complete Plans and Specifications for the relevant segment of the Improvements.

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

- (1) After the Department approves any Plans and Specifications that Lessee has submitted for review, Lessee may not make a material

change in the scope of those Plans and Specifications without the Department's approval.

- (D) The Department shall review, comment upon, or approve within 14 business days each submission Lessee makes in accordance with the conditions contained herein. The Department's failure to act on any of Lessee's submissions within that time period will constitute the Department's approval of the submission.
- 5.4 **Construction of Improvements:** Prior to the commencement of the construction of the Phase I improvements, Lessee shall deliver to the County a copy of its construction schedule. During construction of the Improvements, the County reserves the right, but not the obligation, to inspect or to have inspected the construction to assure that construction is in conformance with the approved Plans and Specifications.
- 5.5 **Construction Bonding and Insurance:** The Lessee shall maintain or cause to be maintained the following construction bonding and insurance during the construction of the Improvements:
- (A) Separate performance and payment bonds, satisfactory to the County, in the full amount of the Improvements, to assure completion of contract work and payment of the costs thereof, free and clear of all claims, liens and encumbrances of subcontractors, laborers, mechanics, suppliers and materialmen, with the County, and Lessee . The required bonds shall be written by or through, and shall be countersigned by a licensed Florida agent of the surety insurer in accordance with Florida Statutes.
  - (B) Completed Value Builders Risk and/or Installation Floater, issued in the name of the Lessee's contractor, the Lessee, and the County as their interest may appear, in amount(s) not less than 100 percent of the insurable value of the structural Improvements, covering perils on an "All Risks" basis including windstorm. Policy(s) must clearly indicate that underground structures (if applicable) and materials being installed are covered.
  - (C) Commercial General Liability Insurance as specified in Article 12 herein.
  - (D) Workers' Compensation as required by Florida Statutes.
  - (E) Automobile Liability Insurance as specified in Article 12 herein.
  - (F) All insurance policies shall be issued by companies authorized to do business under the laws of the state of Florida and rated no less than B as to management and no less than Class V as to strength, in accordance to the A.M. Best Company Insurance Guide, or its equivalent as approved by the County Risk Management Division.
  - (G) The Lessee shall furnish certificates of all required insurance to the County for approval as may be required by the County Risk Management Division. The Certificates shall clearly indicate that the Lessee or its contractors have obtained insurance of the types, amounts and classifications required by these provisions. No material change or cancellation of the insurance

shall be effective without a 30-day prior written notice to and approval by the County Risk Management Division.

- 5.6 (A) Completion of Improvements: Lessee shall Substantially Complete the construction of the Phase I Improvements on or before the thirtieth month from the Commencement Date (or 36<sup>th</sup> month in the case of a DRI or Traffic Concurrency) and Substantially Complete the construction of the Phase II Improvements, if applicable, on or before the fifth annual anniversary of the Commencement Date.
- (B) With Lessee's Final Acceptance of any Improvements, the Lessee shall provide to the County executed copies of the Waiver and Release of Lien upon final payment, pursuant to Florida Statutes, from its contractor.
- (C) Within 30 days of Final Acceptance of the Work by the Lessee, the Lessee shall furnish the County, at the Lessee's expense, one complete set of computer produced drawing disc files (AUTOCAD) of the Record Drawings in the size and format required by the County. The complete set of Record Drawings shall include all pertinent shop drawings as well as the Plans and Specifications as adjusted to accurately depict the as-built work. The Lessee shall also provide the County one copy of all maintenance manuals, pamphlets, charts, parts lists and specified spare parts, operating instructions and other necessary documents required for all installed materials, equipment, or machinery, as well as all applicable warranties and guarantees and the appropriate Certificate of Occupancy.
- 5.7 Assignment of Contract Documents. The Lessee shall provide the County with conditional assignments of its contracts with its architects and general contractors, which condition shall be removed upon the failure of Lessee to complete construction hereunder in the time periods provided (including cure periods). These assignments shall be subordinate to the rights of Lessee's Lender; provided, however, such assignments shall not be subordinate to the extent the Lessor takes actions thereunder to remedy contract matters affecting life, safety or public health not being remedied by Lessee or Lessee's lender following written notice and reasonable opportunity to cure.
- 5.8 Failure to Develop: The County has entered into this Agreement for an initial Term of thirty (30) years with two five-year Renewal Terms on the basis of Lessee's assurance that Lessee will make the Minimum Investment on the Premises as provided in Article 2.11 and, as provided in Article 2.1, that a C.O. or Temporary C.O. for the Phase I Improvements will be obtained no later than the thirtieth (30<sup>th</sup>) month anniversary of the Commencement Date or up to the thirty-sixth (36<sup>th</sup>) month if a DRI or Traffic Concurrency requirement is imposed. If Lessee fails to make such Minimum Investment within the applicable foregoing time period, then the County shall have the right, upon written notice to the Lessee, to (i) withdraw the two five-year Renewal Terms from the Term of this Agreement, and/or (ii) reduce the acreage of the Premises to the reasonable acreage required for the Improvements Lessee has completed (and Rent due hereunder shall be adjusted accordingly). In addition, if Lessee fails to make a minimum investment as set forth in Article 2.11 in the amount of at least \$40 million prior to the fifth anniversary of the Commencement Date, the



County shall have the right to terminate this Agreement upon thirty (30) days' notice to the Lessee.

- 5.9 **Tenant Airport Construction Reimbursement Contracts:** From time to time, the lessee and the County through its County Manager shall be entitled to enter into Tenant Airport Construction (TAC) Contracts with the purpose of enabling Lessee to construct facilities or improvements deemed necessary or appropriate for Lessee's construction and use of its Improvements hereunder. Such contracts shall comply with the MDAD's then-current TAC contract requirements and shall provide for the County's reimbursement of Lessee's cost pursuant to any such contract.

## ARTICLE 6

### **MAINTENANCE AND REPAIR BY LESSEE**

- 6.1 **Cleaning:** The Lessee shall, as its sole cost and expense, perform or cause to be performed, services which will at all times keep the Premises and Improvements clean, neat, orderly, sanitary and presentable.
- 6.2 **Removal of Trash:** The Lessee shall, at its sole cost and expense, remove from the Premises and Improvements all trash and refuse which might accumulate and arise from its use hereunder and the business operations of the Lessee under this Agreement. Such trash and refuse shall be stored temporarily and disposed of in a manner approved by the Department.
- 6.3 **Maintenance and Repairs:** The Lessee shall repair and maintain in good condition the Premises and all Improvements or alternations thereto, except for those items for which the County is responsible pursuant to Article 7 (Maintenance by County). Such repair and maintenance shall include, but not be limited to, all shrubbery, grass, and trees on the Premises, roof, exterior walls, exterior and interior painting, floor coverings, doors, air conditioning, windows, pavement, equipment, furnishings, fixtures, appurtenances, replacement of light bulbs, ballasts and tubes and the replacement of all broken glass, and shall at all times be based on a standard of care reflecting prudent property management. Maintenance and repairs shall be in quality and class equal to or better than the original work to preserve the Premises and Improvements in good order and condition. The Lessee shall repair all damage caused by the Lessee and its employees, agents, independent contractors, patrons, servants or invitees. Prior to or at termination of this Agreement, injury done by the installation or removal of furniture and personal property of the Lessee shall be repaired so as to restore the Premises and Improvements to their original state, except as the Premises may have been altered by the Lessee with the approval of the Department pursuant to Article 9.1 (Alteration), and to quit and surrender up the Premises and Improvements in such good order and condition, except for reasonable wear and tear and damage that the County has the obligation to repair; provided however that such return of the Premises and Improvements under this Article 6.3 shall not relieve the Lessee of its obligations for damages to the Premises and Improvements that may be specifically provided elsewhere in this Agreement.
- 6.4 **Annual Maintenance Inspection:** In addition to other inspections agreed to herein the Lessee agrees that the Consulting Engineer of the Department shall perform an annual survey of the condition of the Improvements. The Lessee agrees to

perform any maintenance of the Improvements identified as necessary to keep the Improvements in good order and condition.

- 6.5 **Excavation of Land:** No excavation of any of the land shall be made, no soil or earth shall be removed from the Premises, and no well of any nature shall be dug, constructed or drilled on the Premises, except as may be required in connection with the construction of the Improvements, as described in the approved Plans and Specifications, pursuant to Article 5.3 (Design of Improvements) and for environmental monitoring purposes pursuant to Article 8.2 (Environmental Protection).
- 6.6 **Water and Sewerage System:** The Lessee shall, at its sole cost and expense, operate and maintain all the components of the water, sanitary sewerage and storm drainage facilities within the boundaries of the Premises and constructed as part of the Improvements. The Lessee shall not make any alternations or modifications to such facilities without the advance written approval of the Department.
- 6.7 **Industrial Waste Facilities:** The Lessee shall be fully responsible for all industrial wastes that exit the Premises and Improvements and that Lessee's activities on the Premises generate and in response thereto shall provide, operate and maintain adequate facilities on the Premises for separating, neutralizing and treating industrial waste and foreign materials and the proper disposal thereof, in accordance with applicable laws, rules and regulations.
- 6.8 **Inspections:** The Department and/or its designated representatives, shall have the right, during normal working hours, to inspect the Premises and Improvements to identify those items of maintenance, repair, replacement, modification and refurbishment required of the Lessee or the County, pursuant to Article 7 (Maintenance by County), to keep the Premises and Improvements in good order and condition. 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 determined by the Department that the Lessee has failed to properly clean, remove trash and refuse, maintain, repair, replace and refurbish the Premises and Improvements as required by this Article 6 (Maintenance and Repair by Lessee), and if that failure continues for more than 30 days after the date of Lessee's receipt of written notice of the failure or for more than such longer period of time approved in writing by the Department following that notice, the Department may enter upon the Premises and Improvements and perform all work, which, in the judgment of the Department, may be necessary and Lessee shall pay the County for the cost of such work, plus 25 percent for administrative costs, and such cost shall be and constitute a part of the rent. Subsequent to receipt of the further notice of intent to perform repairs or cleanup from the Department, the Lessee shall not undertake performance of such repairs or cleanup without specific prior written authorization from the Department.

**ARTICLE 7**

**MAINTENANCE BY COUNTY**

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

**ARTICLE 8**

**REGULATIONS, LICENSES AND PERMITS**

- 8.1 **Rules and Regulations - General:**
- (A) Subject to the limitations on Lessee's liability for Recognized Environmental Condition(s) set forth elsewhere in this Agreement, Lessee shall comply with all Ordinances of the County, including the Rules and Regulations of the Department, Chapters 24 and 25, Code of Metropolitan Dade County, Florida, as the same may be amended from time to time, Operational Directives issued thereunder, all additional laws, statutes, ordinances, regulations and rules of the Federal, State and County Governments, and any and all plans and programs developed in compliance therewith, which may be applicable to its operations or activities under this Agreement, specifically including, without limiting the generality hereof, Federal air and the Department Design Guidelines Manual. 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 Phase I 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, the County's Department of Environmental Resources Management (DERM) or any Federal, State, or County agency

having jurisdiction over any law or requirement referenced in Article 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 fully complying with, any and all permits, licenses and other governmental authorizations, however designated, as may be required, at any time throughout the entire term of this Agreement, by any Federal, State, or County governmental entity or any judicial body having jurisdiction over the Lessee conducted on the Premises and for any and all operations conducted by the Lessee, 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 fully complied with.

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

(D) Violations of Rules and Regulations: Subject to the provisions of Article 8.2 (D)(1), the Lessee agrees to pay on behalf of the County any penalty, assessment or fine issued against the County, or to defend in the name of the County any claim, assessment or civil action, which may be presented or initiated by any agency or officer of the Federal, State or County governments, based in whole or substantial part upon a claim or allegation that the Lessee, its agents, employees, invitees or trespassers have violated any law, ordinance, regulation, rule or directive described in Article 8.1 (Rules and Regulations - General) above or any plan or program developed in compliance therewith. The Lessee further agrees that the substance of the Article 8.1 (Rules and Regulations - General) above or any plan or program developed in compliance therewith shall be included in every sublease, contract and other agreement, that the Lessee may enter into related to its operations and activities under this Agreement and that any such sublease, contract and other agreement shall specifically provide that Miami-Dade County, Florida, is a third party beneficiary of this and related provisions. This provision shall not constitute a waiver of any other conditions of this Agreement prohibiting or limiting assignments, subletting or subcontracting.

8.2 Environmental Protection

(A) [Intentionally Omitted]

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

County has furnished Lessee with copies of Contamination Assessment Reports (the "CARs") and Remedial Action Plans (the "RAPs") regarding soil and groundwater contamination at the Premises, which CARs and RAPs are listed in Schedule 8 to this Agreement. County has installed and is operating remediation systems to clean up the contamination described in such CARs and RAPs. Lessee agrees that during the Term County's authorized representatives shall have the right to enter the Premises in order to operate, maintain, relocate and replace such systems. The County must, however, coordinate with Lessee any entry made on the Premises on the authority of this Article 8.2(B) in order to minimize interference with either the construction of the Improvements or Lessee's conduct of its business activities on the Premises. In particular, if the County has any discretion under Environmental Law as to the location of wells required in connection with the remediation of the Premises, or the method of remediation the County uses, the County shall consult with lessee regarding the locations at which the County's representatives place remediation equipment or install monitoring or other types of wells and the method of remediation the County uses. Without limiting the generality of the foregoing, the County shall have the right, subject to the limitations set forth in this Article 8.2(B) to: (a) install, use, monitor, remove (or, in connection with monitoring wells, abandon in place in accordance with applicable governmental regulations) soil borings, treatment systems, pumps, monitoring wells, and associated equipment; (b) construct, maintain, and ultimately remove various mechanical devices designed to aid in the monitoring and remediating effort, and (c) undertake such related activities as the County or other governmental authorities may require or recommend, utilizing such methods as County or the applicable governmental authorities may elect in order to remediate the contamination described in the CARs and RAPs, the baseline audits, the tenant audits described below, and those conditions that are otherwise the responsibility of the County to remediate hereunder (collectively the "Remedial Action"). County shall utilize reasonable efforts to minimize any disturbance or interference with the Lessee's use of the Premises caused by the Remedial Action, and Lessee shall use reasonable efforts not to interfere with or obstruct the Remedial Action. County and Lessee each agree to take such action as may be reasonable to coordinate their operations so as to minimize any interference with the other party. If vehicles, equipment, or materials belonging to the Lessee have to be temporarily relocated to permit the Remedial Action to be performed, the Lessee will cause such relocation to occur. If Lessee can accomplish the relocation without materially increasing the cost of conducting its activities on the Premises by using other portions of the Premises not directly affected by the Remedial Action, Lessee may not seek reimbursement from the County for costs Lessee incurs in connection with the relocation. If however Lessee must relocate aircraft, vehicles, equipment or materials off the Premises or reconfigure the Improvements or the equipment Lessee installs within the Improvements as a result of Remedial Action that differs significantly from that described in Schedule 8 or that County conducts at locations other than those depicted on the sketch attached as

part of Schedule 8, the County shall be responsible for the costs reasonably associated with the relocation and the design and implementation of the reconfiguration. Attached to Schedule 8 is a site sketch of the Premises describing the Remedial Action Equipment, and depicting the current and proposed future location of such equipment that the County's representative currently anticipate. If Remedial Action equipment or materials need to be temporarily stored in a secure location on the Premises, the Lessee will, if practicable, provide reasonable storage inside the building on the Premises for such equipment and materials at no expense to the County. 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 Schedule 8 at any time during the Term and may continue until such time as a no-further-action letter is obtained from the appropriate regulatory authorities. Lessee expressly waives any right to recover from the County any damages, including direct, indirect, economic or consequential damages, which it may sustain or incur as a result of the County's performance of the Remedial Action. The foregoing waiver does not apply to actual damages that Lessee sustains as a direct result of the County's breach of this Article 8.2(B), if County fails to rectify the breach within a reasonable time following Lessee's delivery of written notice of the breach to the County.

(C) Baseline and Tenant Audits

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 1527-97 (or the most currently approved version thereof) and also includes 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 Commencement Date) Lessee with a copy of the initial Baseline Audit. Within 60 days after the date on which the parties execute any amendment to this Agreement for the purpose of incorporating any of the Building 896 into the Premises, the County shall furnish to Lessee, at the County's sole cost and expense, a copy of the Baseline Audit prepared in accordance with the Standards for a Baseline Audit set forth above with respect to the Building 896 that is the subject of that amendment. The County shall remove any underground storage tanks disclosed by the Baseline Audits and remediate to the extent required by law Hazardous Materials associated with any such underground storage tanks. The County shall be responsible for any other Recognized Environmental Conditions disclosed by the Baseline Audit; to the extent that Environmental law permits, the County will have the discretion to determine the time within the Term at which it responds to a Recognized Environmental Condition that a Baseline Audit discloses,

subject to the limitations set forth in this Article 8.2(C). If a failure or delay in remediating any Recognized Environmental Condition will preclude Lessee from obtaining a Certificate of Occupancy or any other permit or license that Lessee must obtain in order to be able to undertake the construction of the improvements or to lawfully occupy the improvements, the County shall conduct and complete Remedial Action with respect to that Recognized Environmental Condition to the greatest extent practicable within a time that is sufficient to enable Lessee to proceed with its construction of the Improvements in accordance with the construction schedule Lessee furnishes to the County in accordance with Article 5.5.

- (1) Within sixty (60) days from the date of this Agreement, Lessee shall have the right, at its sole cost and expense, to conduct 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 1527-97 (or most current version thereof), Section 3.3.28, and to delineate the vertical and horizontal extent of any soil or ground water contamination not identified in the CARs, RAPs, or the Baseline Audits. Within 90 days of receipt of a Baseline Audit prepared with respect to Building 896, if such building or portion thereof is made available to Lessee under Article 2.4, Lessee shall have the right as its sole cost and expense to conduct an environmental inspection of such Building 896 in accordance with the standards for a Tenant Audit set forth above, through an independent environmental consultant approved in writing by County. Lessee shall furnish to County a copy of any Tenant Audit prepared with respect to Option Parcel, immediately following its completion. 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 DERM, 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 CARs, RAPs, 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 CARs, RAPs, and the Baseline Audits. Lessee may terminate this Agreement as to the Building 896 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 CARs, RAPs, 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.

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

(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; (b) the Environmental Conditions that are the subject of the Remedial Action described in Article 8.2; (c) the Recognized Environmental Conditions that are disclosed either by the Baseline and Tenant Audits conducted under this Article 8.2 or by the construction of the Improvements, (d) any



Environmental Condition Lessee proves originated from an off-site discharge, disposal, or release by a party other than Lessee or any of its employees, agents, or contractors, and (e) any Environmental Condition Lessee proves resulted from a discharge, disposal, or release by the County or any of its employees, agents or contractors, or that existed on the Premises on the Commencement Date. Lessee shall be responsible for all Tenant Contamination, as defined in Article 14.5.

- (E) Maintenance of the Premises: Lessee shall, at its sole cost and expense, keep, maintain, use and operate the Premises at all times in compliance with all applicable Environmental Laws. The Lessee warrants that it will secure by the commencement of the Term all permits or approvals that are required, and shall maintain the Premises in good and sanitary order, condition and repair. As part of this maintenance obligation, Lessee shall promptly respond to and clean up any release or threatened release of any Hazardous Material into the drainage systems, soil, surface water, groundwater, or atmosphere, in a safe manner, in strict accordance with Environmental Law, and as authorized or approved by all federal, state and/or local agencies having authority to regulate the permitting, handling, and clean up of Hazardous Materials. In making the foregoing covenants, Lessee specifically acknowledges its agreement to be liable for, and its responsibility to take such actions as may be required by Environmental Laws (including assessment and remediation) for, any Recognized Environmental Condition(s) and Hazardous Materials on the Premises (i) not revealed by the Remedial Action, as defined in Article 8.2(B), any Baseline Audit, or any Tenant Audit; (ii) not discovered in the construction of Improvements during the Discovery Period; (iii) not resulting from an off-site discharge, disposal, or release by a party other than Lessee, its employees, agents, or contractors; (iv) not resulting from a discharge, disposal, or release by the County or any of its employees, agents, or contractors, or (v) not existing on the Premises as of the Commencement 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 Environmental Condition or Hazardous Materials that Lessee proves originated from an off-site discharge, disposal or release by a party other than Lessee or any of its employees, agents or contractors, notwithstanding the fact that the presence of that Environmental Condition or those Hazardous Materials on, about, or beneath the surface of the Premises was accelerated by virtue of, or resulted from, the construction of the Improvements. The limitation set forth in the preceding sentence will not apply to the extent that the presence of the Environmental Condition or the Hazardous Materials on, about, or beneath the surface of the Premises is attributable to Lessee's failure to comply with all requirements of any de-watering permit that an appropriate regulatory authority issues in connection with the construction of the Improvements. In making the foregoing covenant and the covenants set forth in Article 14.5, Lessee agrees to take all actions at its sole cost and expense as are necessary to return the Premises and any other affected soil or groundwater to their condition existing immediately prior to the commencement of this Agreement.
- (F) Use of Hazardous Materials Shall be in Compliance With All Applicable Law: Except for those Hazardous Materials that Lessee may lawfully

transport for third parties during the regular course of its business, Lessee shall not use, store, generate, treat, transport, or dispose of any Hazardous Material on the Premises without first obtaining County's written approval. Lessee shall notify County and seek such approval in writing at least thirty (30) days prior to bringing any previously unapproved Hazardous Material onto the Premises. County may withdraw approval of any such Hazardous Material at any time, for reasonable cause related to the threat of site contamination or damage or injury to persons, property or resources on or near the Premises. Upon withdrawal of such approval, Lessee shall immediately remove the proscribed Hazardous Material from the Premises. County's written approval of, or failure to approve the use of a Hazardous Material under this Agreement shall not limit or affect Lessee's obligations under this Environmental Lease, including Lessee's duty: (i) to remedy or remove releases or threatened releases; (ii) to comply with Agreement relating to the use, storage, generation, treatment, transportation, and/or disposal of any such Hazardous Materials; and (iii) to indemnify County against any harm or damage caused thereby.

- (G) Environmental Audits: If County shall have reason to believe that Hazardous Materials have been discharged on the Property, by reason of the occurrence of a release of Hazardous Materials or receipt by Lessee or County of any Environmental Claim (as defined in Article 8.2(N)(1)), then County shall have the right, in its sole discretion, to require Lessee to perform to County's satisfaction, an environmental audit and, if deemed necessary by County, a contamination assessment of any areas of suspected disposal or release of Hazardous Material. Such audit and/or risk assessment must be by an environmental consultant satisfactory to County. Should Lessee fail to perform any such environmental audit or assessment within thirty (30) days after County's request, County shall have the right to retain an environmental consultant to perform such environmental audit or assessment. Subject to the limitation set forth below, all costs and expenses incurred by County in the exercise of such rights shall be payable by Lessee within 30 days after the County's demand. The maximum amount of audit or assessment costs for which Lessee will be responsible during any twelve-month period ending on an anniversary of the Date of Beneficial Occupancy will be Ten Thousand Dollars (\$10,000.00) 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 exceeds the amount that Lessee must pay in accordance with the foregoing.
- (H) Reports to County: For any year in which any Hazardous Materials have been used, generated, treated, stored, transported or otherwise been present on or in the Premises pursuant to the provisions and subject to the limitations of this Article 8, Lessee shall provide County with a written report listing (i) the Hazardous Materials that were present on the Premises other than Hazardous Materials that Lessee has lawfully transported for third parties 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 lawfully transports for its customers in the ordinary course of its business.

- (I) Entry by County: Lessee shall permit County and its agents to enter into and upon the Premises, without notice, 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; or (b) any Environmental Claim, then Lessee shall immediately notify County orally within twenty-four (24) hours and in writing within three (3) business days of said notice. County shall have the right but not the obligation to enter onto the Premises or to take such other actions as it shall deem necessary or advisable to clean up, remove, resolve or minimize the impact of or otherwise deal with any such Hazardous Material or Environmental Claim following receipt of any notice from any person or any entity having jurisdiction asserting the existence of any Hazardous Material or an Environmental Claim pertaining to the Premises or any part thereof, which if true, could result in an order, suit or other action against the county; provided, however, that Lessee shall first be given a reasonable opportunity (i) to take such actions as Lessee shall deem necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with any such Hazardous Material or Environmental Claim to the satisfaction of the applicable environmental agency or complainant, 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.
- (K) Agency or Third Party Action: Without limiting its obligations under any other paragraph of this Agreement, Lessee shall be solely and completely responsible for responding to and complying with any administrative notice, order, request or demand, or any third party claim or demand

relating to potential or actual contamination of the Premises alleged to arise out of Lessee's operations. The responsibility conferred under this Article 8.2(K) includes but is not limited to responding to such orders on behalf of County and defending against any assertion of County's financial responsibility or individual duty to perform under such orders relating to contamination on the Premises alleged to arise out of Lessee's operations. In accordance with, and subject to the limitations set forth in, the Indemnity provisions set forth in Article 8.2(L). Lessee shall assume, any liabilities or responsibilities that are assessed against County in any action described under this Article 8.2(K).

(L) Indemnity:

- (1) Lessee hereby indemnifies, defends and holds harmless County from and against any suits, actions, legal or administrative proceedings, demands, claims, liabilities, fines, penalties, losses, injuries, damages, expenses or costs, including, without limitation, interest and reasonable attorneys' and paralegals' fees for attorneys of County's choice, costs of defense (direct and on appeal), settlement or judgment (i) that may be paid, incurred or suffered by, or claimed or asserted under any Environmental Law by any person or entity or governmental department or agency against, County for, with respect to, or as a direct or indirect result of, the presence on or under the Premises, or the transportation, handling, management, storage, spill, escape, seepage, leakage, spillage, discharge, emission, or release to or from the Premises of, any Hazardous Material, that is in any way connected with any death or injury to any person, any destruction or damage to any property, or any potential or actual impacts on, contamination of, or adverse effects in, the environment, and (ii) that is occasioned in any way by (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. Notwithstanding any provision of this Lease to the contrary, in no event shall Lessee have any liability whatsoever under this Lease for any contamination that existed on the Premises as of the Commencement Date, or any contamination that migrates onto the Premises from an off-site source, in either case not caused by Lessee.
- (2) The foregoing indemnity specifically include the direct obligation of the indemnifying party to perform, at its sole cost and expense, any remedial or other activities required, ordered, recommended or requested by any agency, government official or third party, or otherwise necessary to avoid or minimize injury or liability to any person, or to prevent the spread or pollution, however it came to be located thereon (hereinafter, the "Remedial Work"). The indemnifying party shall perform all such work in its own name 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), the indemnifying party shall, within thirty (30) days of receipt of notice thereof, reimburse the indemnified party for all such expenses together with interest from the date of expenditure at the "applicable federal rate" established by the Internal Revenue Service.
  - (5) If a failure or delay in remediating (i) any Recognized Environmental Condition disclosed in the CARs, the RAPs, or the Baseline Audit, or (ii) any Recognized Environmental Condition or subsurface contamination disclosed in the Tenant Audit following the resolution in accordance with the procedure set forth in Article 8.2(C)(1) of any dispute regarding the Recognized Environmental Conditions and subsurface contamination delineated in the Tenant Audit, (iii) any Recognized Environmental Condition that existed on the Premises on the Commencement Date and not caused by the Lessee, or in characterizing any suspected contaminated media that Lessee encounters during the Discovery Period or in storing, transporting or disposing of that media, once characterized as contaminated, will preclude Lessee from obtaining a Certificate of Occupancy or any other permit or license that Lessee must obtain in order to be able to undertake the construction of the Phase I Improvements and Phase II Improvements, if applicable, or to lawfully occupy the Phase I Improvements or Phase II 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 Phase I 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

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any condition, use or activity on the Premises (including any such action against the County); and (ii) any claim that any person threatens or makes at any time against Lessee or against the Premises (including any such claim against the County), and that relates to damage, contribution, cost recovery, compensation, loss or injury resulting from or in any way arising in connection with any Hazardous Material on the Premises or the application of any Environmental Law to activities on the Premises.

- (2) "Hazardous Material" means any substance, whether solid, liquid or gaseous, that is listed, defined or regulated as a "hazardous substance," "hazardous waste," "solid waste," or pesticide, or is otherwise classified as hazardous or toxic, in or pursuant to any Environmental Law; or that is or contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or motor fuel or any petroleum hydrocarbons; or that causes or poses a threat to cause a contamination or nuisance on the Premises or any adjacent property or a hazard to the environment or to the health or safety of persons on the Premises.
- (3) "Environmental Condition" means (a) any violations of any Environmental Law with respect to any Hazardous Material present, or any environmental activity conducted or permitted, at the Premises; (b) any liability that may attach to an owner or operator of the Premises in connection with any Hazardous Material or environmental activity; or (c) any imminent and substantial endangerment to the health or safety of occupants of the Premises arising from any Hazardous Material present or environmental condition described in (a) or (b) above.
- (4) "Environmental Law" 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 Article 3.3.28 of ASTM E 1527-97, 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 the Phase I Improvements, and the Phase II Improvements to be commenced respectively.
- (O) **Lessee's Obligations:** At all times during the Term, the Lessee shall comply with the following:
- (1) **Disposal of Wastes:** The Lessee shall dispose all industrial, domestic, hazardous, and solid wastes that are generated in connection with Lessee's activities on the Premises in accordance with applicable Federal, State and County laws, rules and regulations, it being the responsibility of the Lessee to determine the approved method of disposal of its wastes and take action accordingly.
  - (2) **Aircraft Washing and Stripping:** If permitted under Article 3 (Use of Premises and Improvements), the Lessee shall perform aircraft washing and stripping only in those facilities holding valid permits for such activity issued by DERM.
  - (3) **Records:** The Lessee shall maintain such records as are reasonably necessary to adequately assess environmental compliance in accordance with Federal, State and County laws, rules and Regulations.
- (P) **Lessee Performance of Remedial Action:** Upon request of the County, Lessee shall perform any remedial actions that are required to be performed by the County hereunder ("Lessee Remedial Actions"). The County is willing to permit Lessee to recover the costs Lessee reasonably incurs in connection with the Lessee Remedial Actions by means of a rental credit against the land rent payable by virtue of Article 4 hereof. Lessee shall proceed to perform the Lessee Remedial Actions, in accordance with the procedures set forth by the Department from time to time and a remedial action plan agreed upon between the Lessee and the County. The Lessee's agreement to perform the Lessee Remedial Actions shall in no way abridge any of Lessee's rights or the County's responsibilities under this Lease with respect to environmental matters unless Lessee's is negligent in the performance of the Lessee Remedial Actions. Within ninety (90) days after the completion of the Lessee Remedial Actions, Lessee shall submit to the Department a certified accounting of the monies actually expended in the performance of the Lessee Remedial Actions in accordance with the requirements of this Article, which

accounting will be prepared by an independent certified public accounting firm that the Department approves in advance (the "Auditor"). The Department may not unreasonably withhold, delay or condition that approval. In order for a project cost that Lessee incurs to be eligible for reimbursement by means of land rent credits, Lessee must document for the Auditor that it expended the monies and that the project cost is true, correct and eligible for reimbursement in accordance with the terms of this Article. Eligible project costs include (i) costs for project management, including, without limitation, a reasonable project management fee, (ii) consultant and engineering costs, (iii) costs of materials, labor, supervision and other goods and services used in the performance of the Lessee Remedial Actions in accordance with the approved plan and any changes to the plan that Lessee requests and the Department approves, (iv) the cost of the certification the Auditor performs, (v) the amount of any increase in any financing fee or other associated expenses (including, without limitation, attorneys' fees) that Developer or Lessee pays in connection with its construction or permanent financing for the Phase I and Phase II 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 the rate of seven percent (7%).

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

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



**ARTICLE 9**

**ALTERATION OF PREMISES AND ERECTION OF SIGNS**

- 9.1 **Alteration:** After construction of the Improvements pursuant to Article 5 hereof, the Lessee shall not alter the Premises and Improvements in any manner whatsoever without the prior written approval of the Department. In the event the Lessee is given approval to make alterations to the Premises and Improvements, the Lessee shall comply with the terms and conditions of such approval, as contained in the Department's approval letter, and a failure to do so shall constitute a default pursuant to Article 14.3 (Other Defaults) hereof.
- 9.2 **Signage:** The design and installing of all identifying signs or any advertising matter, of any type or kind which is visible to the public on the exterior of the Premises and Improvements shall be the responsibility of the Lessee, subject to the advance written approval of the Department, based on the Department's overall signage program for the area in which the Premises and Improvements are located.
- 9.3 **Removal:** Any alterations pursuant to Article 9.1 above constructed or installed by the Lessee at its sole expense, including signage, and sortation and telecommunications equipment, that can be removed from the Premises and Improvements without materially damaging, altering, or altering the use of the Premises and Improvements shall be considered the personal property of the Lessee and may be removed by the Lessee at any time during the Term. All other such improvements shall become a part of the Premises and Improvements and shall become the property of the County upon expiration of the Term of the earlier termination of this Agreement.

**ARTICLE 10**

**ASSIGNMENT AND SUBLETTING**

- 10.1 **Right to Assign and Sublet :**
- (A) The County hereby consents to Centurion's assignment of its interests hereunder to the Developer. The County also consents to the Developer's sublease of the Premises back to Centurion. Both Centurion and the Developer shall remain liable as Lessees hereunder.
- (B) Except for the foregoing, and except as provided in subparagraph 10.1 (C) below and Article 10.2, Lessee may not assign the whole or sublet any portion of the Premises and Improvements, or permit their use by others, without the County's prior written consent, which consent shall not be unreasonably withheld, including without limitation any sublease to third party airlines, cargo handlers, freight forwarders, and maintenance operators. The County may not unreasonably withhold or delay that consent if the proposed assignee or sublessee satisfies the criteria set forth in Article 10.2 (C)(4). In the event of any assignment of this Lease other than an assignment under Article 10.1(A) and Article 10.2, the

Lessee shall pay the County an assignment fee equal to the greater of (i) 5% of the Net Profit (defined below) on such assignment, or (ii) \$1 million. In the event of a subletting of all or portion of the Premises other than to Centurion or affiliates of Centurion, the Lessee shall be required to pay as additional rent on a monthly basis the amount of 2% of the gross rents collected from such subtenant. For purposes of this Article, no assignment fee or additional rent shall be due on any assignment to AeroTerm or its affiliates, or any subletting to Centurion or any of its affiliates (or a subletting to a replacement tenant in the event Centurion defaults under its sublease with the Lessee, except that an assignment fee of 5% shall be due on the receipt by any defaulting Lessee of an amount paid by the other Lessee to buy-out the defaulting Lessee). Net Profit shall be defined as the "Gross Proceeds" received by Lessee on the assignment of Lessee's interest in the Lease minus "Lessee's Basis." "Gross Proceeds" shall be defined as cash or other consideration received by Lessee for the assignment of its interest in the Lease, including without limitation, the assumption of any indebtedness secured by the Lease, and Lessee's Basis shall be defined as all hard and soft costs incurred by Lessee in the acquisition, permitting, design, construction, and financing of the improvements on the Premises and Lessee's interest in this Lease capitalized in accordance with generally accepted accounting principles.

- (C) Notwithstanding any provision herein to the contrary, (i) 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, and (ii) Centurion Air Cargo, Inc. or any of its affiliated entities shall have the right to sublease space to other airlines and/or freight forwarders/maintenance suppliers provided such subletting is on a form of sublease approved by the County.

10.2 Conditions of Mortgage for Approved Improvements Costs.

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

- (B) The Department reserves the right to approve the documents memorializing any financing that Lessee secures on the authority of Article 10.2(A). The Department may not unreasonably withhold the approval. Lessee must submit drafts of the financing documents to the Department for review and approval in advance of Lessee's execution of those documents. The Department's failure either to approve the draft financing documents or to furnish Lessee its written objections regarding those documents within five (5) business days after the later of the dates on which Lessee personally delivers copies of the draft financing documents to the Department's Chief of Properties and to the County Attorney's Office will constitute the Department's approval of the documents.
- (C) Following an assignment of the Lessee's execution of a 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 in the Leasehold Mortgagee releases the Leasehold Mortgage or record, the following provisions will apply:
- (1) At the time that the County gives Lessee written notice of the occurrence of any default in respect of the performance of the Lessee's obligations under this agreement, the County shall simultaneously give the Leasehold Mortgagee a copy of that notice in a manner established for the delivery of notices in Article 21.9 at the address for the Leasehold Mortgagee provided to the County. No notice of Default to the Lessee will be effective until the County delivers the notice required by this Article 10.2(C)(1).
  - (2) The Leasehold Mortgagee may rectify a default on Lessee's part, but has no obligation to do so. The County will accept the Leasehold Mortgagee's performance of any of the Lessee's obligations of the same extent as though the Lessee has performed. The County may exercise a remedy available to it by the reason of a default on Lessee's part only if the Leasehold Mortgagee fails to rectify the default within (a) 30 days following expiration of the time period specifically set forth in Article 14 of the Lease for a cure of a particular default, or (b) if no such time period is set forth, then within 30 days after the date of the delivery of the notice required by virtue of Article 10.2(C)(1) above, or if a cure is not reasonably possible within such 30 day period, then within a period of time reasonably required to cure the default through the exercise of prompt, diligent and continuous effort.
  - (3) If a termination of this Agreement occurs prior to the stated date of the expiration of the term of this Agreement by virtue of a default in the performance of any Lessee's obligations that cannot

be rectified by the mere payment of money to the county and that the leasehold Mortgagee was diligently seeking to rectify at the time of the termination, or by virtue of Lessee's rejection or disaffirmance of this Agreement in bankruptcy, the County will execute and deliver a new Lease for the Premises at the Leasehold Mortgagee's request in favor of a successor lessee that satisfies the criteria set forth in Article 10.2(C)(4) (a "Successor Lessee"). For purposes of the preceding sentence, and the preceding sentence only, prompt, diligent and continuous efforts to gain possession of the Premises and to succeed to Lessee's interest in the Premises by means of a foreclosure or the exercise of any other remedy available to the Leasehold Mortgagee by virtue of the Lessee's default in respect of any of its obligations under the terms of the Leasehold Mortgage, together with the payment to the County of all rent and charges due hereunder with respect to which Lessee becomes delinquent and good faith efforts made to rectify other defaults contemporaneously with the efforts to gain possession of the Premises, will constitute diligent efforts on the Leasehold Mortgagee's part to rectify the default that has occurred in respect to the performance of the Lessee's obligations under the terms of this Agreement. That new lease will have a term that coincides with what would have been the remainder of the Term had termination of this Agreement not occurred and will otherwise be on the same terms and conditions as those set forth in this Agreement. The new lease will also have the same priority as this Agreement with respect to any lien or other encumbrance affecting the Premises, including any fee mortgage. In order for the County to be obligated to execute and deliver the new lease, the Leasehold Mortgagee must request the execution and delivery of written notice to the county within one year after the termination of this Agreement occurs, acknowledge and return the new lease to the County for execution on the County's party within 20 days after the date on which the County tenders the new lease to it for signature. Simultaneously with the delivery of the new lease, the Successor Lessee must also execute and deliver to the County a written plan to rectify within a reasonable period of time any default that exists at that time in respect of any of Lessee's obligations under the terms of this Agreement, including, without limitation, any default that may exist in respect of Lessee's obligations arising under the terms of Article 8; that plan must set forth in reasonable detail the manner in which the Successor Lessee plans to rectify each default. During the period between the time and termination of this Agreement occurs and the time at which the Leasehold Mortgagee's entitlement to the new lease expires, the County may not execute any lease (an "End Use Lease") affecting any part of the Premises without the Leasehold Mortgagee's prior written consent as long as the Leasehold Mortgagee has been paying to County all rents and charges that are/would have become due under the terms of this Agreement in the absence of the termination. If the Leasehold Mortgagee consents to the County's execution of an End Use Lease during that period, that End Use Lease must provide that, if the County executes a new lease in favor of a Successor Lessee in accordance with the terms of this

Article 10.2(C)(3), the End Use Lease will be automatically subordinate to the operation and effect of the new lease and the holder of the lessee's interest under the End use Lease will attorn to the Successor Lessee as its sublandlord. Contemporaneously with the County's execution and delivery of the new lease, the Successor Lessee must pay to the County the amount, by which (i) all rent, fees and other charges that would have become due under the terms of this Agreement through the date of the County's execution and delivery of the new lease absent a termination of this Agreement and that Lessee or others acting on its behalf have not previously paid to the County exceeds (ii) the aggregate amount of rent, if any, that the County has collected under the terms of End Use Leases.

- (4) A transfer of Lessee's interest in the Premises to the Leasehold Mortgagee, or a corporate nominee affiliated with the Leasehold Mortgagee (herein a nominee"), or a purchaser at a foreclosure sale that occurs by virtue of the Leasehold Mortgagee's acceptance of a deed in lieu of foreclosure or the exercise of any remedy available to it under the terms of the Leasehold Mortgage will not constitute an assignment requiring the County's consent under the terms of Article 10.1 above. The provisions of Article 3 will govern any use of the Premises that occurs prior to and after a transfer to the Leasehold Mortgagee or the purchaser at the foreclosure sale. The Leasehold Mortgagee, or its nominee, or the purchaser at the foreclosure sale may make a subsequent transfer of Lessee's interest in the Premises only with the County's prior written consent as provided in Article 10.1(C). The County will, however, consent to the subsequent transfer if the proposed successor to the Lessee's interest would have been an acceptable lessee for the Premises in the reasonable exercise of the County's judgment considering the successor's experience, financial strength, history of meeting contractual obligations and intent to implement a business plan consistent with the County's plan for operating the Airport. After succeeding to the Lessee's Interest in the Premises, the Leasehold Mortgagee, its nominee, or a purchaser at the foreclosure sale that is not acceptable to the County as a Successor Lessee in the reasonable exercise of the County's judgment must use reasonably diligent efforts either to become or to find a Successor Lessee satisfying the criteria set forth above in Article 10.2(C)(4) in the County's reasonable judgment.
- (5) If the Leasehold Mortgagee, its nominee, or a purchaser at a foreclosure sale succeeds to lessee's interest in the Premises by virtue of the Leasehold Mortgagee's acceptance of a deed in lieu of foreclosure or the exercise of any remedy available to the Leasehold Mortgagee under the terms of the Leasehold Mortgage, the Leasehold Mortgagee or the purchaser, as the case may be, and their successors and assigns will only have personal liability for the performance of those obligations incumbent upon Lessee under the terms of this Agreement that arise or accrue during the period between the time at which it succeeds to Lessee's interest in the Premises and the time at which it divests itself of that interest.

The foregoing limitation will not preclude the County from terminating this Agreement if the Leasehold Mortgagee, its nominee, or the purchaser, as the case may be, or the subsequent transferee fails to rectify without cost to County any default existing respect of Lessee's obligations at the time the Leasehold Mortgagee, its nominee, the purchaser or the subsequent transferee succeeds to Lessee's interest in the Premises, including, without limitation, any obligation arising under the terms of Article 8.

- (6) Without the Leasehold Mortgagee's prior written consent, Lessee may not amend this Agreement, exercise any right available to it under the terms of this Agreement or at Law to cancel this Agreement, or to voluntarily surrender possession of the Premises to the County. Without the Leasehold Mortgagee's prior written consent, the County may not amend this Agreement. The foregoing restrictions will not apply, however, to amendments for which express provision is made elsewhere in this Agreement, including, without limitation, those for which provision is made in Articles 2, 4, 20, and 21.14. Without the Leasehold Mortgagee's prior written consent, the County may not cancel this Agreement and accept a surrender of the possession of the Premises except in the instances where the cancellation and acceptance of a surrender of possession of the Premises occurs in connection with the County's exercise of its remedies following an occurrence of a default in the performance or any of Lessee's obligations. The Leasehold Mortgagee will not be bound by any amendment, cancellation or surrender that occurs in contravention of the foregoing provisions of this Article 10.2(C)(6).
- (7) The Leasehold Mortgagee will have the right to participate in the adjustment of any insured losses that becomes necessary by reason of damage or destruction occurring to the Improvements and the right to supervise and control the receipt and disbursement of insurance proceeds to the extent provided in agreements among Lessee, the Leasehold Mortgagee and any sublessee holding an interest with respect to the Premises; provided, however, that any distribution of insurance proceeds must comply with the requirements of Article 12 of this Agreement.
- (8) If a taking of any part of the Premises occurs, the Leasehold Mortgagee will have the right to participate in any condemnation proceedings or settlement discussions pertaining to the Lessee's interests hereunder and the right to supervise and control the receipt and disbursement of all condemnation awards arising from such interest hereunder and the right to supervise and control the receipt and disbursement of all condemnation awards arising from such interests to the extent provided in agreements among Lessee, the Leasehold Mortgagee, and any sublessee holding an interest with respect to the Premises. The Leasehold Mortgagee is entitled to receive and apply to the reduction of the indebtedness, the payment of which is secured by the lien of the Leasehold Mortgage, any portion of a condemnation award arising from a taking of

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

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

- (10) Under no circumstances will the fee estate of the County and the leasehold estate created by this Agreement merge, even though owned by the same party, without the Leasehold Mortgagee's written consent.
- (D) Upon written request from time to time made by Lessee, a Leasehold Mortgagee, a prospective Leasehold Mortgagee, or a prospective assignee of Lessee's interest in the Premises, the County shall execute and deliver to the requesting party an estoppel certificate in the form reasonably requested by the requesting party. In each such certificate, the County shall certify, to the extent that it then has knowledge, (i) the amounts of the monthly rent that Lessee is then obligated to pay under the terms of this Agreement and the date through which Lessee has paid that rent, (ii) that this Agreement is in full force and effect, (iii) the specific nature of any default that the County knows to exist in the respect of either party's performance of its respective obligations under the terms of this Agreement and (iv) the specific nature of any defense or offset that the County may assert in connection with any effort on Lessee's party to enforce any of the obligations the County undertakes under the terms of this Agreement.
- (E) The provisions of this Article 10.2 will survive in the termination, rejection or disaffirmance of this Agreement and will continue in full force and effect thereafter to the same extent as if this Article 10.2 were a separate and independent contract made by the County, Lessee, and the Leasehold Mortgagee. The County's agreement set forth in this Article 10.2 to enter into a new lease with the Leasehold Mortgagee constitutes a separate agreement with the County and the Leasehold Mortgagee, a new lease with the Leasehold Mortgagee separate and apart from this Agreement, as well as a part of this Agreement. The county agrees that the Leasehold Mortgagee shall be a third party beneficiary to the terms of this Agreement, and that such third party beneficiary status shall be unaffected by the rejection or disaffirmance of this Agreement in any bankruptcy proceeding by any party.

## **ARTICLE 11**

### **INDEMNIFICATION AND HOLD HARMLESS**

- 11.1 Lessee shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, that the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of action or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Lessee or its employees, agents, servants, partners, principals, contractors, subcontractors, sublessees, trespasses or invitees. Lessee shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or action of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay costs, judgments and attorney's fees which may issue thereon. Lessee expressly understands and agrees that any insurance



protection required by this Agreement or otherwise provided by Lessee shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents, and instrumentalities as herein provided. The indemnity provided herein is in addition to and does not limit the indemnities provided in Article 8.2. The obligation of the Lessee hereunder shall survive the termination of this Agreement.

## ARTICLE 12

### INSURANCE

- 12.1 **Liability Insurance Required:** In addition to such insurances as may be required by law, the Lessee shall maintain, without lapse or material chance, for so long as it occupies the Premises and Improvements, the following insurance:
- (A) Commercial General Liability Insurance, including Contractual Liability, to cover the Lessee's Premises 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 a 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.
    - (2) \$300,000 combined single limit per occurrence for bodily injury and property damage covering such vehicles and ground and mobile equipment when being used by the Lessee off of the AOA.
  - (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: The Lessee, at its sole cost and expense, throughout the term of this Agreement, shall keep the Improvements insured on an "All Risk" basis in an amount not less than 100% of the full replacement value of the Improvements against loss or damage (in excess of a reasonable per occurrence deductible amount, which shall be the responsibility of the Lessee) by fire, lightning, tornado, hurricane, windstorm, hail, flood, earthquake, explosion, riot, riot attending strike, civil commotion, vandalism and malicious mischief, sprinklers and sprinkler leakage, aircraft, vehicles and smoke, or any other casualty in an amount not less than 100% of the full replacement value of the Improvements. To the extent such coverage is not commercially available at commercially reasonable rates, the parties will work together in good faith to arrive at coverages acceptable to both parties based on conditions in the marketplace. The full replacement value of the Improvements shall be established as of the commencement date of this Agreement and shall be established at intervals of not more than three (3) years thereafter, by the firm and professional property evaluators used by the County for establishing replacement values for County property. Any deficiency in the amount of the proceeds from such property insurance resulting from a failure by the Lessee to re-establish the full replacement value of the Improvements shall be the sole responsibility of the Lessee. In addition, Miami-Dade County shall be shown on the policies as a loss payee.
- (1) Damage or Destruction and Restoration of the Improvements: In case of damage to or loss of all or a portion of the Improvements, the Lessee shall give prompt notice thereof to the Department; and, the Lessee shall promptly commence and complete with due diligence (subject only to delays beyond its reasonable control), the restoration of the damaged or destroyed portion of the Improvements as nearly as reasonably practicable to the value and condition thereof immediately prior to such damage or destruction. In the event of such damage or destruction, the proceeds of all property insurance policies shall be used to restore the facility to make it function for the uses permitted under Article 3. The Lessee 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) Business Interruption Insurance: The Lessee at its sole cost and expense throughout the term of this Agreement, shall maintain business interruption insurance at a minimum, in an amount sufficient to continue making land rental, and payments of taxes and insurance, during the rebuilding period as a result of damage to the Improvements.

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

- (A) The Lessee has obtained insurance in the types, amounts and classifications as required for strict compliance with this Article;
- (B) The policy cancellation notification provisions specify at least 30 days advance written notice of cancellation to the County;
- (C) The County is named as an additional insured with respect to the Lessee's commercial general liability policies;
- (D) The County is named as a loss payee with respect to the Lessee's builders risk and property insurance policies; and
- (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, the County reserves the right to require the Lessee to provide additional types of coverage and/or different or higher levels of coverage from time to time during this Agreement as the County requires of all other carriers or tenants similarly situated to Lessee using the Airport, upon issuance of notice in writing to the Lessee, which notice shall automatically amend this Agreement effective 90 days after such notice. If such coverage is not commercially available, the parties will work together in good faith to arrive at coverages acceptable to both parties based on conditions in the marketplace.

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

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

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

### **ARTICLE 13**

#### **USE OF PUBLIC FACILITIES**

13.1 The County grants to the Lessee, in common with all others desiring to use the Airport, and only to the extent necessary or reasonably desirable, so long as such use does not conflict with the County's operation of the Airport, to carry out the rights granted the Lessee hereunder, the nonexclusive privilege to use the runways, taxiways, roads of egress and ingress, service roads and such other facilities and improvements as may be now in existence or hereafter constructed for the use of persons lawfully using the Airport; provided, however, that such usage shall be subject to the payment of nondiscriminatory fees and other

charges established by the County. Nothing herein contained shall grant to the Lessee the right to use any leaseable space or area improved or unimproved which is leased to a third party, or which the County has not leased herein.

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

#### ARTICLE 14

##### TERMINATION

- 14.1 Payment Defaults: Failure of the Lessee to make all payments of rentals, fees, and charges required to be paid herein when due shall constitute a default, and the County may, as its option, terminate this Agreement after ten (10) business days notice in writing to the Lessee unless the default is cured within the notice period.
- 14.2 Insurance Defaults: The County shall have the right, upon ten (10) business days written notice to the Lessee, to terminate this Agreement if the Lessee fails to provide evidence of insurance coverage in strict compliance with Article 12 hereof prior to commencement of operations, or fails to provide a renewal of said evidence upon its expiration; provided, however, that such termination shall not be effective if the Lessee provides the required evidence of insurance coverage within the notice period.
- 14.3 Other Defaults: The County shall have the right, upon 30 calendar days written notice to the Lessee, to terminate Agreement upon the occurrence of any one or more of the following, unless the same shall have been corrected within such period, or, if correction cannot reasonably be completed within such 30-day period, the Lessee has commenced substantial corrected steps within such 30-day period and diligently pursues same to completion:
- (A) Failure of the Lessee to comply with any covenants of this Agreement, other than the covenants to pay rentals, fees and charges when due, and the covenants to provide required evidence of insurance coverage.
  - (B) The conduct of any business, the performance of any service, or the merchandising of any product or service not specifically authorized herein, by the Lessee.
- 14.4 [Intentionally Omitted]
- 14.5 Actions at Termination: The Lessee shall vacate, quit, surrender up and deliver the Premises and Improvements to the County on or before the termination date of this Agreement, whether by lapse of time or otherwise. The Lessee shall surrender the Premises and Improvements in the condition required under Article 6 (Maintenance and Repairs) herein. All repairs for which the Lessee is responsible shall be completed prior to surrender. The Lessee shall deliver to the Department all keys to the Premises and Improvements upon surrender. On or

before the termination date of this Agreement, the Lessee shall remove all of its personal property from the Premises and Improvements. Any personal property of the Lessee not removed in accordance with this Article may be removed by the Department for storage at the cost of the Lessee. Failure on the part of the Lessee to reclaim its personal property within 30 days from the date of termination shall constitute a gratuitous transfer of title thereof to the County for whatever disposition is deemed to be in the best interest of the County.

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

appropriate regulatory authority issues in connection with the construction of the Improvements.

- (C) Nothing in this Article or Agreement shall affect the Lessee's liability for environmental violations as separately provided for in any Federal, State, or local law, except to the extent that the County has agreed to assume liability for contamination existing as of the commencement of this Agreement under Article 8.2.
- 14.6 **Right to Show Premises and Improvements:** At any time after the Lessee has been given notice of termination or default, pursuant to Article 14 (Termination) hereof, and the curative period established in respect of the default in this Article 14 has expired, the County shall have the right to enter on the Premises and Improvements (exclusive of bonded areas within the Improvements) for the purpose of showing same to prospective tenants or users.
- 14.7 **County Defaults:** This Agreement shall be subject to termination (and/or an action to recover damages) by the Lessee in the event of a default by the County in the performance of any material covenant or agreement herein required to be performed by the County and the failure of the County to remedy same within a reasonable period of time following receipt of written notice from the Lessee of such default.
- 14.8 [Intentionally Omitted].
- 14.9 **Other Terminations:** This Agreement shall be subject to termination by the County or the Lessee in the event of any one or more of the following:
- (A) The permanent abandonment of the Airport.
  - (B) The lawful assumption by the United States Government or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part or parts thereof, in such a manner as to substantially restrict the Lessee from operating therefrom for a period in excess of 90 consecutive days, provided that nothing contained herein shall be deemed to constitute a waiver by the Lessee of any right it may have against the United States to just compensation in the event of any such assumption.
  - (C) The issuance by any court of competent jurisdiction of any injunction in any way substantially preventing or restraining the use of the Airport, and the remaining in force of such injunction for a period in excess of 90 days.

## **ARTICLE 15**

### **SPECIAL CONDITIONS**

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

- 15.2 **Nondiscriminatory Prices:** The Lessee shall charge fair, reasonable, customary and not unjustly discriminatory prices for each unit of sale or service; provided, however, that the Lessee may make reasonable, customary and nondiscriminatory discounts, rebates or similar types of price reductions to volume purchasers of the Lessee's services.
- 15.3 **County's Obligations:** The Lessee, in recognition of the County's obligation, pursuant to the Federal Aviation Administration's standard grant assurances, to enforce the provisions of Articles 15.1 (Quality of Services) and 15.2 (Nondiscriminatory Prices) above, agrees that the Department may, from time to time, promulgate standards, methods and procedures for and monitor and test the provision of services hereunder and may require the Lessee to provide copies of schedules of service charges and the bases for discounts, rebates and similar types of price reductions. If the Lessee fails to comply with the provisions of Article 15.1 (Quality of Services) and 15.2 (Nondiscriminatory Prices) above, the first such occurrence shall be considered a curable default, pursuant to Article 14.3 (Other Defaults) hereof, and subsequent occurrence(s) shall be considered a material breach of this Agreement, entitling the County to the remedies provided in this Agreement or by law.

## ARTICLE 16

### **NONDISCRIMINATION**

- 16.1 **Employment Discrimination:** The Lessee shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of age, sex, race, color, religion, national origin, ancestry or disability. The Lessee shall comply with applicable provisions of the Americans with Disabilities Act, including, but not limited to, provisions pertaining to employment.
- 16.2 **Nondiscriminatory Access to Premises and Improvements and Services:** The Lessee, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration thereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, sex, national origin or ancestry shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises and Improvements; (2) that in the construction of any improvements on, over, or under such land and the furnishings of services thereon, no person on the grounds of race, color, sex, national origin or ancestry shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the improvements; and (3) that the Lessee shall use the Premises and Improvements in compliance with all the other requirements imposed by or pursuant to then enforceable regulations of the Department of Transportation, as amended from time to time.
- 16.3 **Breach of Nondiscrimination Covenants:** In the event it has been determined that the Lessee has breached any enforceable nondiscrimination covenants contained in Articles 16.1 (Employment Discrimination) and 16.2 (Nondiscriminatory Access to Premises and Improvements and Services) above, pursuant to the complaint procedures contained in the applicable Federal Regulations, or in applicable laws,

and the Lessee fails to comply with the sanctions and/or remedies which have been prescribed, the County shall have the right to terminate this Agreement pursuant to Article 14.3 (Other Defaults) hereof.

- 16.4 **Affirmative Action and Disadvantaged Business Enterprise Programs:** The Lessee agrees that in the event the provisions of local Ordinances and/or 49 CFR Part 23, Disadvantaged Business Enterprises (DBE) and 14 CFR Part 152, Affirmative Action Employment Programs, are applicable to the Lessee under this Agreement, it shall comply with all requirements of the Department, the Federal Aviation Administration and the U.S. Department of Transportation. These requirements may include, but be not limited to, the compliance with DBE and/or Employment Affirmative Action participation goals, keeping of certain records of good faith compliance efforts, and the submission of various reports, including, if directed by the Department, the contracting of specified percentages of goods and services contracts to Disadvantaged Business Enterprises. Failure to comply with these requirements shall constitute a default hereunder and be grounds for termination of this Agreement. In the event it has been determined, in accordance with applicable regulations, that the Lessee has defaulted in the requirement to comply with this Article , and the Lessee thereafter fails to comply with the sanctions and/or remedies then prescribed, the County shall have the right, upon written notice to the Lessee to terminate this Agreement pursuant to Article 14.3 (Other Defaults) hereof. In the event of any inconsistency between Article 16.4 and Article 2.16, the provisions of Article 2.16 shall prevail.

## 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.
- 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.

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

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

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

- (A) That the Lessee has made a false certification in its execution of the Affidavit submitted or in its annual recertification as required by the Ordinance; or
- (B) That the Lessee has violated its original or renewal certification by failing to carry out any of the specific requirements of the Ordinance, other than the annual recertification; or
- (C) That such a number of employees of the Lessee have been convicted of violations occurring in its workplace(s) as to indicate that the Lessee has failed to make a good faith effort to provide a drug-free workplace as required by the Ordinance.

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

17.6 **Vehicle Permit and Company Identification:** The Lessee understands and agrees that all 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

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by the Lessee in areas under the jurisdiction or control of such federal inspection agencies.

- 17.8 AOA - Right to Search: The Lessee agrees that its vehicles, cargo, goods and other personal property are subject to being searched when attempting to enter or leave and while on the AOA to the extent permissible under applicable Federal Agency Security regulations and Miami-Dade County rules and regulations. The Lessee further agrees that it shall not authorize any employee or agent to enter the AOA unless and until such employee or agent has executed a written consent-to-search form acceptable to the Department. Persons not executing such consent-to-search form shall not be employed by the Lessee at the Airport, in any job requiring access to the AOA.
- (A) It is further agreed that the Department has the right to prohibit an individual, agent or employee of the Lessee from entering the AOA based upon facts which would lead a person of reasonable prudence to believe that such individual might be inclined to engage in theft, cargo tampering, aircraft sabotage or other unlawful activities. Any person denied access to the AOA or whose prior authorization has been revoked or suspended on such grounds shall be entitled to a hearing before the Director of the Department 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 International Airport.
- 17.10 Height Restrictions: The Lessee expressly agrees for itself, its successors and assigns, to restrict the height of any objects of natural growth, other obstructions, or newly constructed structures on the leased Premises and Improvements to such a height so as to comply with Federal Aviation Regulations. Part 77 and with the Code of Metropolitan Miami-Dade County, whichever is more restrictive.
- 17.11 Nuisance. The Lessee shall use its best efforts to control the actions of its employees, agents, invitees and those doing business with it, so as to not unreasonably annoy, disturb or be offensive to others and to provide the services permitted hereunder in a manner that does not unreasonably create a nuisance or event which may unreasonably disturb the quiet enjoyment of any other users of the Airport.

#### ARTICLE 18

### **CONTROL OF EMPLOYEES**

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

### **ARTICLE 19**

#### **CIVIL ACTIONS**

- 19.1 Governing law: Venue: This Agreement shall be governed and construed in accordance with the laws of the State of Florida. The venue of any action on this Agreement shall be laid in Miami-Dade County, Florida.
- 19.2 Registered Office/Agent: Jurisdiction: The Lessee, if a corporation, shall designate a registered office and a registered agent, as required by Article 48.091, Florida Statutes, such designations to be filed with the Florida Department of State in accordance with Article 607.034, Florida Statutes. If the Lessee is a natural person, he and his personal representative hereby submit themselves to the jurisdiction of the Courts of this State for any cause of action based in whole or in part on an alleged breach of this Agreement.

### **ARTICLE 20**

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

- 20.1 Incorporation of Trust Agreement and Bond Resolution by Reference: Notwithstanding any of the terms, provisions and conditions of this Agreement, it is understood and agreed by the parties hereto that, to the extent of any inconsistency with or ambiguity relating to the terms and conditions of this Agreement, and the level of rents, fees or charges required hereunder and their periodic modification or adjustment as may be required by the financial documenters, the provisions of (a) the Trust Agreement dated as of the 1st day of October 1954, as amended, by and between the County and the Chase Manhattan Bank (now the Chase Manhattan Bank, National Association) as Trustee and the First National Bank of Miami (now First National Bank of Florida) as Co-trustee, and specifically the terms of Article 501 thereof, and (b) Resolution No. R-1654-84 adopted by the County on December 4, 1984, Securing Dade County Aviation Facilities Revenue bonds (the Bond Resolution), and specifically the terms of Article 501 thereof, shall prevail and govern at all times during the term of this Agreement. Copies of the Trust Agreement and Bond Resolution are available for inspection in the offices of the Department during normal working hours. [still applicable?]
- 20.2 Adjustment of Terms and Conditions: If at any time during the term of this Agreement a court of competent jurisdiction shall determine that any of the terms and conditions of this Agreement, including the rentals, fees and charges required to be paid hereunder to the County by the Lessee or by other Lessees under other Agreements of the County for the lease or use of facilities used for

similar purposes, are unjustly discriminatory, the County shall have the right to modify such terms and conditions and to increase or otherwise adjust the rentals fees and charges required to be paid under this Agreement in such a manner as the County shall determine is necessary and reasonable so that the rentals, fees and charges payable by the Lessee and others shall not thereafter be unjustly discriminatory to any user of like facilities and shall not result in any violation of the Trust Agreement and/or bond resolution or in any deficiency in revenues necessary to comply with the covenants of the Trust Agreement and/or bond resolution. In the event the County has modified the terms and conditions of this Agreement, including any adjustment of the rentals, fees and charges required to be paid to the County pursuant to this provision, this Agreement shall be amended to incorporate such modification of the terms and conditions including the adjustment of rentals, fees and charges upon the issuance of written notice from the Department to the Lessee.

- 20.3 Lessee Right to Terminate: In the event the terms and conditions of this Agreement, including the rentals, fees and charges payable hereunder, have been substantially modified pursuant to Article 20.2 (Adjustment of Terms and Conditions) above, the Lessee, at any time within one year following the effective date of such modification may terminate this Agreement by giving ninety days written notice to the County, without liability by any party to any other party.

## ARTICLE 21

### OTHER PROVISIONS

- 21.1 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 Articles 2.2, 2.3 and 8.2, the County makes no representation, warranty, guarantee, or averment of any nature whatsoever concerning the physical condition of the Premises and Improvements, and it is agreed that, except as may be provided for in Articles 2.2, 2.3 and 8.2, County will not be responsible for any such physical condition.
- 21.3 Force Majeure: Except as provided below, any material prevention, delay or stoppage attributable to strikes, lockouts, labor disputes, acts of God, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (collectively, the Force Majeure) will excuse the performance of that party for a period equal to the duration of the prevention, delay or stoppage. If, therefore, this Agreement specifies a time period for performance of an obligation of either party, a delay that a Force Majeure causes will extend the period within which the party must complete its performance. The foregoing provisions of this Article 21.3 will not apply to (1) the obligations imposed with regard to rent and other charges Lessee must pay in accordance with the terms of this Agreement and (ii) the obligations imposed

upon the County to pay any amount becoming due to Lessee under the terms of this Agreement.

- 21.4 **Headings:** Any headings preceding the text of any articles, paragraphs or sections of this Agreement shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.
- 21.5 **Interference:** The Lessee further expressly agrees to prevent any use of the Premises and Improvements which would interfere with or adversely affect the operation or maintenance of the Airport or otherwise constitute an airport hazard.
- 21.6 **Authorized Uses Only:** The Lessee shall not use or permit the use of the Airport for any illegal or unauthorized purpose or for any purpose which would increase the premium rates paid by the County on, or invalidate any insurance policies of the County or any policies of insurance written on behalf of the Lessee under this Agreement.
- 21.7 **Binding Effect:** The terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns. This provision shall not constitute a waiver of any conditions prohibiting assignment or subletting.
- 21.8 **Federal Subordination:** This Agreement shall be subordinate to the provisions of any existing or future agreements between the County and the United States of America relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the Airport. All provisions of this Agreement shall be subordinate to the right of the United States of America to lease or otherwise assume control over the Airport, or any part thereof, during time of war or national emergency for military or naval use and any provisions of this Agreement inconsistent with the provisions of such lease to, or assumption of control by, the United State of American shall be suspended.
- 21.9 **Notices:** All notices required or permitted to be given under the terms and provisions of this Agreement by either party to the other shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested facsimile, or by Federal Express Priority Overnight Service to the parties as follows:

As to the County or Aviation Department:

Director

Miami-Dade County Aviation Department

Post Office Box 025504

Miami, Florida 33102-5504

-- Or --

Miami International Airport

Concourse E, 6th Floor

Miami, Florida 33122  
With a copy to:  
County Attorney's Office  
P.O. Box 025504  
Miami, FL 33102-5504

As to the Developer (and Lessee after assignment):

Aero Miami III, LLC  
201 West Street, Suite 200  
Annapolis, Maryland 21401  
Attn: General Counsel

As to the Lessee  
Centurion Air Cargo, Inc.  
1751 NW 68 Avenue  
Bldg 706, Suite 214  
Miami, FL 33126

and

Jarvis & Associates, P.A.  
1500 San Remo, Suite 145  
Coral Gables, Florida 33146

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As to the Mortgagee:  
To be advised

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

- 21.10 **Rights Reserved:** Rights not specifically granted the Lessee by this Agreement are reserved to the County, including, but specifically not limited to, all air rights above the Premises for aviation or non-aviation purposes.
- 21.11 **Rights of County at Airport:** Subject only to the limitations that may be set forth elsewhere in this Agreement, the County shall have the absolute right to make any repairs, alternations and additions to any structures and facilities at the

Airport. Except as may be provided to the contrary elsewhere in this Agreement, the County shall, in the exercise of such right, be free from any and all liability to the lessee for business damages occasioned during the making of such repairs, alterations and additions.

- 21.12 **Rights to be Exercised by Department:** Wherever in this Agreement rights are reserved to the County, such rights may be exercised by the Department.
- 21.13 **No Waiver:** There shall be no waiver of the right of either party to demand strict performance of any of the provisions, terms and covenants of this Agreement nor shall there be any waiver of any breach, default or non-performance hereof by either party, unless such waiver is explicitly made in writing by the other party. Any previous waiver or course of dealing shall not affect the right of either party to demand strict performance of the provisions, terms and covenants of this Agreement with respect to any subsequent event or occurrence of any subsequent breach, default or nonperformance hereof by the other party.
- 21.14 **Right to Regulate:** Nothing in this Agreement shall be construed to waive or limit the governmental authority of the County, as a political subdivision of the State of Florida, to regulate the Lessee or its operations. Notwithstanding any provision of this Agreement, nothing herein shall bind or obligate the County, the Zoning appeals Board, the Building and Zoning Department (as it may be renamed from time to time), the Planning Department, or any department, board or agency of the County, to agree to any specific request of Lessee that relates in any way to the regulatory or quasi-judicial power of the County; and the County shall be released and held harmless by Lessee from any liability, responsibility, claims, consequential damages or other damages, or losses resulting from the denial or withholding of such requests; provided, however, that this provision shall not preclude any appeal from County action wherein the sole remedy sought is reversal of the County's action or injunctive relief, nor shall it preclude any action based on the County's bad faith, capricious behavior or arbitrary action.
- 21.15 **Severability:** If any provision of this Agreement or the application thereof to either party to this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions of this Agreement which can be given effect without the invalid provision, and to this end, the provisions of this Agreement are severable.
- 21.16 **Inspections:** Subject to satisfying any conditions to entry established elsewhere in this Agreement, the authorized employees and representatives of the County and of any applicable Federal or State agency having jurisdiction hereof shall have the right of access to the Premises and Improvements at all reasonable times for the purposes of inspection and testing to determine compliance with the provisions of this Agreement. This right of inspection and testing shall impose no duty on the County to inspect and shall impart no liability upon the County should it not make any such inspections.
- 21.17 **Payment of Taxes:** The Lessee shall pay all taxes and other costs lawfully assessed against its leasehold interests in the Premises and Improvements, its improvements and its operations under this Agreement; provided, however, the Lessee shall not be deemed to be in default of its obligations hereunder for failure to pay such taxes pending the outcome of any legal proceedings instituted to determine the validity of such taxes. Failure to pay the taxes upon the adverse

ultimate conclusion of such legal proceedings against the Lessee and the continuation of that failure for more than the applicable grace period established in Article 14 shall constitute a default.

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

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

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

21.20 Quiet Enjoyment: Subject to the terms of this Agreement, specifically including but not limited to the environmental remediation steps to be taken under Article 8 (Regulations, License and Permits), the County's right and obligation to make certain repairs, alternations, and additions under Articles 7 (Maintenance by County) and 21.11 (Rights of County at Airport), which, for purposes of this clause includes any and all demolition, in whole or in part, of buildings and runways, and roadway systems on or off the Airport, and the reservation of easement rights to the airspace under Article 17.9 (Right of Flight), all of which provisions and others in the Agreement the Lessee acknowledges may cause disruption and disturbance to the Lessee, and upon the observance by the Lessee of all the terms, provisions, covenants and conditions imposed upon the Lessee hereunder, the Lessee shall peaceably and quietly hold and enjoy the Premises and Improvements for the term of this Agreement; provided, however, that the County shall not be liable for any violation of this clause or for any disturbance or disruption in or to the Lessee's business, for acts or omissions of tenants, users of the Airport, third parties, or when any department or agency of the County is acting in its governmental capacity, or by Acts of God.

21.21 Restoration of Damaged Improvements. Lessee shall promptly restore or rebuild any partially or completely damaged or destroyed Improvements (up to the amounts of any insurance proceeds available to Lessee for such restoration/rebuilding), unless Lessee and the Department mutually agree in writing that such restoration or rebuilding is not required and provided, however, that such restoration/rebuilding in all instances must occur if necessary to satisfy the minimum dollar expended and size requirements as set forth in this Lease.

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 the parties covenant that 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.

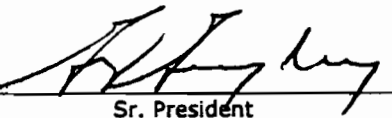
21.24 Rights Non-Exclusive: Notwithstanding anything herein contained that may be or appear to the contrary, the rights, privileges and licenses granted under this Agreement, except in the Premises and Improvements, are "nonexclusive" and the County reserves the right to grant similar privileges to other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

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.

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

CENTURION AIR CARGO, INC.

BOARD OF COUNTY COMMISSIONERS  
OF MIAMI-DADE COUNTY, FLORIDA

By:   
Sr. President

By: \_\_\_\_\_  
County Manager

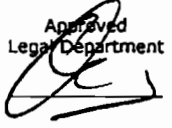
GEORGE GONZALEZ  
Print Name

ATTEST: Harvey Ruvin, Clerk  
By: \_\_\_\_\_

ATTEST  
  
Assistant Secretary

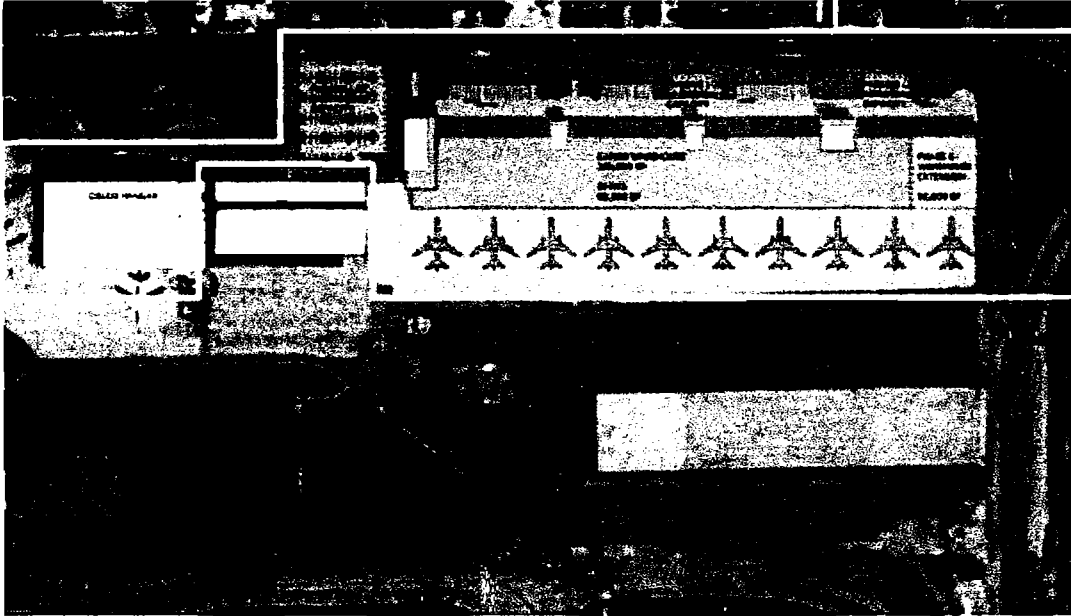
MARTA BLANCO  
Print Name

(CORP. SEAL)

Approved  
Legal Department  


# EXHIBIT "A"

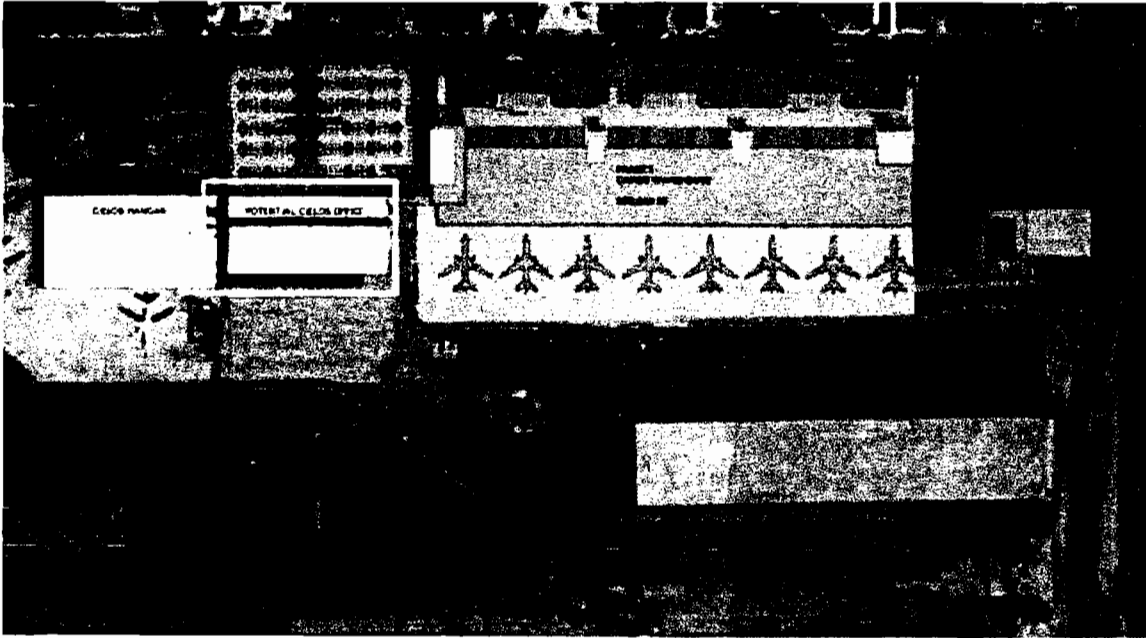
## Improvements



45

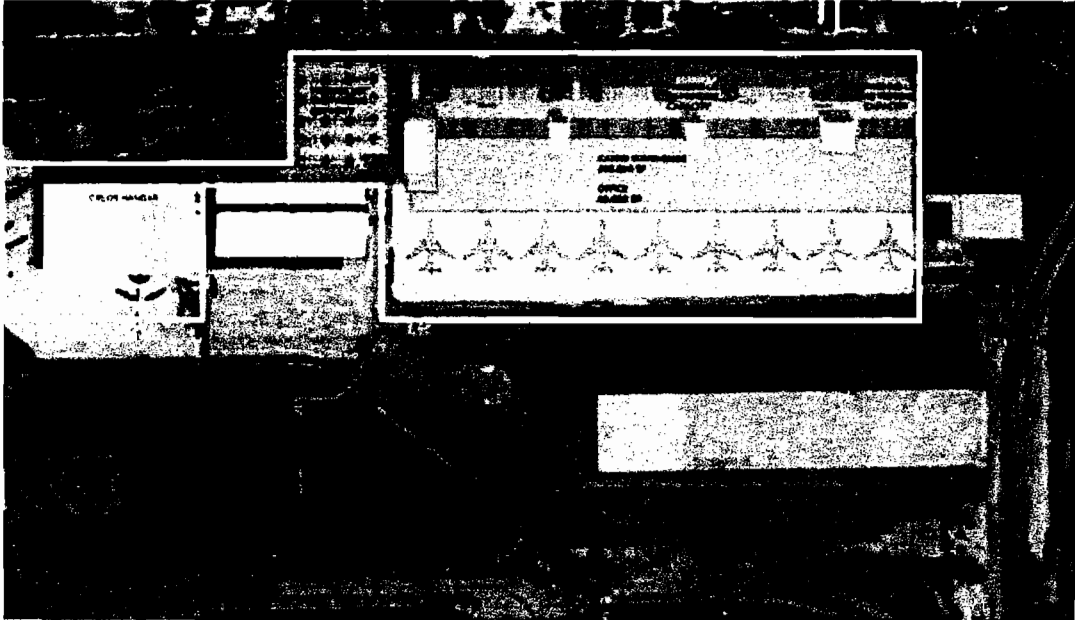
**EXHIBIT "B"**

Building 896 (shown in yellow box)



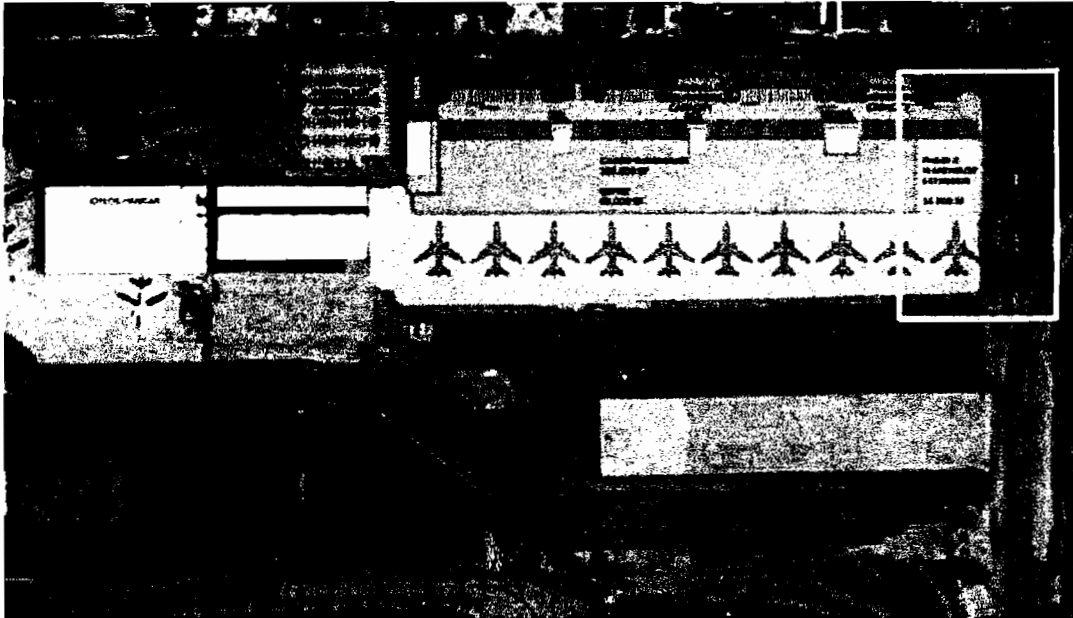
# EXHIBIT "C"

Phase 1 Improvements (shown in yellow box)



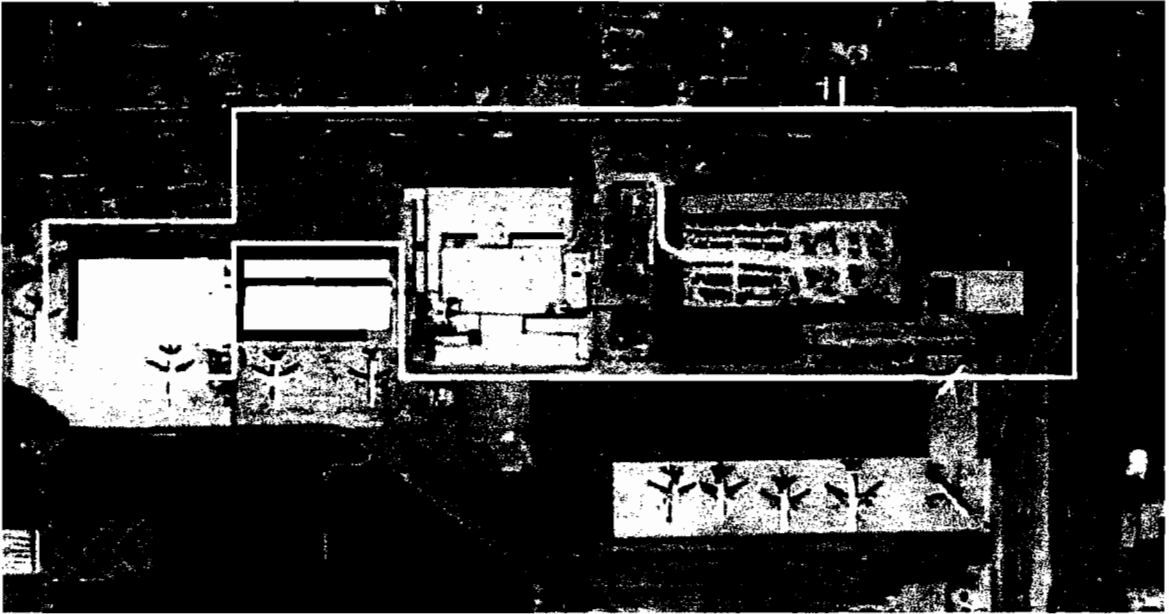
# EXHIBIT "D"

Phase 2 Improvements (shown in yellow box)



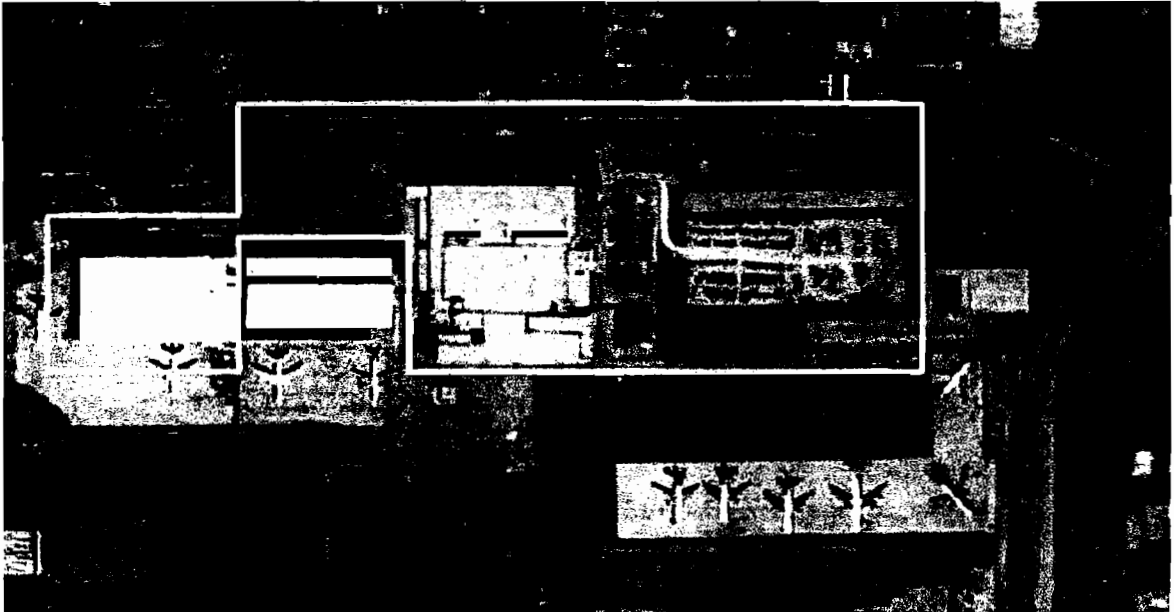
**EXHIBIT "E"**

Premises



**EXHIBIT "F"**

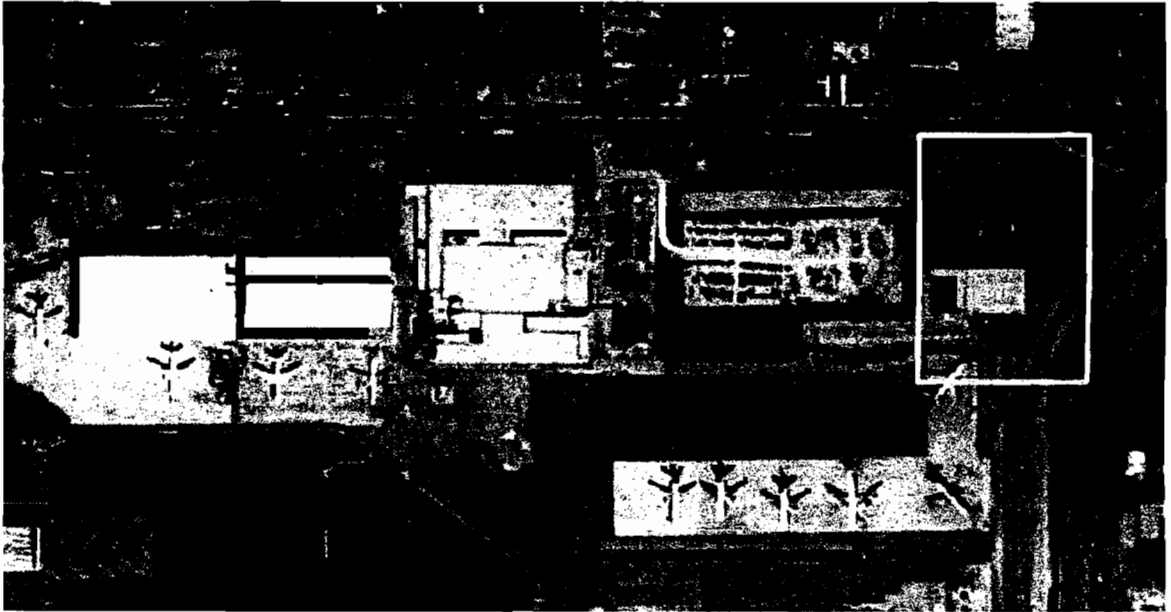
Phase I Premises (shown in yellow box)





**EXHIBIT "G"**

Phase 2 Premises (shown in yellow box)



**EXHIBIT "H"**

Legal Description

Schedule of Square Feet and Projected Investment

Facility Use	Size (Approx)	Projected Cost/Budget
Warehouse	370,000 SF	\$66,000,000
Warehouse Expansion	25,000 SF	\$ 1,500,000
Warehouse Expansion 25,000sf (to accommodate office flr 1)		\$ 1,500,000
Office (Warehouse, flr 1)	25,000 SF	\$ 925,000
Office (Warehouse, flr 2)	40,000 SF	\$ 2,975,000
Hangar, Floor 1	127,000 SF	\$12,000,000
Hangar Office, Floors 2 & 3 (Refurbish existing offices)	45,000 SF	\$ 900,000
Aircraft Ramp	510,000 SF	\$10,000,000
Hangar Acquisition Cost		\$ 6,400,000
Fees and Financing		\$17,500,000
<b>TOTAL COSTS (Phase I)</b>	<b>632,000 SF (no ramp)</b>	<b>\$119,700,000</b>

NOTES:

1. Hangar sf quantities are supplied by Airport plans, we are assuming they are accurate.

**2006 FOR PROFIT CORPORATION ANNUAL REPORT**

DOCUMENT# H84767

**FILED**  
**Jan 11, 2006**  
**Secretary of State**

**Entity Name:** CENTURION AIR CARGO, INC.

**Current Principal Place of Business:**

1800 N.W. 89 PLACE  
MIAMI, FL 33172 US

**New Principal Place of Business:**

**Current Mailing Address:**

% F. GONZALEZ  
1800 N.W. 89 PLACE  
MIAMI, FL 33172

**New Mailing Address:**

FEI Number: 59-2738544      FEI Number Applied For ( )      FEI Number Not Applicable ( )      Certificate of Status Desired ( )

**Name and Address of Current Registered Agent:**

JARVIS, JIM  
JARVIS AND ASSOCIATES, P.A.  
1500 SAN REMO AVE., STE 145  
CORAL GABLES, FL 33134 US

**Name and Address of New Registered Agent:**

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: \_\_\_\_\_

Electronic Signature of Registered Agent

\_\_\_\_\_ Date

Election Campaign Financing Trust Fund Contribution ( ).

**OFFICERS AND DIRECTORS:**

Title: D      (X) Delete  
Name: SPOHRER, BILL F  
Address: 1113 CAMPO SANO AVENUE  
City-St-Zip: CORAL GABLES, FL 33146

Title: SV      ( ) Delete  
Name: ARMENTEROS, YVETTE E  
Address: 4325 SW 98TH AVENUE  
City-St-Zip: MIAMI, FL 33165

Title: TVP      ( ) Delete  
Name: GONZALEZ, FLORENTINO  
Address: 6770 INDIAN CREEK DRIVE, APT. 15F  
City-St-Zip: MIAMI BEACH, FL 33141

Title: CEO      ( ) Delete  
Name: STOCKBRIDGE, WILLIAM D  
Address: 17175 TWIN MAPLE LANE  
City-St-Zip: LEESBURG, VA 20178

Title: D      (X) Delete  
Name: ULLRICH, PETER F  
Address: 444 ARVIDA PARKWAY  
City-St-Zip: CORAL GABLES, FL 33158

**ADDITIONS/CHANGES TO OFFICERS AND DIRECTORS:**

Title:      ( ) Change ( ) Addition  
Name:  
Address:  
City-St-Zip:

Title:      ( ) Change ( ) Addition  
Name:  
Address:  
City-St-Zip:

Title:      ( ) Change ( ) Addition  
Name:  
Address:  
City-St-Zip:

Title:      ( ) Change ( ) Addition  
Name:  
Address:  
City-St-Zip:

Title:      ( ) Change ( ) Addition  
Name:  
Address:  
City-St-Zip:

I hereby certify that the information supplied with this filing does not qualify for the for the exemption stated in Chapter 119, Florida Statutes. I further certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am an officer or director of the corporation or the receiver or trustee empowered to execute this report as required by Chapter 607, Florida Statutes; and that my name appears above, or on an attachment with an address, with all other like empowered.

SIGNATURE: FLORENTINO GONZALEZ

VPT

01/11/2006

Electronic Signature of Signing Officer or Director

\_\_\_\_\_ Date

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**2006 FOR PROFIT CORPORATION AMENDED ANNUAL REPORT**

**FILED  
Jun 02, 2006  
Secretary of State**

**DOCUMENT# H84767**

**Entity Name:** CENTURION AIR CARGO, INC.

**Current Principal Place of Business:**

1800 N.W. 89 PLACE  
MIAMI, FL 33172 US

**New Principal Place of Business:**

1800 N.W. 89TH PLACE  
MIAMI, FL 33172

**Current Mailing Address:**

% F. GONZALEZ  
1800 N.W. 89 PLACE  
MIAMI, FL 33172

**New Mailing Address:**

**FEI Number:** 59-2738544      **FEI Number Applied For ( )**      **FEI Number Not Applicable ( )**      **Certificate of Status Desired ( )**

**Name and Address of Current Registered Agent:**

JARVIS, JIM  
JARVIS AND ASSOCIATES, P.A.  
1500 SAN REMO AVE., STE 145  
CORAL GABLES, FL 33134 US

**Name and Address of New Registered Agent:**

JARVIS & ASSOCIATES, P.A.  
1500 SAN REMO  
SUITE 145  
CORAL GABLES, FL 33146 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

**SIGNATURE:** JAMES W. JARVIS

06/02/2006

Electronic Signature of Registered Agent

Date

**OFFICERS AND DIRECTORS:**

**Title:** SV      ( ) Delete  
**Name:** ARMENTEROS, YVETTE E  
**Address:** 4325 SW 96TH AVENUE  
**City-St-Zip:** MIAMI, FL 33165

**Title:** TVP      ( ) Delete  
**Name:** GONZALEZ, FLORENTINO  
**Address:** 6770 INDIAN CREEK DRIVE, APT. 15F  
**City-St-Zip:** MIAMI BEACH, FL 33141

**Title:** CEO      (X) Delete  
**Name:** STOCKBRIDGE, WILLIAM D  
**Address:** 17175 TWIN MAPLE LANE  
**City-St-Zip:** LEESBURG, VA 20176

**ADDITIONS/CHANGES TO OFFICERS AND DIRECTORS:**

**Title:** DC      (X) Change ( ) Addition  
**Name:** REY, ALFONSO C  
**Address:** 120 KNOLLWOOD DRIVE  
**City-St-Zip:** KEY BISCAYNE, FL 33149

**Title:** DCEO      (X) Change ( ) Addition  
**Name:** GONZALEZ, GEORGE  
**Address:** 2617 NW 49 STREET  
**City-St-Zip:** BOCA RATON, FL 33434

**Title:**      ( ) Change ( ) Addition  
**Name:**  
**Address:**  
**City-St-Zip:**

I hereby certify that the information supplied with this filing does not qualify for the for the exemption stated in Chapter 119, Florida Statutes. I further certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am an officer or director of the corporation or the receiver or trustee empowered to execute this report as required by Chapter 607, Florida Statutes; and that my name appears above, or on an attachment with an address, with all other like empowered.

**SIGNATURE:** GEORGE GONZALEZ

DCEO

06/02/2006

Electronic Signature of Signing Officer or Director

Date

85

Telephone  
(305) 448-4848  
Facsimile  
(305) 448-4545  
E-mail  
info@jarvislaw.com

LAW OFFICES  
JARVIS & ASSOCIATES, P.A.  
The Atrium  
1500 San Remo  
Suite 145  
Coral Gables, FL 33146

August 28, 2006

James W. Jarvis  
Aylin Fraxedias  
James T. Glauert, III +  
\* also admitted in the State of Wyoming and Montana

Via UPS Overnight

Amendment Section  
Department of Corporations  
Clifton Building  
2661 Executive Center Circle  
Tallahassee, FL 32301

Re: Articles of Merger  
Centurion Air Cargo / Wright Bros. Aviation, Inc.

Florida  
FEI Nun.

SECOND:  
merging entit.

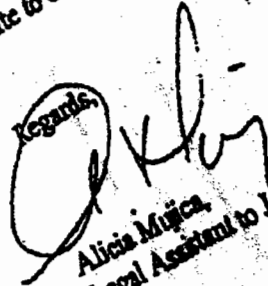
Name an  
Wright Br.  
1850 N.W. 1  
Bldg. 708, Su  
Miami, Florida

Florida Document  
FEI Number: 65-11

Dear Sir or Madame:

Enclosed herewith please find the Articles of Merger with respect to the above-mentioned or  
with our check number 8938 in the amount of Seventy-eight and 75/100 US Dollars (US\$ 78.75) fo  
ices.

If you should have any questions please do not hesitate to contact me at your earliest co

  
Alicia Mujica,  
Legal Assistant to James

THIRD: The Plan of Merger i.

FOURTH: The merger is permit  
laws or articles of incorporation of e

FIFTH: The merger shall become effe

SIXTH: The Plan of Merger was adopted  
30, 2006 and shareholder approval wa

SEVENTH: The Plan of Merger

Enclosures

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**2007 FOR PROFIT CORPORATION ANNUAL REPORT**

**FILED  
Jan 19, 2007  
Secretary of State**

**DOCUMENT# H84767**

**Entity Name: CENTURION AIR CARGO, INC.**

**Current Principal Place of Business:**

**New Principal Place of Business:**

800 N.W. 89 PLACE  
MIAMI, FL 33172 US

1751 NW 68 AVENUE  
BLDG 706 SUITE 214  
MIAMI, FL 33126 US

**Current Mailing Address:**

**New Mailing Address:**

800 N.W. 89TH PLACE  
MIAMI, FL 33172

1751 NW 68 AVENUE  
BLDG 706 SUITE 214  
MIAMI, FL 33126

FEI Number: 59-2738544      FEI Number Applied For ( )      FEI Number Not Applicable ( )      Certificate of Status Desired ( )

**Name and Address of Current Registered Agent:**

**Name and Address of New Registered Agent:**

JARVIS & ASSOCIATES, P.A.  
500 SAN REMO  
SUITE 145  
CORAL GABLES, FL 33146 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

**SIGNATURE:**

Electronic Signature of Registered Agent

Date

Election Campaign Financing Trust Fund Contribution ( )

**OFFICERS AND DIRECTORS:**

**ADDITIONS/CHANGES TO OFFICERS AND DIRECTORS:**

Title: DC ( ) Delete  
Name: REY, ALFONSO C  
Address: 120 KNOLLWOOD DRIVE  
City-St-Zip: KEY BISCAYNE, FL 33149

Title: ( ) Change ( ) Addition  
Name:  
Address:  
City-St-Zip:

Title: DCEO ( ) Delete  
Name: GONZALEZ, GEORGE  
Address: 2817 NW 49 STREET  
City-St-Zip: BOCA RATON, FL 33434

Title: ( ) Change ( ) Addition  
Name:  
Address:  
City-St-Zip:

I certify that the information supplied with this filing does not qualify for the for the exemption stated in Chapter 119, Statutes. I further certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am an officer or director of the corporation or member or trustee empowered to execute this report as required by Chapter 607, Florida Statutes; and that my name appears on an attachment with an address, with all other like empowered.

SIGNATURE: ALFONSO REY

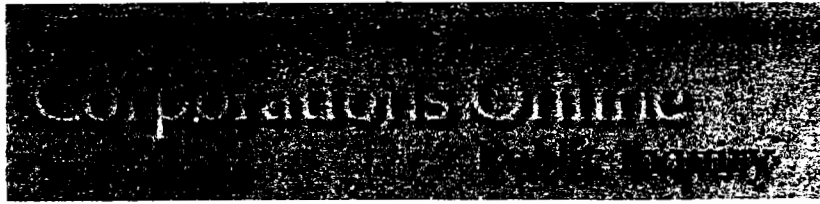
DC

87

01/19/2007

Electronic Signature of Signing Officer or Director

Date



**Florida Profit**

**CENTURION AIR CARGO, INC.**

**PRINCIPAL ADDRESS**

1751 NW 68 AVENUE  
 BLDG 706 SUITE 214  
 MIAMI FL 33126 US  
 Changed 01/19/2007

**MAILING ADDRESS**

1751 NW 68 AVENUE  
 BLDG 706 SUITE 214  
 MIAMI FL 33126  
 Changed 01/19/2007

**Document Number**  
 H84767

**FEI Number**  
 592738544

**Date Filed**  
 11/12/1985

**State**  
 FL

**Status**  
 ACTIVE

**Effective Date**  
 NONE

**Last Event**  
 AMENDMENT

**Event Date Filed**  
 03/22/2007

**Event Effective Date**  
 NONE

**Registered Agent**

<b>Name &amp; Address</b>
JARVIS & ASSOCIATES, P.A. 1500 SAN REMO SUITE 145 CORAL GABLES FL 33146
Name Changed: 06/02/2006
Address Changed: 06/02/2006

**Officer/Director Detail**

Name & Address	Title
REY, ALFONSO C 120 KNOLLWOOD DRIVE	DC

*88*



KEY BISCAYNE FL 33149	
GONZALEZ, GEORGE 2617 NW 49 STREET	DCEO
BOCA RATON FL 33434	

### Annual Reports

Report Year	Filed Date
2006	01/11/2006
2006	06/02/2006
2007	01/19/2007

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### Document Images

Listed below are the images available for this filing.

<a href="#">03/22/2007 -- Amendment</a>
<a href="#">01/19/2007 -- ANNUAL REPORT</a>
<a href="#">08/29/2006 -- Merger</a>
<a href="#">06/02/2006 -- ANNUAL REPORT</a>
<a href="#">01/11/2006 -- ANNUAL REPORT</a>
<a href="#">03/11/2005 -- ANNUAL REPORT</a>
<a href="#">01/23/2004 -- ANNUAL REPORT</a>
<a href="#">03/24/2003 -- ANNUAL REPORT</a>
<a href="#">04/29/2002 -- ANNUAL REPORT</a>
<a href="#">07/20/2001 -- Amendment and Name Change</a>
<a href="#">05/21/2001 -- Reg. Agent Change</a>
<a href="#">04/02/2001 -- ANNUAL REPORT</a>
<a href="#">04/18/2000 -- ANNUAL REPORT</a>
<a href="#">07/12/1999 -- Amendment</a>
<a href="#">03/25/1999 -- ANNUAL REPORT</a>
<a href="#">05/27/1998 -- ANNUAL REPORT</a>
<a href="#">11/06/1997 -- Amendment</a>
<a href="#">03/28/1997 -- ANNUAL REPORT</a>
<a href="#">05/14/1996 -- ANNUAL REPORT</a>
<a href="#">05/01/1995 -- ANNUAL REPORT</a>

**THIS IS NOT OFFICIAL RECORD; SEE DOCUMENTS IF QUESTION OR CONFLICT**

89

LAW OFFICES  
JARVIS & ASSOCIATES, P.A.  
The Atrium  
1500 San Remo  
Suite 145  
Coral Gables, FL 33146

James W. Jarvis  
Ailyn Fraxodas  
James T. Gladen, III +

+ also admitted in the State of Wyoming and Montana

Telephone  
(305) 448-4848  
Facsimile  
(305) 445-4545  
e-mail  
[jw@jarvislaw.com](mailto:jw@jarvislaw.com)

August 28, 2006

*Via UPS Overnight*

Amendment Section  
Department of Corporations  
Clifton Building  
2661 Executive Center Circle  
Tallahassee, FL 32301

Re: Articles of Merger  
Centurion Air Cargo / Wright Bros. Aviation, Inc.

Dear Sir or Madame:

Enclosed herewith please find the Articles of Merger with respect to the above-mentioned corporations along with our check number 8938 in the amount of Seventy-eight and 75/100 US Dollars (US\$ 78.75) for the respective filing fees.

If you should have any questions please do not hesitate to contact me at your earliest convenience.

Regards,



Alicia Mujica,  
Legal Assistant to James W. Jarvis, Esq.

Enclosures

## ARTICLES OF MERGER

The following Articles of Merger are being submitted in accordance with Section 607.1105 of the Florida Statutes.

**FIRST:** The exact name, street address of its principal office, jurisdiction and entity type of the surviving entity are as follows:

<u>Name and Street Address</u>	<u>Jurisdiction</u>	<u>Entity Type</u>
Centurion Air Cargo, Inc. 1800 N.W. 89 <sup>th</sup> Place Miami, Florida 33172	Florida	Chapter 607 Corporation

Florida Document/Registration Number: H84767  
FEI Number: 59-2738544

**SECOND:** The exact name, street address of its principal office, jurisdiction and the entity of the merging entity are as follows:

<u>Name and Street Address</u>	<u>Jurisdiction</u>	<u>Entity Type</u>
Wright Bros. Aviation, Inc. 1850 N.W. 66 <sup>th</sup> Avenue Bldg. 708, Suite 220 Miami, Florida 33126	Florida	Chapter 607 Corporation

Florida Document/Registration Number: P01000059354  
FEI Number: 65-1113273

**THIRD:** The Plan of Merger is attached.

**FOURTH:** The merger is permitted under the laws of the State of Florida and is not prohibited by the by laws or articles of incorporation of either corporation that is a party to the merger.

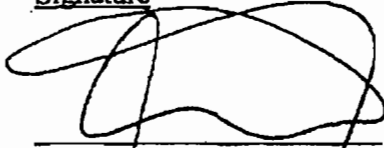
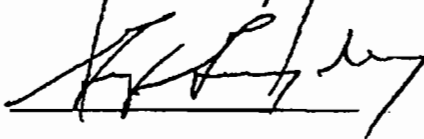
**FIFTH:** The merger shall become effective as of the date of filing.

**SIXTH:** The Plan of Merger was adopted by the Board of Directors of the surviving corporation on June 30, 2006 and shareholder approval was not required.

**SEVENTH:** The Plan of Merger was adopted by the Sole Shareholder of the merging corporation on June 30, 2006.

06 AUG 29 PM 1:28  
FILED  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**EIGHTH: Signatures for each party:**

<u>Name of Corporation</u>	<u>Signature</u>	<u>Name of Individual and Status</u>
Wright Bros Aviation, Inc.		Alfonso C. Rey, as Director, and 100% Shareholder
Centurion Air Cargo, Inc.		George Gonzalez, as President and CEO

## PLAN OF MERGER

The following Plan of Merger was adopted and approved by each party to the merger in accordance with Section 607.1101 of the Florida Statutes.

**FIRST:** The exact name and jurisdiction of the surviving party are as follows:

<u>Name</u>	<u>Jurisdiction</u>
Centurion Air Cargo, Inc.	a Florida corporation

**SECOND:** The exact name and jurisdiction of the merging party are as follows:

<u>Name</u>	<u>Jurisdiction</u>
Wright Bros. Aviation, Inc.	a Florida Corporation

**THIRD:** The terms and conditions of the merger are as follows: Upon approval of the Plan of Merger and execution of the Articles of Merger by the parties, Wright Bros. Aviation, Inc. will merge into Centurion Air Cargo, Inc.

**FOURTH:** The manner and basis of converting the shares, obligations or other securities of the merged party into the shares, obligations or other securities of the survivor, in whole or in part, into cash or other property are as follows:

Centurion Air Cargo, Inc. shall issue and transfer 50,865,466 shares of its common stock to Mr. Alfonso C. Rey in return for cancellation of 100% of the issued and outstanding shares of Wright Bros. Aviation, Inc. common stock and for all assets and liabilities of Wright Bros. Aviation, Inc., by operation of law.