

Date: April 4, 2023

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor 

Subject: Recommendation for Approval to Award Remote VIP Operations for Commercial Airline
Flights at MIA

Agenda Item No. 8(P)(1)

Resolution No. R-301-23

Summary

This item is recommending the lease, development, and operation of the Remote VIP Operations for Commercial Airline Flights at Miami International Airport (MIA), to be hosted at the historic former Pan American Regional Headquarters, Building 874. The Remote VIP Operations shall provide client-centric services for high-profile commercial airlines travelers who wish to avoid congestion and delays of regular MIA terminal passenger processing and who seek an upscale traveling experience. Approval of this item will allow the Miami-Dade Aviation Department (MDAD) to lease the building under a development lease agreement, to be further adapted and reused for Remote VIP Operations, through private capital. The former Pan American Regional Headquarters building will be turned into a profitable revenue generating, client-focused facility with a design that will demonstrate architectural innovation, creativity, acknowledgement of the historically designed facility, and excellence at no cost to the County. It is estimated the County will receive revenue in the amount of \$16,000,000 for the 20-year term of the contract.

This contract provides a unique premium experience that embraces global sophistication and local culture, with efficiency, safety, privacy, and convenience. The target demographic clientele are frequent affluent travelers who value status and seek out luxury amenities and access to upgrade travel options to avoid the congestion that is often experienced by conventional passengers traveling through the main terminals at MIA. After checking in at the new remote terminal and being screened by the Transportation Security Administration (TSA), clients will be driven directly to their commercial flight at any of MIA's concourses and will board the plane directly.

Recommendation

It is recommended that the Board of County Commissioners (Board) approve a competitive lease development contract award, *Contract No. RFP-01555, Remote VIP Operations for Commercial Airlines Flights at MIA*, to The Private Suite MIA, LLC (Private Suite) for MDAD with an estimated revenue of \$16,000,000 for the twenty-year term. Private Suite possesses the necessary experience and expertise that will be essential for project implementation and has operated a private terminal at Los Angeles International Airport (LAX) since 2017 that is known for catering to celebrities and other well-established customers. In addition, Private Suite is leasing one of the buildings at Hartsfield-Jackson Atlanta International Airport (ATL) to provide private terminal service which is anticipated to commence by the end of this year. With the opening of the Private Suite at ATL, it will mark Atlanta as the second location for the Private Suite after LAX. Private Suite is in discussions with Port Authority of New York and New Jersey.

The Small Business Enterprise measures, which may include Airport Concession Disadvantaged Business Enterprise (ACDBE), will be determined after lease development executions, but prior to start of County-approved concessions under the lease development agreement. Private Suite will be required to submit the design and construction package for the improvements to the premises to Small Business Development for review and determination of appropriate small business program measures. Solicitations issued by Private Suite for the development and operation of the premises will be reviewed for sustainability and environmental considerations prior to advertisement. Private Suite will conduct environmental inspections and mitigations and meet County code using the historic building renovation

architect team. Preservation and sustainability will be key features for consideration for the build out, and recycling will be included in the operations of the facility. Private Suite plans to use all-electric fleet of vehicles for its operations. The business model for the services provided by Private Suite is intended to get people off private jets and use commercial flights, which can have a huge positive impact on the environment.

Background

Miami International Airport (MIA) is the County’s leading economic engine, with an annual economic impact of over \$30 billion. MIA offers more flights to Latin America and the Caribbean than any other U.S. airport and is currently the nation’s busiest airport for international passengers and in the top 10 in the U.S. for overall passengers. In 2019, MIA processed close to 46 million domestic and international passengers. In 2022, the total number of passengers was 50.64 million, which was the best year in MIA’s history. MIA is also the number one airport in the U.S. for international cargo operations. The airport is committed to delivering an exceptional passenger experience by providing a variety of concessions, business services, and amenities, both within and beyond its facilities.

The scope of services includes the development of the premises and operation of the services to reflect the innovativeness in new and current airport trends. Proposed amenities include vehicle valet services, secure parking for client owned vehicles, luggage check in services, private rooms with sleeping accommodations, bathrooms, showers, and complementary toiletries, conference rooms and dedicated meeting spaces, private/quiet public spaces, spas, play areas for children, pet relief areas, upscale dining options representative of local and international flavors, full-service and self-service bars with premium liquors, beers, wine, and non-alcoholic beverages, outdoor deck, wi-fi services, airline and worldwide tourism concierge services, communal television viewing areas, FIDS (flight information displays), electronic device charging stations/solutions throughout, TSA screening area, TSA and U.S. Customs and Border Protection (CBP) back of house facilities, limousine services, and direct access to Airside Operations Area and CBP area.

Scope

Miami International Airport is located within District 6, which is represented by Commissioner Kevin Marino Cabrera; however, the scope of this item is countywide in nature.

Fiscal Impact/Funding Source

There is no cost to the County. The fiscal impact for the twenty-year term is estimated at \$16,000,000. The Annual Rent shall consist of either the Minimum Annual Guarantee of \$600,000 (subject to applicable CPI adjustments annually) payable in equal monthly installments, or 7.5 percent of gross revenue, whichever is greater, for any given month during the term of the contract. There is no existing or previous County contract for these services.

Department	Estimated Revenue	Funding Source	Contract Manager
MDAD	\$16,000,000	Revenue Generating	Sylvia Novela
Total:	\$16,000,000		

Track Record/Monitor

Natalya Vasilyeva of the Strategic Procurement Department is the Procurement Contracting Manager.

Delegated Authority

If this item is approved, the County Mayor or County Mayor’s designee will have the authority to exercise all provisions of the contract, including any cancellation or extension provisions, pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38.

Vendor Recommended for Award

A Request for Proposals was issued under full and open competition. Three proposals were received in response to the solicitation, including one “No Bid.” More than 6,500 vendors were invited to participate in the competitive solicitation process via BidSync; 136 vendors viewed the solicitation notification, and 18 downloaded the solicitation packet.

Pursuant to Resolution No. R-477-18, the highest-ranked proposer is recommended in accordance with the method of award per the solicitation and is non-local. The lack of local vendor participation is attributable to the complexity and nature of the services being procured. To encourage vendor participation, prior to the advertisement, firms identified through market research were contacted to survey if they were able to provide the services required, and the scope of work was posted on the County’s Future Solicitations website for the vendor community to preview the upcoming contracting opportunity. In addition, staff held an Industry Day with the vendor community to gather feedback, learn market best practices related to the nature of project, and provide vendors with opportunity to ask questions and exchange ideas.

Vendor	Principal Address	Local Address*	Number of Employee Residents	Principal
			1) Miami-Dade 2) Percentage*	
The Private Suite MIA, LLC	6871 W Imperial Highway Los Angeles, CA	None	1	Joshua Gausman
			0.54%	

*Provided pursuant to Resolution No. R-1011-15. Percentage of employee residents is the percentage of vendor’s employees who reside in Miami-Dade County as compared to the vendor’s total workforce.

Vendors Not Recommended for Award or Did Not Bid

Vendor	Local Address	Reason for Not Recommending
PRE, LLC dba Pangiam	No	Evaluation Scores/Ranking
B Away Travel, LLC	Yes	No Bid*

*A “No Bid” means the vendor responded indicating that it will not be providing an offer.

Due Diligence

Pursuant to Resolution No. R-187-12, due diligence was conducted in accordance with the Strategic Procurement Department’s Procurement Guidelines to determine vendor responsibility, including verifying corporate status and that there are no performance and compliance issues through various vendor responsibility lists and a keyword internet search. The lists that were referenced included convicted vendors, debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties. There were no adverse findings relating to vendor responsibility.

Applicable Ordinances and Contract Measures

- The two percent User Access Program provision does not apply.
- The Small Business Enterprise measures, which may include Airport Concession Disadvantage Business Enterprise (ACDBE), will be determined prior to start of County-approved concessions.
- If the total value of the design and construction is over \$200,000, the firm shall submit the design and construction package to Small Business Development for review and determination of appropriate small business program measures.
- The Responsible Wages apply as the services are covered under the Ordinance.

Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners
Page 4

- The Labor Peace Resolution applies. A signed Labor Peace Agreement was submitted by the firm at time of proposed submission.



Jimmy Morales
Chief Operations Officer



MEMORANDUM
(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: April 4, 2023

FROM: 
Gen Bonzon-Keenan
County Attorney

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

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(P)(1)
4-4-23

RESOLUTION NO. _____ R-301-23

RESOLUTION APPROVING AWARD OF CONTRACT NO. RFP-01555 TO THE PRIVATE SUITE MIA, LLC FOR THE LEASE, DEVELOPMENT, AND OPERATION OF REMOTE VIP OPERATIONS FOR COMMERCIAL AIRLINES FLIGHTS AT MIAMI INTERNATIONAL AIRPORT FOR THE MIAMI-DADE AVIATION DEPARTMENT WITH ESTIMATED REVENUE OF \$16,000,000.00 FOR THE 20 YEAR TERM; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ALL PROVISIONS OF THE CONTRACT, INCLUDING ANY CANCELLATION AND EXTENSION PROVISIONS, PURSUANT TO SECTION 2-8.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA AND IMPLEMENTING ORDER 3-38

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

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

Section 1. This Board approves award of Contract No. RFP-01555 to The Private Suite MIA, LLC, in substantially the form attached and made a part hereof, for the lease, development and operation of remote VIP operations for commercial airlines flights at Miami International Airport with estimated revenue of \$16,000,000.00 for the 20 year term.

Section 2. This Board authorizes the County Mayor or County Mayor's designee to exercise all provisions of the contract, including any cancellation and extension provisions, pursuant to section 2-8.1 of the Code of Miami-Dade County, Florida and Implementing Order 3-38.

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

Oliver G. Gilbert, III, Chairman	aye		
Anthony Rodríguez, Vice Chairman	aye		
Marleine Bastien	aye	Juan Carlos Bermudez	aye
Kevin Marino Cabrera	aye	Sen. René García	aye
Roberto J. Gonzalez	aye	Keon Hardemon	aye
Danielle Cohen Higgins	aye	Eileen Higgins	aye
Kionne L. McGhee	aye	Raquel A. Regalado	aye
Micky Steinberg	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 4th day of April, 2023. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

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



LUIS G. MONTALDO, CLERK AD INTERIM

By: Basia Pruna
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Handwritten signature of David M. Murray in black ink.

David M. Murray

DEVELOPMENT LEASE AGREEMENT BETWEEN **MIAMI-DADE COUNTY**, FLORIDA, AS LESSOR, AND

The Private Suite MIA, LLC, AS LESSEE, OF THE MIAMI INTERNATIONAL AIRPORT REMOTE VIP OPERATIONS FOR COMMERCIAL AIRLINE FLIGHTS AT MIA

RECITALS:

THIS DEVELOPMENT LEASE AGREEMENT ("Agreement") is made and entered into as of the _____ day of _____, 2022, (Effective Date) by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida ("County"), and The Private Suite MIA, LLC Delaware limited liability company, authorized to do business in the State of Florida, ("Lessee").

WITNESSETH:

WHEREAS, the County is the owner of Miami International Airport and operates it through the County's Aviation Department, and Lessee desires to develop a portion of such airport for aviation and aeronautical purposes; and

WHEREAS, Lessee desires to lease Building 874, consisting of approximately 34,115 square feet of office building space and 23,971 square feet of paved parking area which Lessee intends to redevelop into aeronautical facilities, and Lessor is willing to lease such facility to Lessee conditioned upon Lessee's completion of such facilities at a minimum level of cost and within a stated period of time; and

WHEREAS, Lessee acknowledges that all such development activity must occur in strict compliance with requirements of Miami-Dade County Historic Preservation Board, U.S. Federal agencies including but limited to the Federal Aviation Administration ("FAA"), the Transportation Security Administration, US Customs and Border Protection and with all regulatory requirements of the State of Florida and the County and that this Agreement is expressly subject to such regulatory approvals in accordance with the provisions of this Agreement;

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

ARTICLE 1. DEFINITIONS

1. The word "**Airport**" or acronym "**MIA**" to mean Miami International Airport.
2. The word "**Agreement**" to mean the written Development Lease Agreement between the County and the Lessee, including the Appendices attached hereto and all amendments issued by the County hereunder.
3. The words "**Airport Development**" to mean for purposes of the County's right to Purchase the Lessee's Leasehold interest in the Improvements, Airport Development shall include any airport development project or program approved by the County's Board of County Commissioners in its sole discretion.
4. The word "**Alterations**" to mean any alterations to the Premises after completion of the Improvements.
5. The words "**Approved Improvement Cost**" to mean the actual expenditures as certified under the construction audit for design, site development, construction, required bonds, construction and liability insurance, financing fees during construction, building permit, impact and concurrency fees, and the construction audit, but shall exclude the costs of any other consultant (unless otherwise approved in advance by the County) or accountant fees, legal fees, interior decorations (other than standard County

approved finishes) special finishes, wall tile or other special wall finishes and coverings, construction photographs, special external and internal lighting and signage, and furniture and other personal property of the Lessee. In the event of any questions as to whether certain costs are to be included in the Approved Improvements Costs, the County shall make a determination and its decision shall be final.

6. The acronym "**AOA**" to mean Airside Operations Area
7. The term "**As-is**" to mean the present state of the conditions of the Premises, prior to an Agreement for the Services outlined in this RFP.
8. The words "**Aviation**", "**Department**", or "**MDAD**" to mean Miami Dade Aviation Department.
9. The words "**Aviation Director**" or "**Director**" to mean the Director of the Miami-Dade Aviation Department or his or her designee.
10. The words "**Baseline Audit**" to mean an environmental audit of the Premises, conducted to identify any recognized environmental conditions associated with the Premises, which audit may include analyses of soil and groundwater samples.
11. The word "**Board**" to mean Board of County Commissioners of Miami-Dade County.
12. The words "**Certificate of Occupancy**" or acronym "**COO**" or "**Temporary Certificate**" of Occupancy or acronym "**TCO**" to mean the document issued by the appropriate code enforcement agency that enables the Lessee to occupy or utilize the premises for revenue generating purposes.
13. The word "**Code**" to mean the Code of Miami-Dade County, Florida.
14. The word "**Contract Documents**" to mean the legal agreement between the Lessee and a contractor for performance of Work covered in the Contract Documents for the Improvements. The Contract Documents shall include, but not necessarily be limited to, the advertisement for bids, instructions to bidders, bid form, bid bond, contract, surety performance bond, surety payment bond, general conditions, special provisions, technical specifications, and plans together with all addenda, and subsequent change orders, and work orders.
15. The words "**Contract Manager**" to mean the duly authorized representative of the County designated to manage the Development of the Premises.
16. The word "**County**" or "**Lessor**" to mean Miami-Dade County, a political subdivision of the State of Florida. The term County as used in this Agreement shall mean the Miami-Dade County Board of the County Commissioners or the Aviation Department, but it excludes the regulatory departments of; Regulatory & Economic Resources (RER); Transportation & Public Works and Water & Sewer or their successors.
17. The words "**Date of Beneficial Occupancy**" or acronym "**DBO**" to mean to be the earliest of (i) the date on which Substantial Completion of the Work associated with any Improvement on the Premises has occurred and the appropriate code enforcement agency has issued a Certificate of Occupancy or a Temporary Certificate of Occupancy that enables the Lessee to occupy or utilize the Improvement in any manner for its intended use, (ii) the date on which the Lessee commences the use of any Improvement for its intended use (with or without a TCO or CO), or (iii) the date on which Substantial Completion of the Improvement would have occurred and on which the appropriate code enforcement agency would have issued a Certificate of Occupancy or Temporary Certificate of Occupancy but for the occurrence of Lessee's delays, all as determined in the sole reasonable discretion of the County.
18. The word "**Day(s)**" to mean calendar days.

19. The words "**Development**" or "**Project**" to mean the future opportunity planned by the Lessee, in accordance with the scope of this document and as described and illustrated in the Lessee's Proposal, and as agreed upon by the County. The scope of the Lessee's Proposal is understood to include any adjustments or changes that may have occurred in the negotiations between the Lessee and the County prior to an award.
20. The words "**Development Lease Agreement**," "**Agreement**," or "**Contract**" to mean the agreement awarded as a result of the Solicitation RFP-01555 for the development and lease of the Premises, entered into between the County and the awarded Proposer, including all attachments thereto and a part thereof entered into by the County and the Contractor, including all of its terms and conditions, attachments, exhibits, and amendments.
21. The word "**Department**" to mean Miami-Dade County Aviation Department, a department of Miami-Dade County Government, sometimes referred to as MDAD or the Aviation Department, represented by and acting through the Director or their designee(s).
22. The words "**Effective Date**" to mean the date that appears on the Recitals Page of this Agreement
23. The acronym "**FAA**" to mean the Federal Aviation Administration.
24. The words "**First-Rate**" to mean of the best class, quality, and excellence.
25. The words "**Gross Consideration**" to mean all rent, additional rent or other consideration payable by such transferee in excess of the rent and additional rent payable by Lessee under this Lease on a per rentable square foot basis if less than all of the Premises is assigned or transferred, after deducting the reasonable expenses incurred by Lessee for (i) any changes, alterations and improvements to the Premises in connection with the assignment or transfer, and (ii) any brokerage commissions in connection with the assignment or transfer.
26. The words "**Gross Revenue(s)**" to mean all monies paid or payable to, or considerations of determinable value received by the Lessee for sales made, transactions had, or from Lessee members who enroll in any Lessee membership program, regardless of when, where or how, the membership is sold, less any applicable customer/membership refunds, or Services rendered in the operation of its business under this Agreement and from the subleasing of space or other portions of the Premises, regardless of when or where the order therefor is received, whether paid or unpaid, whether on a cash or credit basis or in consideration of any other thing of value. A "sale" shall be deemed to have been consummated for purposes hereof, and the entire amount of the sales price shall be included in Gross Receipts and deemed received at the time sales charges are assessed.

The following shall be excluded from the definition of Gross Revenues:

Losses from "bad" checks or credit card fee transactions will be the Lessee's sole responsibility and shall not be excluded from Gross Revenue. Gross Revenue shall include all such sales, revenues or receipts generated by Lessee's Subcontractors or anyone else conducting business pursuant to an arrangement with the Lessee. "Gross Revenue" shall also include any fees collected by the Lessee from retail concessions partners pursuant to a concessions facilitation partnership arrangement, in the event that Lessee's locations at the Airport are utilized to market, sell, advertise, or promote the goods and services of such partners.

Gross Revenue shall also not include (i) any sums collected for any federal, state, county and municipal sales taxes, so-called luxury taxes, use taxes, consumer excise taxes, gross receipts taxes and other similar

taxes and/or government-mandated user fees now or hereafter imposed by law upon the sale of merchandise and products or services to the extent paid by the Lessee to any duly constituted governmental/taxing authority; (ii) the portion of the sales price for all merchandise and products returned by customers and accepted for credit to the extent of the credit actually given to the customer as well as rebates, exchanges or allowances made to customers; (iii) shipping and delivery charges if there is no profit to the Lessee and such charges are merely an accommodation to customers; (iv) discounts given by the Lessee on sales of memberships; (v) proceeds from the sale of gift certificates or like vouchers until such time as the gift certificates or like vouchers have been treated as a sale pursuant to Lessee's record keeping system or have been recognized as income; (vi) the sale or transfer in bulk of the inventory of the Lessee to a purchaser of all or substantially all of Lessee's assets in a transaction not in the ordinary course of Lessee's business; and (vii) except with respect to proceeds received for business interruptions paid on a gross earnings business interruption insurance policy as provided in the definition of Gross Receipts, receipts from all other insurance proceeds received by the Lessee as a result of a loss or casualty at the Airport.

27. The words "**Initial Rent**" to mean the rent paid by the Lessee for the land and pavement of the Premises
28. The word "**Improvement(s)**" to mean those facilities that the Lessee will design and construct, or cause to be designed or constructed, on the Premises, including the main building, reflecting pool, and vehicular parking areas that are generally depicted on the attached Exhibits A, B, C and P and are further described in **Article 2.03**.
29. The acronym "**LEED**" to mean Leadership in Energy and Environmental Design.
30. The words "**Lessee**" or "**Contractor**" to mean the Proposer that received any award of a Contract from the County as a result of Solicitation RFP-01555, an independent third-party.
31. The words "**Minimum Annual Guarantee**" or "**MAG**" to mean the annual amount the Lessee shall pay as consideration for the privilege to engage in business at Miami International Airport. This annual amount may be referred to as the "**Minimum Monthly Guarantee**" or "**MMG**" when paid on a monthly basis.
32. The words "**Notice to Proceed**" to mean notification from the County addressed to "Lessee" stating the date on which the "Lessee" can begin Work.
33. The words "**Percentage Fee of Total Gross Revenue**" or "**Percentage Fee**" to mean the amount paid by the Lessee, which is determined by multiplying the total monthly Gross Revenues by the percent as further defined in the Agreement under **Article 4 – Rentals and Payments**.
34. The words "**Premise(s)**" to mean the land, legally described in Exhibits A, B, C & P, and the Improvements to be constructed thereon.
35. The word "**Proposal**" to mean the properly signed and completed written good faith commitment by the Proposer submission in response to Solicitation RFP-01555 by a Proposer for the Services, and as amended or modified through negotiations.
36. The word "**Proposer**" to mean the person, firm, entity or organization, as stated on the Submittal Form, having submitted a Proposal to Solicitation RFP-01555.
37. The words "**Project Manager**" to mean the County Mayor or the duly authorized representative designated to manage the Services.
38. The words "**Risk Management Division**" to mean a Division of Miami-Dade County, with offices in the Stephen P. Clark Center at 111 N. W. 1st Street, Miami, Florida 33128.

39. The words “**Scope of Services**” to mean Attachment A of this Agreement, which details the Work and Services to be performed by the Lessee.
40. The words “**Service(s)**” or “**Project**” to mean all matters and things that will be required to be done by the Lessee in accordance with the Scope of Services, and the terms and conditions of this Agreement.
41. The acronym “**SIDA**” to mean Security Identification Display Areas.
42. The word “**Solicitation**” to mean Request for Proposals (**RFP-10555**) document, and all associated addenda and attachments.
43. The words “**Sterile Area**” to mean portions of an airport or terminal area that provides passengers access to boarding aircraft and to which the access generally is controlled by TSA, an aircraft operator, or a foreign air carrier.
44. The word “**Subcontractor**” to mean any person, firm, entity or organization, other than the employees of the Lessee, who contracts with the Lessee to furnish labor, or labor and materials, in connection with the Services to the County, whether directly or indirectly, on behalf of the Lessee.
45. The words “**Substantial Completion**” to mean 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 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. Substantial completion shall be deemed to occur on the DBO as determined by the Department.
46. The acronym “**TSA**” to mean The Transportation Security Administration.
47. The word “**Work**” to mean all labor, materials, tools, equipment, services, methods, procedures, etc., necessary or convenient to performance 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. TERM AND PREMISES

2.01 Term: The County hereby leases to the Lessee, and the Lessee hereby leases from the County, the Premises as further described in **Article 2.03 – Premises**, hereof for the purposes and uses set forth in **Article 3 - Use of Premises** and **Article 5 - Improvements to Premises**, with the right of Lessee to construct or cause to be constructed and thereafter occupy and make use of those Improvements, structures, and facilities described in **Article 5 – Improvements to Premises**, for a lease term of twenty (20) years. Lessee acknowledges that the term of this Agreement, as it applies to the entire Premises, shall be reduced in accordance with **Article 2.06** if Lessee fails to complete construction in a timely manner or fails to make the construction minimum investment required herein.

The term, as defined in this article, shall become effective on the Effective Date of this document, as indicated on the Recitals page.

2.02 Investment: The Lessee shall make a Minimum Development Investment of fifteen million dollars (\$15,000,000) in design and construction on the Premises as described below, within thirty six (36) months of the Effective Date. Such facilities may be constructed by Lessee in the Phases described below, but Lessee shall have the option of constructing and developing the facilities in whatever order it chooses, provided that at the end of the three year period, the facilities described below are completed and have a Certificate of Occupancy or a Temporary Certificate of Occupancy issued, with Approved Improvement Costs for all such

facilities amounting to not less than fifteen million dollars (\$15,000,000) as determined under **Article 5.09**. If Lessee fails to make the minimum investments in the total amount of fifteen million dollars (\$15,000,000) within the three year period, or fails to construct the facilities within such three year period, Lessor shall have the remedies set forth in **Article 2.06** below.

2.03 Premises: The Premises leased herein are located in Building 874 in the Northeast Area of Miami International Airport, and are more particularly described as follows and as shown on Exhibits A dated 07/03/2019, B dated 07/01/2019, C dated 07/16/2019 and P dated 09/01/2020- attached hereto and made a part hereof "Premises":

Building 874

Floor 1

Exhibit A - ID # 2874101 18,113 Square Feet

Courtyard Floor 1

Exhibit A - ID # 27874130 2,816 Square Feet

Floor 2

Exhibit B - ID # 2874202 13,186 Square Feet

Vehicular Pavement – Exhibit P

ID # 25-12F11 21,902 Square Feet

ID # 25-12F10 975 Square Feet

ID # 25-12F16 1,094 Square Feet

Landscaped areas – Exhibit P

ID # 27-12F19 196 Square Feet

ID # 27-12F08 181 Square Feet

ID # 27-12F18 17,442 Square Feet

Landscaped area/Reflecting Pool

Exhibit P - ID # 27-12F17 7,718 Square Feet

Land under Building

Exhibit P - ID # 21-12F05 20,928 Square Feet

2.04 Suitability of Premises: The Lessee acknowledges that (1) the Lessor has made no representations as to the Premises of the suitability of the Premises for the purposes of the Lessee, (b) the Premises are suitable for the Lessee's proposed use and (c) that the Lessor has no obligation to perform or cause to be performed any maintenance, repairs, renovations, clean-ups, painting, or the like of the existing facilities on the leased Premises which are leased in an "as-is" condition, except to the extent of Lessor's responsibilities for environmental conditions under **Article 10**, (d) Lessee has made whatever site inspections it deems necessary so as to be apprised of the conditions of the Premises, both above ground and below ground, and has made its own determination that the Premises are suitable for its intended use (e) Lessee has reviewed all documents applicable to the Premises and the adjacent areas, and (f) Lessee has otherwise satisfied itself that the conditions of the Premises, and utilities in their current state are satisfactory to the Lessee. The Lessee's obligation under this Agreement, such as in **Article 8.01(B)** (Permits and Licenses), to obtain all land use, construction and operating permits and approvals required of the Lessee at the Lessee's sole cost and expense, shall not require the Lessor to take any action or perform any tasks within the Premises to enable the Lessee to obtain such permits and approvals, including, but not limited to, certificates of occupancy, which shall remain the Lessee's exclusive obligation to take or perform in order to obtain such permits and approvals. The Lessee further acknowledges that, by executing this Lease, the Lessee at its own cost, risk, and expense must make

the necessary investments and all Improvements to the Premises, including all infrastructure Improvements and utilities services necessary for Lessee's construction and use of the Premises, to make the Premises suitable for the Lessee's use and to satisfy the County's building, life, safety, fire, historical designation and occupancy requirements, and that the Lessor shall have no obligation to Lessee to compensate or reimburse Lessee for such cost, risk, expense, investment, and Improvements.

2.05 Title to Improvements; Standards of Construction: Unless Lessee's financing documents require otherwise, Lessee shall have the option of (a) placing in the name of the County all Improvements installed or constructed by Lessee upon the Development Phase of the Premises, free and clear of all liens and encumbrances, except for any financial interests or liens specifically approved by County under the loan documents as provided under **Article 12.04(B)** (Lessor Approval of Financing Documents), or (b) retaining title to such Improvements in Lessee's name. For any Improvement whose title is to be placed in County's name, Lessee shall comply with the more stringent design and construction standards set forth by the Aviation Department from time to time to assure that the Improvement will remain in satisfactory condition during the term of this Lease and will have a reasonable useful life following termination of this Agreement. For any improvement whose title is to remain in Lessee's name, Lessee shall be entitled to use modified standards for its design and construction, as approved by the Department, but must nonetheless comply with all applicable building, historical designation, fire, and life/safety codes, comply with the Department's requirements under **Article 5.14 - Standards of Construction** as to the useful life of the Improvement, and must remove any such Improvement upon termination of this Lease for any cause, unless the Aviation Department directs otherwise as to such Improvement.

2.06 Development Schedule and Failure to Develop: Lessor has granted this Agreement for a term as described in **Article 2.01** of this Agreement, on the basis of Lessee's assurance that Lessee will make not less than fifteen million dollars (\$15,000,000) of Improvements and facilities on the Premises no later than thirty-six (36) months from the Effective Date as noted on the Recitals page of this Agreement. In addition, if Lessee fails to obtain a permit to begin construction within twelve (12) months from the Effective Date or complete the construction within thirty-six (36) months from the Effective Date, the Lessor may terminate this Lease. If Lessee fails to make the minimum investment of:

Fifteen million dollars (\$15,000,000) in the construction of the indicated Improvements and obtain a CO or TCO for Improvements and facilities within thirty-six (36) months of the Effective Date, Lessor shall be entitled to take any or all of the following actions at its discretion in consultation with Lessee:

- (a) Reduce the length of the Term and/or termination of this Agreement
- (b) Begin charging fair market value rent for the Improvements on the Development Phase premises (building and associated vehicular parking) as of the date the Term of the Agreement would expire under **Article 2.06(a)** above.
- (c) Terminate the agreement for expenditure less than or equal to 50% of the stated investment amount.

2.07 Review by FAA: This Agreement is subject to the review of the Federal Aviation Administration (FAA), and shall not be effective until completion of such FAA review and the parties' acceptance of any changes hereto required or necessary as a result of the FAA review. If the FAA indicates that any portion of this Agreement is not consistent with the requirements of federal law or grant assurances, or else raises an objection to any portion of this Agreement, the Department shall have the right in its sole discretion to either declare this Agreement to be null and void or else to change the terms of this Agreement so as to overcome the reasons for the FAA's statements or objections and submit to the Lessee this Agreement as so changed. In the latter event, Lessee shall respond to such proposed changes promptly, and in any case not later than sixty (60) days from the date

of submission by the Department. If the Lessee accepts such changes, the parties will execute a new Agreement as changed, subject again to FAA review. At any time following the FAA's initial review of this Agreement in which the FAA made statements or else raised concerns about the terms of the Agreement, the Department may determine that it is in the best interests of the County to lease the Premises to another party on terms that would be acceptable to the FAA, and upon such determination, whatever rights Lessee may have hereunder shall cease upon Lessee's receipt of such statement of determination. No compensation of any sort shall be payable to Lessee in the event that (a) the Department declares this Agreement to be null and void, (b) the Department makes a determination to lease the Premises to another party, or (c) the parties are unable to agree to the terms of a revised Agreement that will overcome the concerns raised by the FAA.

2.08 Early Termination for Airport Purposes:

(a) At any time during the term of this Agreement, if the Premises leased and developed hereunder are required for Airport Development Purposes or any other purpose determined by the Board of County Commissioners, the County shall have the right to terminate this Agreement as to all or any portion of the Premises upon notice to the Lessee as provided herein.

(b) In the event such notice is given **prior** to substantial completion of construction of any improvement to be terminated under the notice, the notice shall specify the Effective date of termination, which may be immediately upon Lessee's receipt of the notice or at such other time specified in the notice. Lessor shall have the option of requiring Lessee to complete construction of the improvement and to obtain a Certificate of Occupancy therefor or else requiring the Lessee to cease all construction activity as of the date set forth in the notice. Lessee shall submit to Lessor all construction costs incurred by Lessee as of the Effective date of termination. The determination of costs eligible for reimbursement to Lessee shall be based on the calculation of Approved Improvement Costs as of the Effective Date of the notice as determined under **Article 5.09**. Within sixty (60) days' of Lessor's acceptance of the Approved Improvement Costs, Lessor shall pay Lessee the amount of the Approved Improvement Costs.

(c) In the event such notice is given **after** completion of any improvement, the notice shall provide Lessee with a reasonable period of time to vacate the improvement, which shall be not less than sixty (60) days after Lessee's receipt of the notice. Lessor shall be responsible for paying to Lessee the unamortized value of the approved audit of the Improvement costs. Amortization shall be calculated assuming a straight-line declining basis over the full Term of the lease.

ARTICLE 3. USE OF PREMISES

3.01 General Privileges, Uses and Rights:

The Lessor hereby grants to the Lessee the following general privileges, uses and rights, all of which shall be subject to the terms, conditions and covenants hereinafter set forth or otherwise applicable to Lessee's use of any portion of the Airport, and all of which shall be non-exclusive on the Airport.

(A) The general use, in common with others, of all public Airport facilities and Improvements, which are now or may hereafter be connected with or appurtenant to said Airport, to be used by the Lessee in connection with its operations hereunder. For the purpose of this Agreement, "public Airport facilities" shall include all public non-airfield areas, including, but not limited to, automobile parking areas, roadways, sidewalks, or other public facilities appurtenant to said Airport, not specifically leased hereunder or under the contractual control of others. Nothing contained herein shall in any way limit the right of the County in its sole discretion to abandon, discontinue or demolish any of the public Airport facilities described herein.

(B) The right of ingress to and egress from the leased Premises over and across public roadways serving the Airport for the Lessee, its agents and employees, patrons and invitees, suppliers of service and furnishers of material. Said right shall be subject to such laws, rules, regulations and orders and fees and charges as now or may hereafter have application at the Airport.

Nothing herein contained shall be construed to grant to the Lessee the right to use any other space or area improved or unimproved which is leased to a third party, or which the County has not specifically leased to the Lessee.

3.02 Use of Premises: The Lessee shall use the Premises leased herein, as administrative offices and facilities for the security screening, processing and transfer of VIP passengers to and from commercial aircraft in accordance with Transportation Security Administration (TSA) and Federal Aviation Administration (FAA) guidelines. The Lessee may also provide goods and services commonly available in a commercial airport terminal, such as food & beverage and ground transportation. Use of Federal facilities and/or facilities under lease to any other entity, including but not limited to any airline, may require Lessee to enter into additional agreements with such entity; Lessee shall be solely responsible for the terms and costs of such other agreements.

3.03 Concession Services: The Lessor reserves the right to establish fees and require permits for the operation of concessions, restaurants, car rentals, taxicab and other ground transportation services and other commercial activities at the Airport.

3.04 Lessee's Rights Not Exclusive: Notwithstanding anything herein contained that may be, or that may appear to be, to the contrary, it is expressly understood and agreed that the rights granted under this agreement are non-exclusive and Lessor reserves the right to grant similar privileges and similar leases to other lessees on other parts of the airport and to take any and all actions (including the leasing of property for any lawful purpose) that Lessor is permitted to take under federal, state, and local law pertaining to the airport on which the Premises herein are located.

3.05 Substitution of Third-Party Brand Concepts: Substitution of third-party brand concept(s) will not be permitted, without prior written approval from the County.

ARTICLE 4. RENTALS AND PAYMENTS

4.01 Initial Rent: Lessee shall pay an Initial Rent beginning on the Effective Date of the Agreement and up to the DBO. The Initial Rent, as defined above, shall be determined by multiplying the total building and courtyard leasable square footage, as defined above, multiplied times the presently appraised Zone 1 rate per square foot of \$2.50 a square foot, as of October 1, 2022, subject to adjustments annually. The Lessee shall additionally pay the appraised Zone 1 rate per square foot of the landscape/reflecting pool area, and, either, the appraised Zone 1 rate per square foot of all assigned parking lot spaces to be used by the Lessee, or, \$720 per parking lot space, both subject to annual adjustments, whichever total is greater.

4.02 Partial Monthly Rent plus Partial Initial Rent Period: Lessee shall pay monthly 50% of the Monthly Rent, as per **Sub-Article 4.03**, or 50% of the Initial Rent, as per **Sub-Article 4.01**, whichever is greater, beginning on the first month from the DBO up to the last month of the second year of the DBO.

4.03 Monthly Rent: In addition to the Initial Rent, Lessee shall pay a monthly rental for the lease of the Premises, beginning on the first month of the third year from the Date of Beneficial Occupancy. The Monthly Rent shall consist of either the Minimum Annual Guarantee (MAG) or Percentage of Gross Revenues, whichever is greater.

The MAG agreed upon shall be six hundred thousand Dollars (\$600,000) payable in equal monthly installments of fifty thousand Dollars (\$50,000) as the Minimum Monthly Guarantee (MMG) subject to this Article and due if greater than the percentage of Gross Revenues (7.5%) for any given month. If the percentage of Gross Revenues for any given month is greater than the Minimum Monthly Guarantee (MMG) that will be the Monthly Rent.

The MAG is subject to the applicable CPI- U on an annual basis, and which may be no higher than 5% in any index year but not less than zero) to Miami-Dade County. Said rental commencing as described above shall be payable monthly in U.S. funds, plus applicable state sales tax, as required by law, on the first day of each and every month as shown below and without billing, at the offices of the Department as set forth in **Article 4.07** (Method for Payment).

Sales Taxes and Other County Charges: Lessee shall pay to the Lessor, in addition to the foregoing rents, all applicable State sales taxes as well as all federal, state or local taxes arising out of Lessee's use of the Premises, and all other charges imposed by the County on the Lessee's use of the Premises provided that such tenant charges are applicable to all similarly-situated tenants.

4.04 Security Deposit: Unless previously deposited with the County, within three days after the date this Agreement is fully executed, Lessee will deposit with the County an amount equal to **two times** the required total monthly ground rent as determined pursuant to **Article 4.01** 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 Department, in its sole discretion, may authorize the Lessee to 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, or because the Department has reason to believe, based on published reports, that the Lessee's future ability to pay such rentals, fees and charges, on a timely basis, is in jeopardy.

4.05 Common Use Service Charge: 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 dumpsters provided by the Department pursuant to **Article 6.02** (Removal of Trash) and janitorial services, 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 services charges shall be adjusted and billed retroactively from time to time based on changes in usages and in costs to the County.

4.06 Rental Rate Review: Intentionally deleted.

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

4.08 Method of Payment: The Lessee shall pay, by mail, all rentals, fees and charges required by this Agreement to the following:

By mail:

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

By hand delivery to the offices of the Department during normal working hours:

Miami-Dade County Aviation Department
4200 N.W. 36 Street
Miami, Florida 33166

By electronic funds transfer for immediate credit via wire transfer to:

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

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

By electronic funds transfer for next day credit via the ACH (Automatic Clearing House) to:

Bank: Bank of America
Miami, Florida
ABA Number: 063100277
Account Number: Miami-Dade Aviation Department
Bank Account Number: XXXXXXXX (to be provided)

Note: Transaction must include the Aviation Department's invoice number(s).

4.09 Late Payment Charge: In the event the Lessee fails to make any payments required to be paid under the provisions of this Lease, within ten (10) days after the same shall become due, interest shall be due and payable on the unpaid payments in the amount of one and one-half percent (1.5%) per month against the delinquent payment from the original due date until the Lessor actually receives the payment. Such interest rate shall apply unless the Board of County Commissioners has established a different rate or a specific provision of federal or state law requires otherwise. The right of the Lessor 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 Lessor to enforce other provisions herein, including the termination of this Agreement, and to pursue other remedies provided by law.

4.10 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, THIRTYDOLLARS, if the face value of the dishonored check or draft is more than \$50.00 and less than \$300.00, or FORTYDOLLARS, 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.

4.11 Utilities: Unless the Premises are separately metered and billed directly to the Lessee by the utility company or included in the rental rates and noted in **Article 4.01**, the Lessee hereby agrees to pay monthly, upon billing by the Department, for utility consumption in the Premises. This monthly charge will be based on a survey conducted by or on behalf of the Department of the utility consumption by the Lessee and/or current nondiscriminatory rates charged others at the Airport. This monthly charge may also be adjusted and billed retroactively, from time to time, based on changes in consumption and rates. The Lessee shall pay for all utilities used by it. In the event the Premises are metered and billed to the Department, the Lessee shall pay for utility consumption based on the metered charge. The County shall have no obligation to provide utilities to the Premises other than those existing as of the Effective Date of this Agreement.

4.12 Other Fees and Charges: The Lessee acknowledges that the Board of County Commissioners has or may 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, 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, in writing, report its uses of applicable facilities, equipment and services and simultaneously pay the applicable fees and charges at such frequency and in such manner as may be prescribed by the Department. Notwithstanding the absence of any identification in this Agreement of particular charges to be paid by Lessee for its use of the Premises and the Airport, Lessee agrees to pay whatever charges are imposed by the County on all tenants and users of the Airport.

Third parties providing services to Lessee at the premises will be required to be permitted with MDAD, and pay MDAD seven percent (7%) of the gross revenues such entity receives from Lessee for services provided on the premises.

ARTICLE 5. IMPROVEMENTS TO PREMISES

5.01 Improvements:

(A) As authorized pursuant to Chapter 125.012(24), Florida Statutes, subject to the provisions of this Article, the Lessee, for its convenience, shall, design, construct and pay for such Improvements to the Premises as shall be approved by the Lessor (as hereinafter provided), as shall be necessary to make the Premises suitable for Lessee's use and occupancy for the purposes and uses described in **Article 3** ("Use of Premises") hereof and as shown on attached Exhibit(s) herein, in accordance with all applicable FAA and Departmental requirements and all County Historical Board, building, fire and environmental codes and the Americans with Disabilities Act.

(B) The Lessee hereby agrees to invest not less than fifteen million (\$15,000-) in accordance with **Article 2.02** (Investment) to design, construct and renovate infrastructure on the Premises to provide services and

amenities for VIP passenger processing. Expenditures that satisfy such minimum investment requirement shall be limited to actual expenditures made by Lessee prior to three (3) years after the Effective Date that relate directly to the design and construction of the Improvements and infrastructure as reasonably determined by the Lessor under **Article 5.09**, but specifically excluding (i) costs associated with the design, purchase and installation of personal property, and (ii) accounting and legal fees.

Additionally, Approved Improvements Costs shall include the actual expenditures as certified under the construction audit for architectural and engineering design, construction, site development, required bonds, construction and liability insurance, construction financing fees and interest, building permit, impact and concurrency fees, and the construction audit, but shall exclude the costs of any other consultant (unless otherwise approved in advance by the County), accountant fees, permanent financing fees or charges, legal fees whether arising out of construction claims or lawsuits or any other matter, interior decorations (other than standard County approved finishes) special finishes, wall tile or other special wall finishes and coverings, construction photographs, special external and internal lighting and signage, and furniture and other personal property of the Lessee. In the event of any questions as to whether certain costs are to be included in the Approved Improvements Costs, the County through its Consulting Engineers shall make a determination and its decision shall be final.

(C) The Lessee shall bear and be solely responsible for all costs arising out of the Improvements, including, but not limited to, the following:

- (1) land use approvals, development fees, concurrency fees, and permit fees for the design, construction, and subsequent use of the Improvements and infrastructure;
- (2) design and construction of the Improvements and infrastructure, including but not limited to utilities, roads, parking lots and landscaping Lessee will be required to provide its own separate electrical and water and sewer service wherever possible.
- (3) financing, construction bonding and insurance, building permits, impact and concurrency fees, utility installations and/or hook-ups or other infrastructure, as may be required to make the Premises suitable for the use of the Improvements;
- (4) design and construction of the Improvements, necessary to satisfy the historic preservation requirements;
- (5) construction audits (as may be required elsewhere herein);
- (6) consultants, accountants, financing charges, legal fees, furnishings, equipment, and other personal property of the Lessee; and
- (6) All other direct or indirect costs associated with the approvals, design, construction, and financing of the Improvements, and their subsequent use.

Lessee acknowledges that the Lessor shall have no maintenance responsibility for any of the Improvements, utilities and infrastructure to be constructed by Lessee.

5.02 Design of Improvements:

(A) Prior to the selection of any design consultant and/or construction professional, Lessor and Lessee shall hold a preliminary meeting, coordinated through the Lessor's Facilities Project Manager, to obtain conceptual approval of the planned improvements. Lessor's Facilities Project Manager shall also provide guidance on project design, permitting and project closeout processes, Small Business Development (SBD) and Arts in Public Places (AIPP) review, and the project's staff selection, including but not limited to, architect/engineer, consultants and contractors (prime & subs).

(B) Prior to the commencement of any construction of an Improvement on the Premises, Lessor and Lessee shall hold a pre-design meeting to be coordinated through the Lessor's Facilities Project Manager with the

participation from all parties deemed by Lessor to be necessary for such meeting, for discussions regarding utilities, grading drainage, airside, security, existing as-built drawings, compliance with the Master Plan, compliance with historic preservation and the terms of the Agreement and any other related item(s). Lessee acknowledges its obligation to assure that FAA approval is obtained, even though MDAD must be involved in such process, and that such FAA approval is communicated to Lessee in writing prior to the commencement of construction of each Improvement. The Lessee and its architect/engineer have the responsibility to insure that the project design shall be in accordance with all applicable laws, codes, regulations, and other requirements of County, State and/or Federal authorities having jurisdiction over the construction of the Improvements by law or by contract with the County, including all then current requirements of the County as they relate to Tenant Airport Construction, reimbursable/non-reimbursable projects (TAC-R/TAC-N projects). The Lessee shall be responsible for obtaining and confirming as-built drawings and information pertaining to the design of the facilities.

(C) Lessee acknowledges that before the County's Building Department may issue any permit for an Improvement on County-owned property, the Aviation Department must issue a "Letter of Concurrence" that constitutes the owner's authority for the Lessee to apply for and obtain the building permit. The Department shall not be required to issue the Letter of Concurrence until such time as Lessee has complied with all obligations in this Agreement as to the design and construction of the Improvement, including compliance with the Aviation Department's TAC-N procedures, submission of approved Contract Documents as that term is defined in (c)(i) below, and compliance with the regulatory provisions of the County's other departments having jurisdiction over the construction, such as, but not limited to, the Fire Department, The Historic Preservation Board and the Department of Environmental Resources Management.

(D) As described in subsection (1) below, the Lessee shall submit to the Facilities Division of the Department the Contract Documents for each Improvement for the Department's review, modifications, and approval. In no event shall the Department's approval hereunder be unreasonably withheld, conditioned or delayed. The Department's failure to submit modifications within fourteen (14) business days from the date the complete Contract Documents are submitted by the Lessee to the Department shall cause the Development time schedule required herein to be extended for a period equal to the time taken by Lessor after the 14th day to submit modifications, provided, however, that if the Department has requested changes on such Contract Documents, Lessee shall not go forward with the project until it has incorporated such changes in its Contract Documents and resubmitted them to the Department for confirmation that the changes in the Contract Documents have been made.

(1) Unless Lessor requires submission of Plans and Specifications at other percentages of their completion, the Lessee shall submit to the Department three (3 sets) of the Contract Documents consisting of: i.) 100% complete Plans and Specifications; ii.) a project schedule based upon calendar days without dates for the design, bid and construction to be attached as "Exhibit X" hereto, hereinafter referred to as "Lessee's Project Schedule"; and iii) cost estimates for the Improvements, prepared by an architect/engineer registered in the State of Florida (the "Contract Documents"). The Department may from time to time request that other documents be submitted by Lessee as part of the Contract Documents for a particular Improvement, and Lessee shall comply with such request. Lessee acknowledges that failure to comply with Lessee's obligations to submit complete Contract Documents may delay the Department's review of the Contract Documents, which may cause the Lessee to miss other design or construction deadlines contained herein or desired by Lessee. The Lessee shall continue to be held responsible for meeting the deadlines contained herein and shall be subject to the

Department's remedies specified herein for not meeting said deadlines. The Department shall in no way be held responsible for delays resulting from the failure of the Lessee to meet all submittal requirements contained herein.

- (2) Upon submission of the 100% complete Contract Documents to the Department for design review; the Department shall also review the plans for compliance with the following:
 - (a) Conformance with the Airport Master Plan, Comprehensive Master Development Plan (CDMP), and Airport Layout Plan (ALP), and has the approval of the FAA
 - (b) Conformance with requirements of the Historic Preservation Board
 - (c) Compliance with environmental requirements, utilities master plan, and storm water master plan and permitting requirements.
- (3) The Department shall comment in writing on the Contract Documents within fourteen (14) calendar days of such submission. All comments by the Department shall be incorporated into the Contract Documents unless 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. The determination of the Department at this time shall be final and binding upon the Lessee and accordingly shall be incorporated in the revised plan for final resubmittal. After the Department reviews the Plans and Specifications as submitted by the Lessee the Lessee may not make a material change in the Plans and Specification or their scope without the Department's further review, which shall not be unreasonably withheld or delayed. The Department's review for Lessee's design and compliance with all applicable codes and regulations does not constitute certification or warranty by the Department (a) as to the quality of the Contract Documents prepared by the Lessee's architect/engineer(s), (b) that the Contract Documents are free of design errors or omissions, or (c) that they are in compliance with applicable laws, codes, rules or regulations of the authorities having jurisdiction over the construction of the Improvements. Such review shall not be unreasonably withheld or delayed by the Department.
 - (a) If the Lessee fails to provide the complete Contract Documents for review to the Department or delays the start of the construction by more than 60 calendar days from the agreed upon Project Schedule, any reviews theretofore provided by the Department will become null and void and will require Lessee's re-submission of the documents for Lessor's review.

5.03 Submission of Certain Documents and Fees Prior to Commencement of Construction: At least ten (10) days prior to the commencing construction, Lessee shall comply with the following requirements:

- (A) Lessee shall submit the following to the Department's Facilities Project Manager, who will be assigned to this Agreement:
 - (1) A copy of the building permit(s);
 - (2) All construction bonds including performance, payment, contract completion bonds or their substitute and Insurance Certificates required under **Article 5.07** (Construction Bonds and Insurance Required), and **Article 13**. (Insurance).
 - (3) The Environmental Insurance Policy required under **Article 13.01(D)**; and
 - (4) Consents from Lessee's general contractor and architect to the assignment of Lessee's rights under its contracts with such parties to the County.
- (B) Unless the Lessor directs otherwise, Lessee shall submit the following documents or payments to the Department's Finance Manager:

- (1) A check made payable to the Department in the amount that represents one percent (1%) of the budgeted construction hard costs for reimbursement of Building Department fees pursuant to **Article 5.15** together with a copy of the construction contract awarded to the lowest bidder or as negotiated. If the final construction hard costs are higher or lower than the budgeted amount, the difference shall be multiplied by 1% and shall either be paid by Lessee to the Department if the resulting number is a positive amount in accordance with the time frame established under **Article 5** herein or refunded to the Lessee by the Department if the resulting number is negative. Such fee shall be non-refundable. In addition, if Lessee obtains a building permit and allows the permit to expire prior to completion of the Improvements then Lessee shall be required to pay an additional one-half of one percent ($\frac{1}{2}$ of 1%) of the budgeted construction hard costs as administrative fees for plans processing reviews required by Building Department staff to issue a building permit. Such fee shall be non-refundable and shall be payable in addition to the 1% fee required pursuant to this **Article 5.03(B)(1)**; and
- (2) Copy of Lessee Audit pursuant to **Article 10.06**.
- (C) Lessee shall submit the following to the Department's Assistant Director of Business Retention and Development
- (1) Copy of Lessee Financing Documents pursuant to **Article 12.04 (B)**;
- (2) any other documents
- (D) Lessee shall not be authorized to begin construction until the above-listed items have been submitted to the Department. If Lessee begins construction prior to submission of the Documents and Fees in the required form and amounts, satisfactory to the Department, as required pursuant to this **Article 5.03**, the Department shall be authorized to halt Lessee's construction activities without any liability to the County until such time as Lessee satisfies this requirement. In such event, no extensions of time shall be granted by the Department to Lessee. During construction, the Department's Project Manager or a designee will be permitted by Lessee to observe all aspects of the progress of the work.

5.04 Construction of Improvements: Promptly following Lessor's approval of the Contract Documents in accordance with **Article 5.02** (Design of Improvements), but not more than twelve (12) months thereafter, the Lessee shall finalize and enter into a contract(s) for the construction of the Improvements, in accordance with the terms and conditions of the approved Contract Documents. The Lessee shall cause the construction of the Improvements to be completed within the time period specified in the Contract Documents, excluding any delays not within Lessee's reasonable control, unless an extension of such period is approved, in writing, by the Department, but notwithstanding any periods of time set forth in the Contract Documents and except for any extension of time granted by the Department, no later than thirty six (36) months following the Effective Date. In no event shall any approval hereunder be unreasonably withheld, conditioned or delayed.

5.05 Failure to Complete on a Timely Basis: The Lessee shall complete construction of each Improvement, as evidenced by a Certificate or Temporary Certificate of Occupancy, not later than the time periods set forth in the Contract Documents and in any event not later than the time periods set forth in **Article 2.02** (Investment), 2.06, and **Article 5.04** (Construction of Improvements), unless an extension is granted, subject, however, to any delays caused by casualty, Act of God or other cause beyond the control of the Lessee.

In the event the Lessee fails to comply with the time requirements for the design and construction of the Improvements, as specified in **Articles 2.02** (Investment), **2.06 (Development Schedule and Failure to Develop)**, **5.02** (Design of Improvements), **Article 5.04** (Construction of Improvements) and this **5.05** (Failure to Complete on a Timely Basis), unless Lessee submits evidence that any delay is outside of Lessee's reasonable control or such time requirements are extended by the Department, in writing, based on a showing

of good faith effort by the Lessee, the County shall have the right to terminate this Agreement on sixty (60) days' notice or else take whatever appropriate legal steps may be available to protect the County's interests.

5.06 Certain Construction Contract Terms: All contracts entered into by the Lessee for the construction of the Improvements shall require completion of the Improvements within a specified time period following the execution of said contract(s) and shall contain, unless otherwise authorized by the Department, reasonable provisions for the payment of actual or liquidated damages in the event Lessee's contractor fails to complete the construction on time. The Lessee agrees that it will use its best efforts to take all necessary action available under such construction contract to enforce the timely completion of the work covered thereby. Further, as a standard construction practice, all such contracts shall contain provisions requiring the retention of 10% of contractor billings or such lesser percentage amount as may be approved by the Department. All contracts shall provide that the County is a third-party beneficiary thereof.

5.07 Construction Bonds and Insurance Required: All contracts for the construction of any Improvements shall require that 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 and suppliers. The required bonds shall be written by or through, and shall be countersigned by, a licensed Florida agent of the surety insurer in accordance with Florida Statutes.
- (B) A contract completion bond from the Lessee to the County as security for the completion of and payment for the construction of the Improvements free and clear of all claims of any nature whatsoever in the full amount of the cost of the contracts for construction of the Approved Improvements. In lieu of a contract completion bond, the County may accept substitute documents that provide the Aviation Department with assurance that the Lessee will complete the Improvements. If Lessee obtains a performance and payment bond that names the Lessee and its general contractor as joint obligees, County will accept such bond in satisfaction of the requirement for a contract completion bond, provided such bond is in a form reasonably acceptable to the County.
- (C) Completed Value Builders Risk and/or Installation Floater, issued in the name of the Lessee's contractor, the Lessee, and the County as their interest may appear, in amount(s) not less than 100% of the insurable value of the structural Improvements, covering perils on an "All Risks" basis including windstorm. Policy(s) must clearly indicate that underground structures (if applicable) and materials being installed are covered.
- (D) Public Liability Insurance, as specified in **Article 13** (Insurance) herein.
- (E) Workers Compensation as required by Florida Statutes.
- (F) Automobile Liability Insurance as specified in **Article 13** (Insurance) herein.
- (G) Pollution and Remediation Liability Insurance as specified in **Article 13** (Insurance) herein.
- (H) Business Interruption Insurance as specified in **Article 13** (Insurance) herein.

The Lessee shall furnish certificates to the Department and all required insurance certificates to the County for approval, as may be required by the County Risk Management Division. These 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.

5.08 Construction Completion Documents: Within one hundred eighty (180) days following the completion of construction of any Improvement for which a Certificate or Temporary Certificate of Occupancy is issued, the Lessee shall furnish the following documents to the Department:

- (A) Documents showing that the Improvement has met the requirements of the final inspection and that all permits have been closed out;
- (B) Documents that Lessee has obtained lien waivers from the general contractor and all parties designated by the Department, along with any final affidavit of the general contractor required by Chapter 713, Florida Statutes;
- (C) Certificate of Occupancy or Temporary Certificate of Occupancy for the Improvement;
- (D) Certification from the Lessee's architect that the Improvement has been completed in conformance with the approved Plans and Specification as well as all permits and applicable governmental requirements;
- (E) At least one copy of an as-built survey of the area covered by the Improvement;
- (F) Two (2) complete sets of as-built construction drawings and two (2) AutoCAD files of the as-built construction drawings in a compact disk format or other format designated by the Department, including all pertinent shop and working drawings and such other as-built drawings as the Department may reasonably require; and
- (G) Copies of all releases of contractor claims and liens.

5.09 Final Improvement Costs:

(A) For purposes of verifying Lessee's expenditure of not less than FIFTEEN-MILLION DOLLARS (\$15,000,000) in design and construction costs of the Improvements, within ninety (90) days of completion of construction of the Improvements, the Lessee shall submit to the Finance Division of the Department, a certified audit of the monies actually expended in the design and construction of the Improvements, including all infrastructure and utility facilities (collectively in this Agreement, unless specifically stated otherwise, the "Improvements"), in accordance with the Contract Documents described above in **Article 5.02 (D)**, prepared by an independent certified public accounting firm ("Auditor"), that is approved in advance by the Department, which approval shall not be unreasonably withheld, conditioned or delayed. The audit report shall provide a detailed list of all expenditures in the design and construction costs of the Improvements on the Premises. Eligible costs for such Improvements are those costs for project management, any design costs paid by the Lessee which are not attributable to items considered to be non-reimbursable obligations of the Lessee, and construction in accordance with the Contract Documents and any changes thereto requested by the Lessee and approved by the Department, including the costs of required bonds and construction insurance ("Approved Improvements Costs"). The Lessee shall be responsible for providing documentation of the Improvements on the Premises, whereby the Auditor can validate all costs incurred on the premises and render an opinion in the audit report. The Department's failure to disapprove the audit submitted by Lessee as required in this **Article 5.09** within one hundred eighty (180) days from the date of submission shall constitute an unconditional approval. In the event of any disputes between the Department and the Lessee as to whether certain costs are to be included in Approved Improvements Costs, said dispute(s) shall be submitted to the Consulting Engineers under the County's Trust Agreement, as defined in **Article 20.01** (Incorporation of Trust Agreement by Reference) hereof. The decision of said Consulting Engineers shall be final and binding upon the parties hereto.

5.10 Temporary Structures: Trailers or temporary structures used for construction purposes but not for business purposes shall be allowed on the leased Premises during the period of construction of the Improvements subject to all required permitting. All trailers or temporary structures must comply with the Florida Building Code and must be removed prior to or upon the ending of construction. Copies of the building permits shall be submitted to the Department's Facilities Project Manager within ten (10) calendar days of issuance to Lessee.

5.11 Review of Construction: During the construction of the Improvements, the Department or its designee shall have the right, but not the obligation, to periodically review the construction and to enter the Premises at reasonable times to inspect the construction for the purpose of ensuring conformity with the Contract Documents and any changes thereto requested by the Lessee and approved by the Department. Failure of the Department to make such review or inspection shall not impose any liability on the Department or the County, nor constitute Lessor's acceptance of the Improvement as being in accordance with the Contract Documents and Lessee's obligations hereunder.

5.12 Tenant Airport Construction Contracts: From time to time, the Lessee and the County through its County Manager shall be entitled to enter into separate Tenant Airport Construction, reimbursable ("TAC-R") or non-reimbursable contracts (TAC-N) for the purpose of enabling Lessee to construct facilities or improvements on the Premises or on the Airport deemed necessary or appropriate for Lessee's construction and use of its Improvements on the Premises. Such contracts shall comply with the Department's TAC-R or TAC-N contract requirements, as such requirements may be amended by the Department from time to time, and Lessee shall comply with all County requirements for such construction as may be applicable at the time such Construction is commenced, including requirements as to wage rates, small business utilization, employment opportunities, and other requirements; prior to commencing any TAC-R or TAC-N construction Lessee shall notify the County's Small Business Development, or its successor, of Lessee's intended construction.

5.13 Assignment of Contract Documents to Lessor and Assumption of Construction of Improvements by County: In the event Lessee fails to perform its material obligations under **Article 5** of this Agreement, the Lessor may provide Lessee written notice of such default specifying those matters constituting such default. Material obligations shall include, but not be limited to, compliance with the Contract Documents and compliance with any regulatory requirement. If such default continues for a period of thirty (30) days following Lessee's receipt of the notice or Lessee fails to diligently commence to cure such default within such thirty (30) day period if such default is of a nature that it cannot be cured within thirty (30) days, the Lessor may either terminate this Agreement or else terminate Lessee's rights with respect to the construction of the Improvements or portions thereof and thereafter assume the obligations of Lessee under this **Article 5** of the Agreement under an assignment by Lessee to Lessor of relevant contracts and permits, and complete the construction of the Improvements or portions thereof with the benefit of all bonds and other forms of security provided by Lessee hereunder. Lessor's use of any such bonds or security shall not diminish Lessee's liability to Lessor hereunder for failure to complete the Improvements in accordance with Lessee's obligations hereunder.

5.14 Standards of Construction; Removal of Improvements at Termination. The Lessee may construct all Improvements to the standards established by the Lessor from time to time or shall be entitled to use modified standards for its design and construction of Improvements that are to remain in Lessee's name.

5.15 Compliance with Responsible Wages and Benefits for County Construction Contracts (Implementing Order 3-24): Lessee is aware of the policy of Miami-Dade County that in all leases of County-owned land which provide for privately funded construction improvements thereon whose construction costs are greater than or equal to \$5 million dollars, or construction improvements where any portion of which are financed by any federal, state or local governmental entity or by bonds issued by such entities, including the Industrial Development Authority (IDA), the Lessee shall include the requirements of the Responsible Wages Ordinance codified as Section 2-11.16 of the Miami-Dade County Code, as well as Implementing Order #3-24 in all

applicable construction contracts. Lessee agrees to comply with all applicable provisions of such ordinance and implementing order.

5.16 Other Programs: To the extent required by the current terms of the County's Community Business Enterprise (CBE) Program applicable to architects and engineers and the Community Small Business Enterprise (CSBE) Program for construction activities as further described in sub-article 5.16A below, as well as the Living Wage Ordinance under Section 2-8.9, the Art in Public Places (AIPP) Program under Section 2-11.15 (sub-article 5.16B), the ordinance referred to as the "Little Davis-Bacon Ordinance" under Section 2-11.16, and any other program of the County made applicable to the Lessee's activities hereunder, as such programs, ordinances, or code provisions may be amended from time to time, Lessee agrees to comply with such applicable provisions as well as any Implementing Orders and other directives issued by the County relating to such Programs.

A. Selecting Contractors and Awarding Contracts: The Lessee shall enter into written agreements with the contractor(s) providing construction services for the Project, which agreements shall incorporate, and be consistent with, all of the terms and conditions of this Lease Agreement and be subject to review and approval by the County prior to their execution.

The Lessee shall comply with the County's Ordinances, Resolutions and Code requirements that are applicable to the Project as a condition of awarding the construction contract(s) and this Lease Agreement shall be incorporated into any construction contract and all terms in any such construction contract shall be consistent with the Lease Agreement.

Prior to competitively selecting any contractor, the Lessee shall obtain and the contractor shall meet Community Small Business Enterprise (CSBE) goals established by the County's Review Committee under the County's CSBE Program, as enacted under the County's Ordinance 97-52, as amended, and codified in Section 10-33.02 of the County Code; and Administrative Order 3-22, as amended. The Lessee shall cause the contractor to comply with the County's Resolution No. R-138-10, which mandates that the work of CSBE firms be identified in the Schedule of Values (SOV); and the requirements of Resolution No. R-1386-09 pertaining to sub-contracting. The Lessee shall submit its Schedule of Intent (SOI) for approval prior to commencing construction, and comply with the reporting requirements of the CSBE Program. For purposes of the Lease Agreement, SOV is defined as a detailed breakdown of each lump sum bid item in the bid form indicating a complete breakdown of labor and material for all categories of Work and shall include such items as building permit, mobilization, insurance, contractor administration, supervision, etc. The SOV shall be used as the basis to determine monthly progress payments. For purposes of the Lease Agreement, the SOI is defined as a listing of all Small Business Enterprise (SBE) sub-contractors that will be utilized for Work on the Project (form SBD 400).

Pursuant to Section 2-10.4.01 and 10-33.02 of the Code and Section 4.24 (Small Business Enterprise Program) of the code, all privately funded design and construction with a total value over \$200,000.00 must comply with the code which governs the County's Small Business Development of the Internal Services Department prior to advertisement and/or award for review and determination of the appropriate small business program measures. All packages must be advertised and awarded with the applicable small business measure in accordance with the requirements.

B. Art in Public Places: Art in Public Places ("AIPP") provisions of the Miami-Dade County Code and Administrative Orders, as managed by the Miami-Dade County Department of Cultural Affairs ("Department of Cultural Affairs") are pursuant to Procedure 358 in the Miami-Dade County Procedures Manual ("Procedures Manual"). The Lessee/Developer shall transmit 1.5% of the Project costs for all development on County land (as outlined in the Procedures Manual) to the Miami-Dade Aviation Department to be deposited in the Aviation Art in Public Places Trust Account for the implementation of the AIPP program. The Lessee/Developer is required to work collaboratively with the Department of Cultural Affairs on the

implementation of the AIPP program pursuant to the requirements of said program. The referenced documents can be accessed at:

https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances
<http://www.miamidade.gov/ao/home.asp?Process=alphalist>
<http://intra.miamidade.gov/managementandbudget/library/procedures/358.pdf>

ARTICLE 6. MAINTENANCE AND REPAIR BY LESSEE

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

6.02 Removal of Trash: The Lessee shall, at its sole cost and expense, remove from the Premises all trash and refuse which might accumulate and arise from its use of the Premises and the business operations of the Lessee under this Agreement. Such trash and refuse shall be disposed of in a manner approved by the Lessor.

6.03 Maintenance and Repairs:

(A) For the building and other improvements to be constructed by Lessee on the Premises, Lessee shall be exclusively responsible for maintenance and repair of all improvements as well as unpaved and landscaped areas whether or not certificates of occupancy or temporary certificates of occupancy have been issued. Maintenance and repairs by Lessee shall be in quality and class equal to or better than the original work to preserve the Premises in good order and condition. The Lessee shall repair all damage caused by the Lessee and its employees, agents, independent contractors, patrons, servants, trespassers, or invitees.

(B) Except as provided in **Article 7**, in no event shall Lessor be responsible or liable for any maintenance or repair of the building or any Improvement, fixture, equipment, structure, facility, alteration, or addition thereto on the Premises.

(C) Any injury or damage caused by the installation or removal of personal property of the Lessee shall be repaired so as to restore Improvements to their original state, except as such Improvements may have been altered by the Lessee with the approval of the Lessor pursuant to **Article 9.01** (Alterations), and to quit and surrender up the Premises in the same good order and condition as it was at the commencement of this Agreement and upon completion of construction of any Improvement, except for reasonable wear and tear and damage caused by an Act of God; provided however, that such return of the Premises and Improvements in the condition required under this **Article 6.03** shall not relieve the Lessee of its obligations for damages to the Premises that may be specifically provided elsewhere in this Agreement.

6.04 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 for environmental monitoring purposes, without the prior written approval by the Lessor. The Lessee shall obtain permission for excavation required for construction pursuant to **Article 5** (Improvements).

6.05 Water and Sewerage System: The Lessee shall operate and maintain, at its sole cost and expense, all the components of the existing water, sanitary sewerage and storm drainage facilities within the boundaries of the Premises. The Lessee shall not make any alterations or modifications to these facilities without the advance written approval of the Lessor.

6.06 Industrial Waste Facilities: The Lessee shall be fully responsible for all industrial wastes exiting or resulting from Lessee's operations on the Premises and in response thereto shall provide, operate and maintain adequate facilities on the Premises for separating, neutralizing and treating industrial wastes and foreign materials and the proper disposal thereof, in accordance with applicable laws, rules and regulations.

6.07 Grassed Areas and Shrubbery: The Lessee shall mow the grassed areas and trim the shrubbery on the leasehold regularly to maintain the Premises in a neat, orderly and attractive condition. Any land areas not grassed or paved shall be stabilized by the Lessee and the Premises shall be so utilized that use of the same will not cause dust, debris or waste to be blown about or raised so as to be ingested by aircraft or otherwise interfere with or disturb the use or enjoyment of others of their premises. All landscaping maintenance required hereunder shall be performed in accordance with landscape maintenance standards, as published from time to time by the Lessor.

6.08 Inspections: The Lessor and/or its designated representatives shall have the right, during normal working hours, to inspect the Premises to identify those items of maintenance, repair, replacement, modification and refurbishment required of the Lessee to keep the Premises 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; provided, however that if such corrective work cannot be reasonably accomplished within a 30-day period then the Lessee shall commence the corrective work within that 30 days' notice and diligently prosecute the same completion. Trash and debris problems shall be corrected within 24 hours following receipt of either oral or written notice from the Lessor. Failure of the Lessor to inspect as aforementioned shall not impose any liability on the Lessor.

6.09 Failure to Maintain: If it is determined by the Lessor that the Lessee has failed to properly clean, remove trash and debris, maintain, repair, replace and refurbish the Premises as required by this **Article 6** (Maintenance and Repair by Lessee), the Department shall provide to the Lessee a list of deficiencies, reflecting the amount of time to be reasonably allowed for the Lessee to correct same. If the Lessee fails to correct such deficiencies within the time allowed, the Lessor may enter upon the Premises and perform all work, which, in the judgment of the Lessor, may be necessary and the Lessor shall add the cost of such work, plus 25% for administrative costs, to the rent due hereunder on the first day of the month following the date of such work, 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 Lessor, the Lessee shall not undertake performance of such repairs or cleanup without specific prior written authorization from the Lessor.

6.10 Recertification: As may be required by the County, recertification repairs shall be performed by the Department when the existing premises reach 40 years old and every 10 years subsequently. Lessee shall be responsible for 50% of the 40-year recertification/ or as required by the County Code repair costs inasmuch as maintenance responsibility for existing premises is transferred to the Lessee at the Effective date of this Agreement. Notwithstanding the preceding, Lessee shall be solely responsible for all costs, inclusive of costs necessary to achieve a Certificate of Occupancy and any outstanding certification or re-certification under the Code that must be satisfied, required or contemplated in Article 2 of this agreement.

ARTICLE 7. MAINTENANCE BY COUNTY

7.01 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.

7.02 Maintenance of Airport Facilities: Throughout the term of this Agreement, the County shall maintain the Airport so that Lessee may make use of the Airport for the purposes stated in **Article 3**.

ARTICLE 8. REGULATIONS, LICENSES AND PERMITS

8.01 Rules and Regulations - General:

(A) Rules and Regulations:

- (1) The Lessee shall comply with all Ordinances of the County, including the Rules and Regulations of the Department, Chapter 25, Code of Miami-Dade County, Florida, as the same may be amended from time to time, Operational Directives issued thereunder, all additional laws, statutes, ordinances, regulations and rules of the Federal, State and County Governments, and any and all plans and programs developed in compliance therewith, which may be applicable to its operations or activities under this Agreement, specifically including, without limiting the generality hereof, Federal air and safety laws and regulations and Federal, State and County environmental laws.
 - (2) During the renovation period of the work to be performed by Lessee hereunder, and at any time Lessee performs any work on the Premises, Lessee shall comply with all design and construction requirements of MDAD, including, but not limited to, MDAD's Tenant Airport Construction (Reimbursable or Non-Reimbursable) requirements ("TAC"), as they may be amended from time to time. All design and construction work must be approved in advance by MDAD, to the extent set forth in such TAC requirements.
- (B) Permits and Licenses:**
- (1) The Lessee, at its sole cost and expense, shall be liable and responsible for obtaining, paying for, maintaining on a current basis, and fully complying with, any and all permits, licenses and other governmental authorizations, however designated, as may be required, at any time throughout the entire term of this Agreement, by any Federal, State, or County governmental entity or any judicial body having jurisdiction over the Lessee or the Lessee's operations and activities, for any activity of the Lessee conducted on the Premises and for any and all operations conducted by the Lessee, including insuring that all legal requirements, permits and licenses necessary for or resulting, directly or indirectly, from the Lessee's operations and activities on the Premises have been obtained and are being fully complied with.
 - (2) Such permits and licenses shall include, but not be limited to, a Certificate of Use and Occupancy and any required Industrial Waste or Operating Permits from Department of Regulatory and Economic Resources. At the inception of 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 therefor, which the Department may request.
- (C) Penalties, Assessments and Fines:** Subject to the County's obligations as confirmed in **Article 10** (Environmental Compliance), 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 8.01** (Rules and Regulations - General) above or any plan or program developed in compliance therewith. The Lessee further agrees that the substance of this **Article 8.01** (Rules and Regulations - General) above shall be included in every sublease, contract and other agreement, which the Lessee may enter into related to its operations and activities under this Agreement and that any such sublease, contract and other agreement shall specifically provide that "Miami-Dade County, Florida is a third party beneficiary of this and related provisions." This provision shall not constitute a waiver of any other conditions of this Agreement prohibiting or limiting assignments, subletting or subcontracting.

ARTICLE 9. ALTERATION OF PREMISES AND ERECTION OF SIGNS

9.01 Alterations: The Lessee shall not alter the Premises in any manner whatsoever without the prior written approval of the Department. In the event the Lessee is given approval to make any alterations to the Premises, the Lessee shall fully comply with the terms and conditions of the approval document, the applicable Tenant Airport Construction (TAC) requirements (<https://www.miami-airport.com/resources.asp>), as may be amended from time to time, of the Department's TAC Program in effect, and **Article 8** (Regulations, Licenses and Permits). Such programs may include, but shall not be limited to: (i) the County's Community Business Enterprise (CBE) Program applicable to architects and engineers under Section 2-10.4.01 of Miami-Dade County's Code; (ii) the Community Small Business Enterprise (CSBE) Program for construction activities under Section 10-33.02; (iii) the Living Wage Ordinance under Section 2-8.9; (iv) the Art in Public Places (AIPP) Program under Section 2-11.15; (v) the Responsible Wages Ordinance under Section 2-11.16; (vi) Residents First Training and Employment Program under Section 2-11.7; (vii) Employ Miami-Dade under Administrative Order (AO) 3-6; and any other program of the County applicable to the Lessee's alteration activities hereunder, as such programs, ordinances, or code provisions may be amended from time to time.

The Lessee shall comply with such applicable provisions as well as any Administrative and/or Implementing Orders and other directives issued by the County relating to such Programs. The Lessee's failure to do so shall constitute a default pursuant to **Article 14.03** (Other Defaults) hereof.

9.02 Removal of Alterations: Any alterations pursuant to **Article 9.01 (Alterations)** above constructed or installed by the Lessee at its sole expense, including signage and telecommunications equipment, that can be removed from the Premises and Improvements without materially damaging, altering, or altering the use of the Premises and Improvements shall be considered the personal property of the Lessee and may be removed and or replaced by the Lessee in accordance with the TAC process at any time during the Term. All other Improvements shall become a part of the Premises and Improvements and shall become the property of the County upon expiration of the term, or as earlier designated by Lessee as provided in **Article 2.01**, or the earlier termination of this Agreement; provided, however, that in the case of any Improvements which were constructed, installed, added or altered with proceeds of tax-exempt financing, such Improvements shall immediately vest in the County or the entity providing such financing, if the financing documents so provide, and shall be deemed to be the property of the County or such entity upon their construction, installation or other implementation, subject, however, to all of Lessee's rights under this Agreement. Lessee hereby reserves the right to remove any item of a non-leased nature, including but not limited to personal property, at any time during the term and upon termination of the Agreement.

9.03 Signage: The Lessee shall not erect, maintain or display any identifying signs or any advertising matter, of any type or kind, which is visible to the public, without prior written approval of the Department. In the event the Department changes the graphics system for the identification of lessees at the Airport, the Lessee agrees, if required by the Department, to change, at its sole cost, any of its identification signs necessary to comply with such graphics system.

ARTICLE 10. ENVIRONMENTAL COMPLIANCE

10.01 Environmental Compliance: For purposes of this Agreement, the following additional definitions apply:

- (A) "Baseline Environmental Conditions" means the presence or release of Hazardous Materials, at, on, under, or from the Premises prior to Lessee's Occupancy Date, the presence or release of which was not caused

by Lessee or Lessee's agents, employees, contractors, invitees or trespassers. Solely for purposes of this Agreement, and without limiting the foregoing it shall be presumed that the Baseline Environmental Conditions include without limitation the conditions identified in any existing (as of the date of this Agreement) Miami-Dade County maintained records, including contamination assessment reports and any other technical reports, data bases, remedial action plans, the Baseline Audit or the presence, discharge, disposal or release of any other Hazardous Materials originating prior to the Occupancy Date that comes to be located on the Premises and not caused by Lessee or Lessee's agents, employees, contractors, invitees or trespassers.

- (B) "Environmental Claim" means any investigative, enforcement, cleanup, removal, containment, remedial or other private, governmental or regulatory action at any time threatened, instituted or completed pursuant to any applicable Environmental Requirement, against Lessee with respect to its operations at Miami International Airport or against or with respect to the Premises or any condition, use or activity on the Premises (including any such action against County), and any claim at any time threatened or made by any person against Lessee with respect to its operations at Miami International Airport or against or with respect to the Premises or any condition, use or activity on the Premises (including any such claim against County), relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or in any way arising in connection with any Hazardous Material or any applicable Environmental Requirement.
- (C) "Environmental Law" means any applicable federal, state or local law, statute, ordinance, code, rule, or regulation, or license, authorization, decision, order, injunction, or decree, any of which may be issued by a judicial or regulatory body of competent jurisdiction, or rule of common law including, without limitation, actions in nuisance or trespass, and any judicial or agency interpretation of any of the foregoing, which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground or air or water or noise pollution or contamination, and underground or aboveground tanks) and shall include without limitation, the Solid Waste Disposal Act, 42 U.S.C. § 6901 *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C § 9601 *et seq.* ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Hazardous Materials Transportation Act 49 U.S.C. § 1801 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*; the Clean Air Act 42 U.S.C. § 7401 *et seq.*; the Toxic Materials Control Act 15 U.S.C. § 2601 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*; Chapters 403, 376 and 373, Florida Statutes; Chapters 24 and 25 of Miami-Dade County Code, and any other applicable local, state or federal environmental statutes, codes, or ordinances, and all rules, regulations, orders and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.
- (D) "Environmental Requirement" means any Environmental Law, or any agreement or restriction entered into or applicable by law (including but not limited to any condition or requirement imposed by any insurance or surety company), as the same now exists or may be changed or amended or come into effect in the future, which pertains to health, safety, any Hazardous Material, or the environment, including but not limited to ground or air or water or noise pollution or contamination, and underground or aboveground tanks.

With regard to any environmental agreements or restrictions entered into by MDAD, MDAD agrees to use reasonable efforts to apprise the Miami Airport Affairs Committee (the "MAAC"), which represents the interests of the airlines at the Airport, of any such agreements or restrictions and to obtain the MAAC's input into such items.

- (E) "Hazardous Material" means any substance, whether solid, liquid or gaseous, which is listed, defined or regulated as a hazardous substance, a hazardous waste or pesticide, or otherwise classified as hazardous or toxic, in or pursuant to any applicable Environmental Requirement; or which is or contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material,

or motor fuel or other petroleum hydrocarbons; or which causes or poses a threat to cause contamination or a nuisance on the Premises, any adjacent Premises or a hazard to the environment or to the health or safety of persons on the Premises or Other Airport Property.

- (F) "Initial Construction Period" means for any lease which contemplates construction or renovation for Premises not previously occupied in whole or in part by Lessee under this Agreement and/or any previous Agreement, a period of time not to exceed six (6) months commencing with the date on which Lessee breaks ground on the Premises for construction of foundations or commences such renovation.
- (G) "Occupancy Date" means the date Lessee first entered, occupied or took possession of the Premises under any written or verbal agreement.
- (H) "On" or "in" when used with respect to the Premises or any premises adjacent to the Premises, means "on, in, under, above or about."
- (I) "Other Airport Property" means property on the Airport occupied or used by Lessee, or upon which Lessee performs operations, but which is not subject to a lease, sublease or other legal agreement governing the terms of Lessee's occupation, use or operations at such property.
- (J) "Recognized Environmental Condition" shall have the meaning set forth in ASTM E 1527-05, Section 1.1.1, as such provision may be amended or superseded from time to time.
- (K) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment.
- (L) "Remediation" means any investigation, clean-up, removal action, remedial action, restoration, repair, response action, corrective action, monitoring, sampling and analysis, installation, reclamation, closure, or post-closure in connection with the suspected, threatened or actual release of Hazardous Materials.
- (M) "Trespassers" mean third parties who have entered the Premises and whose actions while on the Premises have resulted in Release of Hazardous Materials directly onto the Premises or onto other Airport Property accessed by such persons through the Premises. Notwithstanding the foregoing, for purposes of this Agreement, Trespassers shall not include those third parties whose actions took place off of the Premises and which resulted in the presence of Hazardous Materials on the Premises due to the migration of Hazardous Materials from that off-Premises location.

10.02 Lessee's Acceptance of the Risks and Condition of Premises As-Is: Lessee agrees that the Premises shall be leased and delivered to Lessee in its current "as-is/with all faults" condition (but it is not intended by this provision that County be relieved from its duties expressly set forth in this Agreement or any other applicable agreement). Lessee hereby, warrants, covenants, agrees, and acknowledges that:

- (A) Hazardous Materials may be present on the Premises and Other Airport Property. The County is currently engaged in a significant environmental remediation program at MIA.
- (B) Under **Article 10.05** below, Lessee is provided the opportunity to conduct an independent investigation of the Premises and the physical condition thereof, including the potential presence of any Hazardous Materials on or about the Premises. Lessee's report on the investigation, if any such report has been prepared, has been provided to the County and is listed in Exhibit K-03 attached to this Agreement. Whether Lessee has conducted such an investigation or not, Lessee is willing to proceed with this Agreement notwithstanding the environmental conditions of the Premises or the properties surrounding the Premises, subject to Lessee's right to terminate this Agreement as otherwise provided herein.
- (C) Because of the possible presence of environmental contaminants on the Premises or other Airport property, County has made no express, implied, or other representations of any kind with respect to the suitability or usability of the Premises or other Airport Property, or any Improvements appurtenant thereto, including, without limitation, the suitability or usability of any building materials, building systems, soils or groundwater conditions (due to the presence of Hazardous Materials in, on, under, or

- about the Premises or other Airport property), for Lessee's proposed or intended use, and Lessee has relied solely on Lessee's own inspection and examination of such matters.
- (D) Except as to County's obligations set forth in this Article or elsewhere in this Agreement, Lessee expressly assumes the risk that Hazardous Materials that are or may be present on the Premises at the commencement of this Agreement may affect the suitability or usability of the Premises for Lessee's proposed or intended use. Lessee agrees that, except to the extent of County's Remediation obligations provided in this **Article 10**, or any other discharge, disposal or release of Hazardous Materials or violation of Environmental Requirements, caused by County, its agents, employees or contractors and except with respect to Baseline Environmental Conditions, County shall have no responsibility or liability with respect to any Hazardous Materials on the Premises. Notwithstanding the foregoing, in no event shall County be liable to Lessee for damages relating to physical or personal injury, business interruptions relocation costs or any other cost (other than a cost for which County is liable under this **Article 10**) resulting from the presence of Hazardous Materials on the Premises at any time during this Agreement.

10.03 Responsibilities for Hazardous Materials:

- (A) Unless the parties agree otherwise in writing, the County shall conduct response actions mandated by existing Environmental Requirements applicable to the County for Hazardous Materials disclosed in the Lessee Audit to the extent required by **Article 10.05** and (ii) Baseline Environmental Conditions, provided however that:
- 1) To the extent this Agreement covers Premises not previously occupied by Lessee and if this Agreement contemplates construction or renovation by the Lessee, any Hazardous Materials discovered during the Initial Construction Period as defined in **Article 10.01(F)**, shall be presumed to be a Baseline Environmental Condition under this Agreement except to the extent the Aviation Department demonstrates to the satisfaction of Lessee by written notice setting forth the Aviation Department's explanation as to why the Hazardous Material originated from a discharge, disposal or release that was caused by Lessee, Lessee's agents, employees, contractors, invitees or Trespassers. Should Lessee determine that such a demonstration has not been made to Lessee's satisfaction, County may invoke the dispute resolution provision of 10.16. Until such time as the parties reach an agreement or such time as the dispute is otherwise resolved, responsibility for such Hazardous Materials shall remain with the Aviation Department.
 - 2) To the extent this Agreement covers premises previously occupied by Lessee, and except for Baseline Environmental Conditions, Remediation of any Hazardous Material discovered on the Premises shall be the responsibility of the Lessee, except to the extent that Lessee demonstrates to the satisfaction of Aviation Department Management by written notice setting forth Lessee's explanation as to why the Hazardous Material originated from (1) a discharge, disposal or release outside of the Premises, unless such discharge, disposal or release was caused by Lessee, Lessee's agents, employees, contractors or invitees (2) a discharge, disposal or release of Hazardous Material on the Premises prior to the date upon which Lessee first occupied the premises and not caused by Lessee or Lessee's agents, employees, contractors, invitees; or (3) a discharge, disposal or release caused by the County, its agents, employees, contractors or any third party. Should the Aviation Department determine that such a demonstration has not been made to Aviation Department's satisfaction, Lessee may invoke the dispute resolution provision of 8.16. Until such time as the parties reach an agreement or such time as the dispute is otherwise resolved, responsibility for such Hazardous Material shall remain with Lessee.

- (B) County's responsibility for Remediation under this **Article 10.03** shall be limited to the Hazardous Materials required to be remediated under applicable Environmental Requirements. If County is permitted to leave any Hazardous Materials in place under applicable Environmental Requirements, County shall have the option of so doing, unless a governmental authority requires at any time the removal of Hazardous Materials for Lessee to be able to continue with construction or occupancy of the Premises. The County shall notify Lessee of any such decision to leave Hazardous Materials in place.
- (C) (1) To the extent they exist, the County has made available to Lessee a listing of contamination assessment reports and remedial action plans regarding any soil and groundwater contamination at the Premises. The County may have already installed or may have plans to install remediation systems to clean up the contamination described in such reports to the extent they exist. Lessee agrees that during the term of the Agreement, County's authorized representatives shall have the right to enter the Premises in order to operate, inspect, maintain, relocate and replace any such installed systems. Without limiting the generality of the foregoing, the County shall have the right to: (a) install, use, monitor, remove (or, in connection with monitoring wells, abandon in place in accordance with applicable governmental regulations) soil borings, treatment systems, pumps, monitoring wells, and associated equipment; (b) construct, maintain, and ultimately remove various mechanical devices designed to aid in the monitoring and remediating effort; and (c) undertake such related activities as the Aviation Department or other governmental authorities may require or recommend, utilizing such methods as the Aviation Department or the applicable governmental authorities may elect in order to remediate the contamination described in any such reports.
- (2) County shall utilize reasonable efforts to minimize any disturbance of the Lessee's use of the Premises caused by any Remediation it undertakes and shall provide Lessee prior written notice of such Remediation. Lessee agrees that it shall not unreasonably interfere with or obstruct such Remediation. 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 Remediation to be performed, the Lessee will effect such relocation at no expense to the County.
- (3) If Remediation equipment or materials need to be temporarily stored in a secure location on the Premises, the Lessee will provide reasonable storage inside the building on the Premises for such equipment and materials at no expense to the County, provided, however, that Lessee shall bear no liability and otherwise shall have no responsibility for any theft of and/or damage to such equipment or materials so stored, to the extent Lessee took reasonable measures to prevent, such theft and/or damage and such theft and/or damage was not caused by Lessee or Lessee's employees. To the extent that water and electrical service within the Premises are not metered and the Lessee does not pay for such services directly, the Lessee will provide the County with water and electrical service from the Premises in connection with the Remediation, without charge. The Lessee acknowledges the Remediation may be conducted in the future at any time during the term of the Agreement and may continue until such time as a no further action letter is obtained from the appropriate regulatory authorities.

10.04 (D) Lessee shall be responsible for Remediation, at its sole cost and expense, of any other Hazardous Materials as may be present on or under the Premises except for those Hazardous Materials which are expressly the responsibility of the County pursuant to this Section. **Baseline Audit:** The County has provided Lessee with a copy of an environmental audit of the Premises, conducted to identify any Recognized Environmental Conditions associated with the Premises, which audit may include analyses of soil and groundwater samples (the initial "Baseline Audit"). Except to the extent Lessee previously occupied the Premises, the County shall be responsible for any Recognized Environmental Conditions within the meaning of ASTM E 1527-05, or most recent version, disclosed by the Baseline Audit. Except to the extent Lessee previously occupied the Premises,

Lessee may terminate this Agreement within sixty (60) days of receipt of the Baseline Audit if Lessee, in its sole discretion, determines that the Recognized Environmental Conditions disclosed in such Baseline Audit are unacceptable. To the extent Lessee previously occupied the Premises, Lessee, subject to its right to invoke the dispute resolution provision of 10.16, shall be responsible for all Recognized Environmental Conditions disclosed in the Baseline Audit, which are not otherwise Baseline Environmental Conditions, unless Lessee demonstrates to the County's satisfaction that the Recognized Environmental Conditions originated from (1) a discharge, disposal or release outside of the Premises, unless such discharge, disposal or release was caused by Lessee, Lessee's agents employees, contractors or invitees, or Trespassers; or (2) a discharge, disposal or release of Hazardous Material on the Premises prior to Lessee's first occupancy of the Premises and not caused by Lessee, Lessee's agents, employees, contractors, invitees or trespassers.

10.05 Lessee Audit: Lessee, at its sole cost and expense, shall have the right to conduct, within sixty (60) days from the receipt of the Baseline Audit, an environmental inspection of the Premises (the "Lessee Audit"), through an independent environmental consultant approved in writing by County, such approval not to be unreasonably withheld or delayed. If Lessee elects to conduct a Lessee Audit, it shall furnish County a copy of the Lessee Audit within thirty (30) days of Lessee's receipt of the Lessee Audit. The purpose of the Lessee Audit is to determine whether there are present on the Premises any Recognized Environmental Conditions not identified in the Baseline Audit, any previous audits, or any contamination assessment reports or remedial action plans, to the extent any such documents exist. Within thirty (30) days of receipt of such Lessee Audit, the County shall notify Lessee if it disputes the Recognized Environmental Conditions or the delineation of any subsurface conditions described in the Lessee Audit. If the Lessee Audit reveals any Recognized Environmental Conditions or delineates any subsurface contamination not disclosed in any contamination assessment reports, remedial action plans, or the Baseline Audit, and which are not otherwise considered Baseline Environmental Conditions under the terms of this Agreement, then, except to the extent that Lessee previously occupied the Premises, the County, at its option, shall: (i) allow Lessee to terminate the Agreement, without penalty, within sixty (60) days of receipt of such notice of dispute from the County, or (ii) notify Lessee that it has agreed to be responsible for such Recognized Environmental Conditions and delineated subsurface contamination to the same extent as the County is responsible for the Recognized Environmental Conditions and subsurface contamination disclosed in any contamination assessment reports, remedial action plans and the Baseline Audit. If the County allows Lessee to terminate the Agreement and Lessee elects not to terminate, Lessee's failure to terminate shall constitute a waiver of 1) Lessee's rights to terminate its obligations under this Agreement as to any findings in such Lessee Audit and, 2) as provided in **Article 10.04**, any claim it may have against the County with respect either to Recognized Environmental Conditions and subsurface contamination disclosed in such Lessee Audit. To the extent the Lessee previously occupied the Premises, Lessee shall be responsible for all Recognized Environmental Conditions disclosed in the Lessee Audit that are not Baseline Environmental Conditions unless Lessee demonstrates to the satisfaction of Aviation Department Management by written notice setting forth Lessee's explanation why the Recognized Environmental Conditions originated from (1) a discharge, disposal or release outside of the Premises, unless such discharge, disposal or release was caused by Lessee, Lessee's agents, employees, contractors, or invitees; (2) a discharge, disposal or release of Hazardous Material on the Premises prior to the Occupancy Date and not caused by Lessee or Lessee's agents, employees, contractors, invitees; or (3) a discharge, disposal or release caused by County or third party. Should the Aviation Department determine that such a demonstration has not been made to Aviation Department's satisfaction, Lessee may invoke the dispute resolution provision of 10.16. Until such time as the parties reach an agreement or until such time as the dispute is otherwise resolved, responsibility for such Recognized Environmental Condition shall remain with Lessee.

10.06 Environmental Maintenance of Premises: Except for the obligations of the County under this **Article**, Lessee shall, at its sole cost and expense, keep, maintain and use the Premises, and operate within the

Premises at all times, in compliance with all applicable Environmental Laws, and shall maintain the Premises in good and sanitary order, condition, and repair.

10.07 Lessee's Use of Hazardous Materials: Exhibit K-08 is a complete list of all Hazardous Materials which Lessee currently intends to use on the Premises or Other Airport Property during the term of the Agreement which have been approved by the County, and the use, storage and transportation of which on or about the Premises shall not be subject to County's approval or objections. Except for those Hazardous Materials listed on Exhibit K-08, Lessee shall not use, store, generate, treat, transport, or dispose of any Hazardous Material on the Premises or Other Airport Property without first providing the County thirty (30) days written notice prior to bringing such Hazardous Material upon the Premises. To the extent certain Hazardous Materials are needed to be used by Lessee on a non-routine basis, such as for emergency repairs, Lessee may provide such notice within twenty-four (24) hours of bringing such Hazardous Material upon the Premises. Notwithstanding the foregoing, County may object to the use of any previously approved Hazardous Material should County reasonably determine that the continued use of the Hazardous Material by Lessee presents a material increased risk of site contamination, damage or injury to persons, Premises, resources on or near the Premises or Other Airport Property, or noncompliance due to a change in regulation of such Hazardous Material under applicable Environmental Law. Upon County's objection, Lessee shall immediately remove the Hazardous Material from the site. This section 10.07 shall not apply to Hazardous Materials which are not used, generated, treated or disposed of by Lessee but which are otherwise transported by Lessee solely in the course of Lessee's business, such as cargo operations, and for which Lessee has no knowledge as to the identity of such Hazardous Materials prior to such transport. County's objection or failure to object to the use, storage, generation, treatment, transportation, or disposal of Hazardous Material under this paragraph, or the exclusion of certain Hazardous Materials under this paragraph, shall not limit or affect Lessee's obligations under this Agreement, including Lessee's duty to remedy or remove releases or threatened releases; to comply with applicable Environmental Law and/or Environmental Requirements relating to the use, storage, generation, treatment, transportation, and/or disposal of any such Hazardous Materials; or to indemnify County against any harm or damage caused thereby. Lessee shall promptly and completely answer periodic questionnaires from the County concerning Lessee's practices regarding the generation, use, storage, and disposal of Hazardous Materials under this Agreement.

10.08 Entry by County:

(A) Notwithstanding any other right of entry granted to County under this Agreement, and subject to the requirements set forth in **Article 10.10(B)**, MDAD shall have the right, at its own expense and upon reasonable notice, to enter the Premises or to have consultants enter the Premises throughout the Term of this Agreement for the purposes of: (1) determining whether the Premises are in conformity with applicable Environmental Law; (2) conducting an environmental review or investigation of the Premises; (3) determining whether Lessee has complied with the applicable environmental requirements of this Agreement; (4) determining the corrective measures, if any, required of Lessee to ensure the safe use, storage, and disposal of Hazardous Materials; or (5) removing Hazardous Materials (except to the extent used, stored, generated, treated, transported, or disposed of by Lessee in compliance with applicable Environmental Requirements and the terms of this Agreement). Lessee agrees to provide access and reasonable assistance for such inspections. MDAD shall use its best efforts to reasonably minimize interruptions of business operations on the Premises.

(B) Such inspections may include, but are not limited to, entering the Premises or adjacent property with drill rigs or other machinery for the purpose of obtaining laboratory samples of environmental conditions or soil or groundwater conditions. Lessee shall have the right to collect split samples of any samples collected by MDAD, MDAD shall not be limited in the number of such inspections during the Term of this Agreement MDAD will conduct such inspections during Lessee's normal business hours, but MDAD may conduct such inspections

in other than normal business hours if the circumstances so require. For inspections conducted by MDAD, MDAD agrees to provide Lessee with reasonable notice (not less than twenty four (24) hours) prior to inspecting the Premises; provided however, that such notice period shall not apply under circumstances in which MDAD reasonably determines that there exists an immediate threat to the health, safety, or welfare of any persons. Based on the results of such inspections, should MDAD reasonably determine that Hazardous Materials have been released, discharged, stored, or used on the Premises in violation of the terms of this Agreement, Lessee shall, in a timely manner, at its expense, remove such Hazardous Materials in a manner not inconsistent with applicable Environmental Law and otherwise comply with the reasonable recommendations of MDAD and any regulatory authorities related to the results of such inspections. The right granted to MDAD herein to inspect the Premises shall not create a duty on MDAD's part to inspect the Premises, nor liability of MDAD for Lessee's use, storage, or disposal of Hazardous Materials, it being understood that Lessee shall be solely responsible for all liability in connection therewith. MDAD shall provide the results of such inspections to the Lessee in a timely manner if requested to do so in writing. Nothing herein shall be construed to limit, restrain, impair or interfere with County's regulatory authority to conduct inspections and/or the manner in which it conducts such inspections. Lessee shall not be liable or otherwise responsible for any property damage to the Premises or injury to any person caused by County, its agents or consultants during County's inspection under this Section 10.08.

10.09 Permits and Licenses: The Lessee warrants that it will secure at the times required by issuing authorities all applicable permits or approvals that are required by any governmental authority having lawful jurisdiction to enable Lessee to conduct its obligations under this Agreement. Upon written request, Lessee shall provide to County copies of all permits, licenses, certificates of occupancy, approvals, consent orders, or other authorizations issued to Lessee under applicable Environmental Requirements, as they pertain to the Lessee's operations on or use of the Premises or Other Airport Property.

10.10 Notice of Discharge to County:

(A) In the event of: (i) the happening of any material event involving the spill, release, leak, seepage, discharge or clean up of any Hazardous Material on the Premises or Other Airport Property in connection with Lessee's operation thereon; or (ii) any written Environmental Claim affecting Lessee from any person or entity resulting from Lessee's use of the Premises or Other Airport Property, then Lessee shall immediately notify County orally within twenty-four (24) hours and in writing within three (3) business days of said notice. If County is reasonably satisfied that Lessee is not promptly commencing the response to either of such events. County shall have the right but not the obligation to enter onto the Premises or to take such other actions as it shall deem reasonably necessary or advisable to clean up, remove, resolve or minimize the impact of or otherwise deal with any such Hazardous Material or Environmental Claim following receipt of any notice from any person or any entity having jurisdiction asserting the existence of any Hazardous Material or an Environmental Claim pertaining to the Premises, which if true, could result in an order, suit or other action against the County. If Lessee is unable to resolve such action in a manner which results in no liability on the part of County, all reasonable costs and expenses incurred by County shall be deemed additional rent due County under this Agreement and shall be payable by Lessee upon demand, except to the extent they relate to a Baseline Environmental Condition.

(B) With regard to any reporting obligation arising out of Lessee's operations or during the Agreement, Lessee shall timely notify the State of Florida Department of Environmental Protection, all Miami-Dade County pertinent regulatory agencies, and the United States Environmental Protection Agency, as appropriate, with regard to any and all applicable reporting obligations while simultaneously providing written notice to County.

(C) Within sixty (60) days of execution of this Agreement, Lessee shall submit to County an emergency action plan/contingency plan setting forth in detail Lessee's procedures for responding to spills, releases, or discharges of Hazardous Materials. The emergency action plan/contingency plan shall identify Lessee's emergency response coordinator and Lessee's emergency response contractor.

10.11 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, (or on or in other Airport property for purposes related to Lessee's operations on the Premises), Lessee shall provide County with a written report listing: the Hazardous Materials which were present on the Premises or other Airport property; all releases of Hazardous Material that occurred or were discovered on the Premises or other Airport property and which were required to be reported to regulatory authorities under applicable Environmental Laws; all enforcement actions related to such Hazardous Materials, including all, consent agreements or other non-privileged documents relating to such enforcement actions during that time period. In addition, Lessee shall provide County with copies of any reports filed in accordance with the Emergency Planning and Community Right to Know Act (EPCRA) and shall make available for review upon request by County copies of all manifests for hazardous wastes generated from operations on the Premises. Lessee shall provide the report required under this section to the County by April 1 of each year for the preceding calendar year.

10.12 Periodic Environmental Audits: Lessee shall establish and maintain, at its sole expense, a system to assure and monitor its continued compliance on the Premises with all applicable Environmental Laws, which system shall include, no less than once each year a detailed review of such compliance (the "Environmental Audit") by such consultant or consultants as County may approve, which approval shall not be unreasonably withheld, delayed or conditioned. Alternatively, if the Aviation Department approves, which approval shall not be unreasonably withheld, delayed, or conditioned, such Environmental Audit may be conducted by Lessee's personnel but in either case Lessee shall provide County with a copy or summary of its report of its annual Environmental Audit, which shall be consistent with ASTM's "Practice for Environmental Regulatory Compliance Audits" which shall include in its scope the items listed in <https://www.miamidade.gov/permits/plans/environmental-review.asp> or other recognized format approved by County. If the Environmental Audit indicates any unresolved violation of any applicable Environmental Law and/or Environmental Requirements, Lessee shall, at the request of County, provide a detailed review of the status of any such violation within thirty (30) days of the County's request.

10.13 Remediation of Hazardous Material Releases: If Lessee or Lessee's agents, employees, contractors, invitees or trespassers cause any Hazardous Materials to be released, discharged, or otherwise located on or about the Premises or Other Airport Property during the term of this Agreement ("Hazardous Material Release"), Lessee shall promptly take all actions, at its sole expense and without abatement of rent, as are reasonable and necessary to return the affected portion of the Premises or Other Airport Property and any other affected soil or groundwater to their condition existing prior to the Hazardous Material Release in a manner not inconsistent with applicable Environmental Law. County shall have the right to approve all such remedial work, including, without limitation: (i) the selection of any contractor or consultant Lessee proposes to retain to investigate the nature or extent of such Hazardous Material Release or to perform any such remedial work; (ii) any reports or disclosure statements to be submitted to any governmental authorities prior to the submission of such materials; and (iii) any proposed remediation plan or any material revision thereto prior to submission to any governmental authorities. The County's approvals shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, County's prior consent shall not be necessary if a Hazardous Material Release poses an immediate threat to the health, safety, or welfare of any persons and, despite Lessee's best efforts, it is not practicable to obtain County's consent before taking remedial action to abate such immediate threat, provided

that: (a) Lessee shall notify County as soon as possible and shall thereafter obtain County's consent as otherwise provided in this paragraph; and (b) Lessee shall take only such action as may be necessary or appropriate to abate such immediate threat and shall otherwise comply with the provisions of this paragraph. In addition to any rights reserved by County in this Agreement, County shall have the right, but not the obligation, to participate with Lessee, Lessee's consultants and Lessee's contractors in any meetings with representatives of the governmental authorities and Lessee shall provide County reasonable notice of any such meetings. All remedial work shall be performed in compliance with all applicable Environmental Laws. The County's consent to any remedial activities undertaken by Lessee shall not be withheld so long as County reasonably determines that such activities will not cause any material adverse long-term or short-term effect on the Premises, or other adjoining property owned by County. Lessee's obligations in this section do not apply to Baseline Environmental Conditions.

10.14 Indemnity: Lessee shall indemnify, defend (with counsel reasonably satisfactory to County), and hold County, its directors, officers, employees, agents, assigns, and any successors to County's interest in the Premises, harmless from and against any and all loss, cost, damage, expense (including reasonable attorneys' fees), claim, cause of action, judgment, penalty, fine, or liability, directly or indirectly, relating to or arising from the use, storage, release, discharge, handling, or presence of Hazardous Materials on, under, or about the Premises or Other Airport Property and caused by Lessee, Lessee's agents, employees, contractors, invitees or trespassers. This indemnification shall include without limitation: (a) personal injury claims; (b) the payment of liens; (c) diminution in the value of the Premises or Other Airport Property; (d) damages for the loss or restriction on use of the Premises or Other Airport Property; (e) sums paid in settlement of claims; (f) reasonable attorneys' fees, consulting fees, and expert fees, (g) the cost of any investigation of site conditions, and (h) the cost of any repair, cleanup, remedial, removal, or restoration work or detoxification if required by any governmental authorities or deemed necessary in County's reasonable judgment, but shall not extend to such claims, payment, diminution, damages, sums, fees or costs to the extent caused (i) solely by an act of God or (ii) by the negligent or willful misconduct of the County, its officers, employees, contractors or agents. Or for which the County is otherwise responsible under this Lease. For any legal proceedings or actions initiated in connection with the Hazardous Materials Release, County shall have the right at its expense but not the obligation to join and participate in such proceedings or actions in which the County is a named party, and control that portion of the proceedings in which it is a named party. County may also negotiate, defend, approve, and appeal any action in which County is named as a party taken or issued by any applicable governmental authorities with regard to a Hazardous Materials Release; provided, however, claims for which Lessee may be liable pursuant to this Article shall not be settled without Lessee's consent. Any costs or expenses incurred by County for which Lessee is responsible under this paragraph or for which Lessee has indemnified County: (i) shall be paid to County on demand, during the term of this Agreement as additional rent; and (ii) from and after the expiration or earlier termination of the Agreement shall be reimbursed by Lessee on demand. Lessee's obligations pursuant to the foregoing indemnity shall survive the expiration or termination of this Agreement and shall bind Lessee's successors and assignees and inure to the benefit of County's successors and assignees. Notwithstanding any other provision of this Agreement, this section 10.14 does not apply to Baseline Environmental Conditions or a discharge, disposal or release caused by the County, its officers, employees, contractors or agents.

- (A) This indemnity specifically includes the direct obligation of Lessee to perform, at its sole cost and expense, any remedial or other activities required or ordered by court or agency having competent jurisdiction over the subject matter, or otherwise necessary to avoid or minimize injury or liability to any person, or to prevent the spread of Hazardous Materials.
- (B) In addition, because costs of Hazardous Materials discharges are passed on to airlines through the

residual rate charging mechanism at Miami International Airport and the charges to Lessee will be increased to offset such costs. Lessee agrees in order to minimize its obligations in this regard to use best efforts to assist the Aviation Department in responding to Hazardous Materials spills in or on Airport property reasonably close the Premises used by Lessee by making Lessee's remediation equipment and personnel available for such emergency remediation activity. However, Lessee may provide such assistance only at the direct request of the Aviation Department and only if Lessee's remediation equipment is intended to be utilized for the Hazardous Material spill at issue and only if Lessee's personnel have been trained to respond to the Hazardous Material spill at issue. If Lessee is directed to perform any remedial work under this Article for which it is later determined that Lessee is not responsible, the Aviation Department shall reimburse Lessee for all costs associated with or arising out of Lessee's performance of such remedial work. Lessee shall cooperate with the Aviation Department in any subsequent effort by the Aviation Department to recover from the responsible parties all costs involved with the remediation effort that utilized Lessee's equipment and personnel. Lessee shall perform all such work in its own name in accordance with applicable laws. Lessee acknowledges that the County's regulatory power in this regard is independent of the County's contractual undertakings herein, and nothing herein shall affect the County's right in its regulatory capacity to impose its environmental rules, regulations, and authorities upon the Lessee in accordance with the law.

- (C) In the event Lessee fails to perform its obligations in **Article 10.14(A)** above, and without waiving its rights hereunder, County may, at its option, perform such remedial work as described in **Article 10.14(A)** above, and thereafter seek reimbursement for the costs thereof. In accordance with this Article, Lessee shall permit County or its designated representative access to the Premises areas to perform such remedial activities.
- (D) Whenever County has incurred costs described in this section as a result of the failure of Lessee to perform its obligations hereunder, Lessee shall, within thirty (30) days of receipt of notice thereof, reimburse County for all such expenses together with interest at the rate of 1½% per month (not to exceed the maximum rate permissible under law) on the outstanding balance commencing on the thirty-first day following Lessee's receipt of such notice until the date of payment.
- (E) To the extent of Lessee's responsibility under this Article and without limiting its obligations under any other paragraph of this Agreement, and except to the extent of County's responsibility for environmental conditions set forth in this Article, Lessee shall be solely and completely responsible for responding to and complying with any administrative notice, order, request or demand, or any third party claim or demand relating to potential or actual Hazardous Materials contamination on the Premise. Lessee's responsibility under this paragraph includes but is not limited to responding to such orders on behalf of County and defending against any assertion of County's financial responsibility or individual duty to perform under such orders. Lessee shall assume, pursuant to the indemnity provision set forth in this Article, any liabilities or responsibilities which are assessed against County in any action described under this paragraph.

10.15 Dispute Resolution: County and Lessee agree that any dispute between them relating to this Article will first be submitted, by written notice, to a designated representative of both County and Lessee who will meet at County's place of business or other mutually agreeable location, or by teleconference, and confer in an effort to resolve such dispute. Any decision of the representatives will be final and binding on the parties. In the event the representatives are unable to resolve any dispute within ten (10) days after submission to them, either party may refer the dispute to mediation, or institute any other available legal or equitable proceeding in order to resolve the dispute.

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

10.17 No Waiver of Rights, Causes of Actions or Defenses. Notwithstanding any language in this Agreement, including without limitation **Articles 10.03, 10.04, 10.05, 10.06, 10.14, 10.15** and **10.16**, Lessee does not agree to waive or release any rights, causes of action or defenses it may have against Miami-Dade County or any other party related to allegations made by the County in (i) Case No. 01-8758 CA 25 which has been filed by the County in the Florida Circuit Court of the Eleventh Judicial Circuit, and (ii) a letter dated April 9, 2001, to Lessee and others (who are referred to as "responsible parties" or "RPs"). Nothing herein shall be construed to limit or expand upon any releases previously granted to or exchanged between the parties as a result of judgments or settlements obtained in proceedings between the parties, including, without limitation, settlements in bankruptcy or settlements entered under Case No. 01-8758 CA 25 which has been filed by the County in the Florida Circuit Court of the Eleventh Judicial Circuit.

10.18 Surrender of Premises: Lessee shall surrender the Premises used by Lessee to County upon the expiration or earlier termination of this Agreement free of debris, waste, and Hazardous Materials used, stored, or disposed of by Lessee or its agents, employees, contractors, invitees or Trespassers, or otherwise discharged on the Premises or Other Airport Property for which Lessee is responsible during the term of this Agreement. The Premises shall be surrendered in a condition that complies with all applicable Environmental Requirements, and such other reasonable environmental requirements as may be imposed by County. Lessee shall not be responsible under this Section 10.18 to the extent of County's obligations under this Article.

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

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

10.21 Right to Regulate: As provided for in **Article 21.12** of this Agreement, nothing within this Article shall be construed to waive or limit, restrain, impair or interfere with the County's regulatory authority.

ARTICLE 11. INDEMNIFICATION AND HOLD HARMLESS

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, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement or the use of the Premises or the Airport by the Lessee or its employees, agents, servants, partners, principals, invitees, trespassers, contractors or subcontractors, except to the extent attributable to the gross negligence or willful misconduct of the County or its agents and trespassers. Lessee shall pay all claims and

losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay 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 Lessor shall give to the Lessee reasonable notice of any such claims or actions. The provisions of this section shall survive the expiration or early termination of this Agreement.

ARTICLE 12. ASSIGNMENT AND SUBLETTING AND CONDITIONS OF FINANCING

12.01 Assignment and Transfer: Except as provided in **Article 12.02**, the Lessee shall not, in any manner, assign, transfer, mortgage, pledge, hypothecate, encumber or otherwise convey an interest in this Agreement, or authorize others to exercise the rights granted to the Lessee herein, without the written approval of the Aviation Department. The Lessee may make a collateral assignment to a Lender, sell the stock of the business, or sell equity interests in Lessee which provide for less than 49% equity in Lessee without prior consent of the Department. Equity sales which convey, or result in another entity owning more than, 49% equity in Lessee shall require consent of the Department, unless (a) Lessee's corporate officers are the same following the equity sale and (b) if the Lessee's general manager overseeing the Lease remains the same. Additionally, Lessee may sell substantially all of its assets to a corporate affiliate or parent without prior approval of the Department. A sale of Lessee's assets to an entity other than a corporate parent or affiliate shall require the consent of the County unless (a) substantially all of the Lessee's assets are sold, (b) the purchaser is a single entity that will continue all of the operations permitted or required of Lessee hereunder, and (c) the purchaser meets the Department's requirements set forth in Article 11.03(D)(5) herein. In the event the Lessee seeks financing from a Lender, and the Lender requires as a provision of such financing provisions regarding the assignment of the Lease or affecting the interests of or requiring certain actions by the Department, such provisions must be approved by the Department; however, such approval shall not be unreasonably withheld or delayed by MDAD for so long as the Use of Premises as provided for in Article 2 (Use of Premises) remain the same and the Lender assigns the Lease to an entity deemed by MDAD to be reputable and credit worthy and meeting the Department requirements stated under Article 11.03 (D) (5) (Transfer To A "Transferee" or "Successor Lessee"). For the purposes of this section, a parent or affiliate of Lessee is an entity which owns a majority interest in Lessee, directly or through intermediaries, or in which Lessee owns a majority interest, either directly or through intermediaries.

12.02 Assignment or Transfer Fee: A Transfer or Assignment Fee of 2% of gross consideration received by Lessee for the assignment or transfer of all or any portion of this Lease shall apply during the first six (6) years of the Lease Term. Notwithstanding, no Transfer or Assignment Fee shall apply to any assignment or transfer which does not require the Department's consent as listed in Section 12.01 above

12.03 Subletting: The Lessee shall submit any subleases to the Department for approval, which shall not be unreasonably withheld, conditioned or delayed. Any objection by the Department must be forwarded to the Lessee within 30 days of receipt of the sublease by the Department's Director. Subleases shall be subject to the provisions of any applicable County Commission Resolution, as amended from time to time, which may describe conditions applicable to subleases or limit the rental to be charged to the sublease by the Lessee. The County shall have the right to audit the Lessee's compliance with such subleasing policy. Subleases are subject to gross revenue reporting requirements.

Further, any such subleases shall be subject to the same conditions, obligations and terms as set forth herein, including as a minimum, but not limited to, requirements for compliance with Airport Rules and Regulations and

applicable laws in payment of concession fees and indemnification of the County. Notwithstanding anything herein contained to the contrary, in the event of an approved sublease, the Lessee shall remain fully liable to the County for fulfilling all obligations, conditions and terms of this Agreement, throughout its entire term.

12.04 Conditions of Financing for Approved Improvements Costs:

(A) Financing of Improvements. Lessee may secure private financing to provide funds required for the construction of the Improvements. No mortgage or other encumbrance the Lessee executes in connection with that financing (a "Leasehold Mortgage") will extend to or be a lien or encumbrance upon Lessor's interest in any part of the Premises or in any right appurtenant to that interest. Moreover, the Lessor has no obligation to subordinate the Lessor'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 12.04(A).

(B) Lessor Approval of Financing Documents. The Lessor reserves the right to approve the documents memorialising any financing that Lessee secures on the authority of Article 12.04(A), which approval shall not be unreasonably withheld. Lessee must submit for the Lessor's review and approval drafts of the financing documents in advance of Lessee's execution of those documents or documentation verifying Lessee's ability to self-finance the Improvements

(C) Recording of Leasehold Mortgage. Following the Lessee's execution of a Leasehold Mortgage, if applicable, Lessee shall furnish the Lessor (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 mortgagees or secured party (the "Leasehold Mortgage") in whose favour Lessee executed the Leasehold Mortgage.

(D) Conditions of Leasehold Mortgage. Following the delivery of the documents in 12.04(C) (Recording of Leasehold Mortgage) and continuing until the Leasehold Mortgagee releases the Leasehold Mortgage of record, the following provisions will apply:

1. LESSOR TO GIVE NOTICE OF DEFAULT. At the time that the Lessor gives Lessee written notice of the occurrence of any default in respect of the performance of Lessee's obligations under this Agreement, the Lessor shall simultaneously give the Leasehold Mortgagee a copy of that notice in a manner established for the delivery of notices in Article 21.07 (Notices) at the address for the Leasehold Mortgagee provided to the Lessor. No notice of default to Lessee will be effective until the Lessor delivers the notice required by this Article 12.04(D) (1).

2. MORTGAGEE'S RIGHT TO CURE DEFAULT. The Leasehold Mortgagee may rectify a default on Lessee's part but has no obligation to do so. The Lessor will accept the Leasehold Mortgagee's performance of any of Lessee's obligations to the same extent as though the Lessee has performed. The Lessor may exercise a remedy available to it by reason of a default on Lessee's part only if Lessee and the Leasehold Mortgagee fail to rectify the default within (a) any time period specifically set forth in Article 14 (Termination by County or Lessee) 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 12.04(D)(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. TERMINATION DELAYED DURING EXERCISE OF LEASEHOLD MORTGAGEE'S REMEDIES. Even though a default has occurred and neither the Lessee nor the Mortgagee has provided for a cure within the times permitted by Article 12.04(D)(2) above, the Lessor will not terminate the Lease for a reasonable period of time, not to exceed one (1) year, from the date of termination provided in the Lessor's notice of default, if the Mortgagee is then making: (a) 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 Lessee's default in respect of any of its obligations under the terms of the Leasehold Mortgage, together with (b) the payment to the Lessor of all rent and charges due hereunder with respect to which Lessee becomes delinquent and (c) good faith efforts to rectify other defaults contemporaneously with the efforts to gain possession of the Premises.

4. LEASEHOLD MORTGAGEE'S OPTION FOR ISSUANCE OF NEW LEASE. Prior to the expiration of the one (1) year period provided above in Article 12.04(D)(3), the Leasehold Mortgagee must request the Lessor to execute and deliver a new lease for the Premises in favour of a successor Lessee meeting the criteria of Article 12.04(D)(5) (a "Successor Lessee"). 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 Lessor to be obligated to execute and deliver the new lease, the Leasehold Mortgagee must request the execution and delivery of the new lease by the delivery of written notice to the Lessor within one year after the termination of this Agreement occurs, and acknowledge and return the new lease to the County for execution on the Lessor's part within 20 days after the date on which the Lessor 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 Lessor 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 10 (Environmental Compliance); that plan must set forth in reasonable detail the manner in which the Successor Lessee plans to rectify each default.

5. TRANSFER TO A "TRANSFeree" OR "SUCCESSOR LESSEE". 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 (herein a "Transferee") will not constitute an assignment requiring the Lessor's consent under the terms of Article 12.01 (Assignment and Transfer) above. The provisions of Article 3 (Use of Premises) will govern any use of the Premises that occurs prior to and after a transfer to the Transferee. The Transferee may make a subsequent transfer of Lessee's interest in the Premises only with the Lessor's prior written consent as provided in Article 12.01. The Lessor will, however, consent to the subsequent transfer to a Successor Lessee or Lessees if the proposed successor or successors to the Lessee's interest would have been acceptable to the Lessor for the Premises in the reasonable exercise of the Lessor's judgment considering the successor's experience, financial strength, history of meeting contractual obligations and intent to implement a business plan consistent with the Lessor's plan for operating the Airport. The parties agree that the Transferee will be subject to the termination provisions of Article 14 (Termination by Lessor or Lessee). After succeeding to Lessee's interest in the Premises, a Transferee that is not a Successor Lessee must use reasonable best efforts to find a Successor Lessee satisfying the criteria set forth above in this Article 12.04(D)(5), but in any event no later than one (1) year following the date of termination provided in Lessor's default notice. If no Successor Lessee or Lessees are found in such one (1) year period to occupy at least 50% of the Premises and Improvements, then all of the Lessee's, Leasehold Mortgagee's and Transferee's interests in the Premises, the Improvements, and this Lease shall terminate in their entirety, without any right of recovery or compensation from the Lessor.

6. NO OBLIGATIONS OF TRANSFeree; LESSOR'S RIGHT TO TERMINATE IF OBLIGATIONS NOT SATISFIED. If a Transferee 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 Transferee and its 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 the Transferee 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 Lessor from terminating this Agreement if the Transferee fails to rectify without cost to Lessor any default existing in respect of Lessee's obligations at the time the Transferee succeeds to Lessee's interest in the Premises, including, without limitation, any obligation arising under the terms of Article 10 (Environmental Compliance).

7. NO AMENDMENT OF LEASE WITHOUT LEASEHOLD MORTGAGEE'S CONSENT. 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 Lessor. Without the Leasehold Mortgagee's prior written consent, the Lessor may not amend this Agreement provided, however, the foregoing restrictions will not apply to amendments for which express provision is made elsewhere in this Agreement, including, without limitation, those for which provision is made in Articles 2 (Term and Premises), 4 (Rentals and Payments), 20 (Trust Agreement), and 21.13 (Severability). Without the Leasehold Mortgagee's prior written consent, the Lessor may not cancel this Agreement and accept a surrender of possession of the Premises except in the instances where the cancellation and acceptance of a surrender of possession of the Premises occurs in accordance with Article 14.05 (Actions at Termination) or in connection with the Lessor's exercise of its remedies following an occurrence of a default in the performance of 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 12.04(D) (7).

8. RIGHTS OF LEASEHOLD MORTGAGEE IN INSURED LOSSES. 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, as may be applicable, and the right to supervise and control the receipt and disbursement of insurance proceeds to the extent provided in agreements among Lessee, Leasehold Mortgagees and any other parties holding an interest with respect to the Premises; provided, however, that any distribution of insurance proceeds must comply with the requirements of Article 13 (Insurance) of this Agreement.

9. RIGHTS OF LEASEHOLD MORTGAGEE IN CONDEMNATION. If 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 interests to the extent provided in agreements among Lessee, Leasehold Mortgagee and any other party 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 Mortgagee, 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 Lessor by the condemning authority of whatever compensation and damages are determined to be owing to the Lessor for Lessor'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 Lessor 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 Lessor 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 Lessee hereunder to such date, and thereupon this Agreement and the Term shall cease and terminate. If a taking for a temporary period occurs, this Agreement 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 Lessor's interest in the Premises, subject to provisions of any agreements among Lessee, the Leasehold Mortgagee and any Lessee holding an interest with respect to the Premises.

10. LESSOR WAIVER OF RIGHT TO CERTAIN RENTALS. During the entire term hereof, Lessor 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 approved sublease of any part of the Improvements. Lessee may assign those rentals to the Leasehold Mortgagee without any consent or approval of the County. Nothing in this Article 12.04 shall (a) alter County's ownership of the Improvements in accordance with Article 2.05(Improvements Free and Clear) of this Agreement, (b) alter Lessee's obligations to commence paying Lessor fair market rentals or other rentals on the Improvements as provided in Article 4 (Rentals and Payments) or (c) provide Lessee with any ownership claim to the Improvements or the rentals therefrom after the conclusion of the term of this lease.

11. NON MERGER OF FEE AND LEASEHOLD INTEREST. Under no circumstances will the fee estate of the Lessor and the leasehold estate created by this Agreement or any sublease created hereunder merge, even though owned by the same party, without the Leasehold Mortgagee's written consent.

E) Estoppel Certificate. Upon written request from time to time by Lessee, a Leasehold Mortgagee, a prospective Leasehold Mortgagee, or a prospective assignee of Lessee's interest in the Premises, the Lessor 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 Lessor shall certify, to the extent that it then has knowledge: (i) the amount 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 Lessor knows to exist in respect of either party's performance of its respective obligations under the terms of this Agreement, and (iv) the specific nature of any defence or offset that the Lessor may assert in connection with any effort on Lessee's part to enforce any of the obligations the Lessor undertakes under the terms of this Agreement.

(F) Leasehold Mortgagee's Right To New Lease. The provision of this Article will survive 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 12.04 were a separate and independent contract made by the Lessor, Lessee, and the Leasehold Mortgagee. The Lessor's agreement set forth in this Article 12.04 to enter into a new lease with the Leasehold Mortgagee constitutes a separate agreement with the Lessor and the Leasehold Mortgagee. The Lessor 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 13. INSURANCE

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

(A) Commercial General Liability Insurance on a comprehensive basis, including Contractual Liability, to cover the Lessee's Premises 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.

(B) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used by the Lessee in connection with its operations under this Agreement in an amount not less than \$5,000,000 combined single limit per occurrence for bodily injury and property damage.

(C) Workers' Compensation Insurance as required by Chapter 440, Florida Statutes.

(D) Pollution and Remediation Legal Liability Insurance to the extent required under Section 10, in an amount not less than \$2,000,000 covering site assessment, site clean-up, third party claims and remediation expenses including, but not limited to governmental claims, legal defense costs, charges and expenses arising from any on-site and off-site loss, damage, expense or claim related to the release or any threatened release of Hazardous Material at the Lessee's Premises.

(E) Builders Risk and Property Insurance The Lessee and/or its sub-lessee(s), at its (and/or their) 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 commercially available at commercially reasonable rates. The full replacement value of the Improvements shall be established as of the date each Improvement is constructed and a certificate of completion (or certificate of occupancy) for same is issued by the appropriate governing authority with jurisdiction over same and shall be re-established at intervals of not more than thirty-six (36) months 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.

(F) 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.

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

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

- (A) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$5,000,000 combined single limit per occurrence for bodily injury and property damage.

- (B) Commercial General Liability Insurance in an amount not less than \$5,000,000 per occurrence, \$10,000,000 in the aggregate not to exclude Contractual Liability, Premises and Operations and Products and Completed Operations. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
- (C) Worker's Compensation Insurance as required by Chapter 440, Florida Statutes.

On said insurance certificates, unless specifically shown to be excluded thereon, commercial general liability coverage shall include contractual liability, and notification of cancellation shall include notification of material changes in the policies.

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

13.03 Compliance: Compliance with the requirements of this **Article 13** (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.

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

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

ARTICLE 14. TERMINATION

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

14.02 Insurance Defaults: The Lessor shall have the right, upon 15 calendar days written notice to the Lessee, to terminate this Agreement if the Lessee fails to provide evidence of insurance coverage in strict compliance with **Article 13** 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 or grace period.

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

- (A) Failure of the Lessee to comply with any covenants of this Agreement, other than the covenants to pay rentals, fees and charges when due, and the covenants to provide required evidence of insurance coverage. This shall also include the development schedule as indicated in **Article 3.06**.
- (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.

- (C) Failure of the Lessee to comply with any Environmental Law or Environmental Requirement as those terms are defined in **Article 10.01** of this Agreement.
- (D) Failure to construct Improvements in a timely manner as noted in Article 2.06 (Development Schedule and Failure to Develop) and **Article 5.05** (Failure to Complete on a Timely Basis)

14.04 Immediate Termination: The happening of the following events shall constitute a default by the Lessee and this Agreement shall permit Lessor to terminate this lease immediately, effective as of the date of Lessee's receipt of notice thereof: abandonment of the Premises or discontinuance of operations; failure of the Lessee for fifteen (15) days or more to occupy the Premises for one or more of the purposes permitted under this Agreement; or if a lien is filed against the leasehold interest of the Lessee and not removed within a reasonable time.

14.05 Actions at Termination:

(A) The Lessee shall vacate, quit, surrender up and deliver the Premises to the Lessor on or before the termination date of this Agreement, whether by lapse of time or otherwise. The Lessee shall surrender the Premises in the condition required under **Article 6** (Maintenance and Repairs) herein with all repairs for which the Lessee is responsible shall be completed prior to surrender and. In no event shall Lessor be required to pay any compensation or reimbursement to Lessee for such transfer of title. On or before the termination date of this Agreement, the Lessee shall remove all of its personal property from the Premises; provided, however, that if immediate termination occurs under **Article 14.04**, Lessee shall be allowed up to five calendar days from the receipt of notice of termination to remove such personal property.

(B) If the Lessor advises the Lessee that it has reason to believe that any hazardous substance or environmental contaminant has been released within the Premises or into the ground under the Premises, then the Lessee at its expense shall retain an approved environmental consultant to perform whatever environmental assessment may be required to determine the extent of such release. Unless expressly stated to be Lessor's obligation under **Article 10**, only related to such hazardous substances deemed to be on site prior to the lease Effective Date. The Lessee shall comply with the recommendations and conclusions of such consultant regarding environmental clean-up efforts that may be required, and shall comply with any other clean-up requirements imposed on the Lessee by Federal, State or County laws, regulations or codes.

(C) In the event of termination for default, the Lessor shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the Agreement, the following amounts as damages: (1) the reasonable costs of re-entry and re-leasing including without limitation the cost of any clean up, alteration, repair, maintenance, refurbishment, removal of personal property and fixtures of the Lessee, or any other expense occasioned by failure of the Lessee to quit the Premises upon termination and to leave them in the required condition, any remodeling costs, attorney's fees, court costs, and expenses of litigation through all levels of legal proceedings; and (2) the loss of reasonable rental value from the date of default until a new tenant has been secured.

14.06 Lien Upon Personal Property: In the event of termination for default, the Lessor shall have a lien upon all personal property of the Lessee located at Premises to secure the payment of any unpaid rentals, fees and charges accruing under the terms of this Agreement.

14.07 Right to Show Premises: At any time within six months of the scheduled expiration date of this Agreement or any time after the Lessee has been given notice of termination or default, pursuant to **Article 14** (Termination) or **Article 2.06** (a) Reduction of Term hereof, the Lessor shall have the right to enter on the Premises for the purposes of showing the Premises to prospective tenants or users during regular business hours.

14.08 Other Terminations: This Agreement shall be subject to termination by the Lessor 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 there from for a period in excess of ninety (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 for 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 ninety (90) days. In the event of termination for such reason, Lessee's exclusive remedy shall be termination or reinstatement of this lease by the County, at its sole discretion, for a period of time equal to the number of days that the injunction was in effect in excess of said ninety (90) days.

14.09 Habitual Default: Notwithstanding the foregoing, in the event that the Lessee has frequently, regularly or repetitively defaulted in the performance of or breach any of the terms, covenants and conditions required herein, to be kept and performed by the Lessee, on five (5) occasions regardless of whether the Lessee has cured each individual condition of breach or default as provided for in **Sub-Article 14.01** (Payment Default), **Sub-Article 14.02** (Insurance Defaults), and **Sub-Article 14.03** (Other Defaults) above, the Lessee shall be determined by MDAD to be an "habitual violator". At the time that such determination is made the Department shall issue to the Lessee a written notice, advising of such determination and citing the circumstances thereof. Such notice shall also advise the Lessee that there shall be no further notice or grace periods to correct any subsequent breach(s) or default(s) and that any subsequent breach or default, of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and collectively shall constitute a condition of non-curable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, the County may terminate this Agreement upon the giving of written notice of termination to the Lessee, such termination to be effective upon the seventh (7th) day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Lessee shall have no further rights hereunder. Immediately upon receipt of said termination, the Lessee shall discontinue its operations at the Airport and proceed to remove all its personal property in accordance with **Sub-Article 14.05** (Actions at Termination) hereof.

14.10 Termination by Abandonment: This Agreement shall be automatically terminated upon the abandonment by the Lessee of Premises or voluntary discontinuance of operations at the Airport for any period of time exceeding fifteen (15) consecutive calendar days, unless such abandonment or discontinuance has been caused by strike, labor disturbance, acts of God, civil disturbance, casualty or governmental order that prevents the Lessee's use of the Premises for the purposes authorized in **Article 3.02** (Use of Premises) hereof. Such termination shall not relieve the Lessee of its rental payment obligation for the remaining term of this Agreement nor does it constitute a waiver by the Lessor of its rights to recover damages for rental payments for the remaining term of this Agreement.

14.11 County Defaults: This Agreement shall be subject to termination by the Lessee in the event of a default by the County in the performance of any 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.

ARTICLE 15. SPECIAL CONDITIONS

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

15.02 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.

15.03 County's Obligations: The Lessee, in recognition of the County's obligation, pursuant to Section 22 of Part V of the Federal Aviation Administration's standard grant assurances, to enforce the provisions of **Articles 15.01** (Quality of Services) and **15.02** (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. Should the Department determine that the Lessee is not in compliance with the provisions of **Articles 15.01** (Quality of Services) and **14.02** (Nondiscriminatory Prices) above, the first such occurrence shall be considered a curable default, pursuant to **Article 14.03** (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.

15.04 Air Shows and Special Events: Upon at least 60 days written notice from the Department, the County may require the Lessee to surrender portions of the Premises for certain periods of time during the term of this Agreement for the purpose of allowing the use of designated portions of the Premises by others in connection with air shows and other special events. Said use will not exceed ten days or more than three events per year. For any day or part of a day that the Premises are so used, rental payments under **Article 4.01** (Rentals) will be abated. The Department shall actively keep the Lessee advised of all of the planning for such events, air shows, or County sponsored special events, if portions of the Premises are to be so used.

ARTICLE 16. EQUAL EMPLOYMENT OPPORTUNITY, NONDISCRIMINATION AND AFFIRMATIVE ACTION

The Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the Lessee for the period during which Federal assistance is extended to the Airport through the Airport Improvement Program. In cases where Federal assistance provides, or is in the form of personal property, real property or interest therein; structures or improvements thereon, this provision obligates the party or any transferee for the longer of the following periods:

- (A) The period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- B) The period during which the airport sponsor or any transferee retains ownership or possession of the property.

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

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

16.03 Breach of Nondiscrimination Covenants: In the event it has been determined that the Lessee has breached any enforceable nondiscrimination covenants contained in **Sub-Articles 16.01** (Employment Discrimination) and **Sub-Article 16.02** (Nondiscriminatory Access to Premises and Services), pursuant to the complaint procedures contained in the applicable Federal Regulations, and the Lessee fails to comply with the sanctions and/or remedies which have been prescribed, the County shall have the right to terminate this Agreement pursuant to **Sub-Article 14.03** (Other Defaults) hereof.

16.04 Affirmative Action and Disadvantaged Business Enterprise

Programs: The Lessee agrees that in the event the provisions of 49 CFR Part 23, Disadvantaged Business Enterprises (DBE) and 14 CFR Part 152, Affirmative Action Employment Programs, are applicable to the Lessee under this Agreement, it shall comply with all requirements of the Department, the Federal Aviation Administration and the U. S. Department of Transportation. These requirements may include, but not be limited to, the compliance with DBE and/or Employment Affirmative Action participation goals, keeping of certain records of good faith compliance efforts, and the submission of various reports, including, if directed by the Department, the contracting of specified percentages of goods and services contracts to Disadvantaged Business Enterprises. Failure to comply with these requirements shall constitute a default hereunder and be grounds for termination of this Agreement. In the event it has been determined, in accordance with applicable regulations, that the Lessee has defaulted in the requirement to comply with this section, and the Lessee thereafter fails to comply with the sanctions and/or remedies then prescribed, the County shall have the right, upon written notice to the Lessee, to terminate this Agreement pursuant to **Sub-Article 14.03** (Other Defaults) hereof.

16.05 Title VI Clauses for Compliance with Nondiscrimination Requirements: During the performance of this Lease, the Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the "Lessee") agrees as follows:

(A) Compliance with Regulations: The Lessee (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are set forth in **Sub-Article 16.06: Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program**

(B) Nondiscrimination: The Lessee, with regards to the work performed by it during the Lease, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-lessees or subcontractors, including procurements of materials and leases of equipment. The Lessee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities set forth below, including employment practices when the Lease covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

(C) Solicitations for sub-leases or subcontracts, including procurements of materials and equipment: In all solicitations, either by competitive bidding, or negotiation made by the Lessee for work to be performed under a sub-lease or subcontract, including procurements of materials, or leases of equipment, each potential sub-lessee or subcontractor or supplier will be notified by the Lessee of the Lessee's obligations under this Lease and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

(D) Information and Reports: The Lessee will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a Lessee is in the exclusive possession of another who fails or refuses to furnish the information, the Lessee will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

(E) Sanctions for Noncompliance: In the event of a Lessee's noncompliance with the Nondiscrimination provisions of this Lease, the sponsor will impose such Lease sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

1. Withholding payments to the Lessee under the Lease until the Lessee complies; and/or
2. Cancelling, terminating, or suspending a Lease, in whole or in part.

(F) Incorporation of Provisions: The Lessee will include the provisions of paragraphs (A) through (F) in every sublease and subcontract, including procurements of materials and leases of equipment, Required Contract Provisions Issued on January 29, 2016 Page 19 AIP Grants and Obligated Sponsors Airports (ARP) unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Lessee will take action with respect to any sublease or subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Lessee becomes involved in, or is threatened with litigation by a sub-lessee, subcontractor, or supplier because of such direction, the Lessee may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Lessee may request the United States to enter into the litigation to protect the interests of the United States.

16.06 Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program:

(A) The Lessee, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) that the Lessee will use the Premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities.

(B) With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, the County will have the right to terminate the Lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Lease had never been made or issued.

16.07 Title VI List of Pertinent Nondiscrimination Acts and Authorities: During the performance of this Lease, the Lessee agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

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

ARTICLE 17. SECURITY AND SPECIAL PROVISIONS

17.01 Security: The Lessee acknowledges and accepts full responsibility for (i) the security and protection of the Premises, any Improvements thereon, its equipment and property on the Airport and (ii) all breaches of federal and Lessor security requirements by Lessee’s employees or those persons for whom Lessee has responsibility under **Article 17.02**, and (iii) control of access to the AOA through the Premises by persons and vehicles. The Lessee fully understands and acknowledges that any security measures deemed necessary by

the Lessee for the protection of said Premises, equipment and property shall be the sole responsibility of the Lessee and shall involve no cost to the County. Lessee is responsible for compliance by its employees and all others for whom it is responsible with applicable security requirements relating to access, through Lessee's Premises or otherwise, to the AOA or any Security Identification Display Area ("SIDA"). All such security measures by the Lessee shall be in accordance with FAR 107, 49 CFR Part 1542 and the Airport Security Plan.

17.02 Security Identification Display Areas Access - Identification Badges: The Lessee shall be responsible for (i) assuring that all of Lessee's employees, and all employees and persons of entities accessing the AOA/SIDA through the Premises on behalf of Lessee (collectively herein, the "SIDA Users"), have appropriate SIDA Identification Badges and comply with all federal and Lessor security requirements applicable to the Premises and SIDAs, (ii) immediately reporting to MDAD all lost or stolen ID badges of Lessee's employees and/or visitors' badges provided by Lessee, and (iii) immediately returning the ID badges of any of Lessee's employees that are transferred from the Airport 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 an ID badge is issued. The Lessee shall pay, or cause to be paid, to the Department any fines or penalties imposed on Lessor for a violation of the security requirements set forth herein, as well as 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 ID badges, which data may include the fingerprinting of employee applicants for the badges.

17.03 AOA - Driver Training: Before the Lessee shall permit any employee to operate a motor vehicle of any kind or type on the AOA, the Lessee shall require such 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, and appropriate Florida driver's licenses.

17.04 Alcohol and Drug Testing: The Lessee acknowledges that the County, as a public agency sponsor under the provisions of the Airport and Airway Improvement Act of 1982, as amended (the "Act"), has the obligation to establish a drug free workplace and to establish policies and programs to ensure airport safety and security. The Lessee acknowledges that the Department, on behalf of the County, has the right to require users of the Airport (Lessees, Permittees, Licensees, etc.) to establish reasonable programs to further the achievement of the objectives described herein. Accordingly, the Lessee shall establish programs for pre-employment alcohol and drug screening for all candidates for employment at the Airport who will as a part of their duties (a) be present on the AOA; (b) operate a motor vehicle of any type on the AOA; or (c) operate any equipment, motorized or not, on the AOA and for the same or similar screening based upon a reasonable suspicion that an employee, while on duty on the AOA, may be under the influence of alcohol or drugs. Notwithstanding the above, the Lessee specifically acknowledges that the County, acting through the Department, has the right and obligation to deny access to the AOA and to withdraw AOA driving privileges from any person who it has a reasonable suspicion to believe is under the influence of alcohol or drugs.

17.05 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 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 re-certification 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 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 re-certification as required by the Ordinance;
- (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 re-certification; 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.

17.06 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.

17.07 Vehicle Permit and Company Identification: Motor vehicles and equipment of the Lessee operating on the AOA must have an official motor vehicle identification permit issued pursuant to Operational Directives of the Department. In addition, company identification must be conspicuously displayed thereon.

17.08 Federal Agencies Right to Consent: The Lessee understands and agrees that all persons entering and working in or around arriving international aircraft and facilities used by the various Federal Inspection Services agencies may be subject to the consent and approval of such agencies. Persons not approved or consented to by the Federal Inspection Services agencies shall not be employed by the Lessee in areas under the jurisdiction or control of such federal inspection agencies.

17.09 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. 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.

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

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.

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

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

ARTICLE 18. EMPLOYEES

18.01 Control of Employees: 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.

18.02 Lessee's Responsibility for Employee's Violations: In the event the Lessee is in default of the covenants of **Article 18.01** (Control of Employees) for failure to properly control its employees or by permitting its employees to improperly use the facilities by the County, the Department shall have the right to require the Lessee to conduct an investigation into any claimed violation of the covenants; if such investigation substantiates a violation, Lessee agrees to administer the appropriate discipline up to and including discharge of the offending employee.

ARTICLE 19. CIVIL ACTIONS

19.01 Governing Law; Venue: This Agreement shall be governed and construed in accordance with the laws of the State of Florida. The venue of any action on this Agreement shall be laid in Miami-Dade County, Florida, and any action to determine the rights or obligations of the parties hereto shall be brought in the courts of the State of Florida.

19.02 Notice of Commencement of Civil Action: In the event that the County or the Lessee commence a civil action where such action is based in whole or in part on an alleged breach of this Agreement, the County and the Lessee agree that service of process shall be made pursuant to the rules of Civil Procedure in the court in which the action has been filed.

19.03 Registered Office/Agent; Jurisdiction: Notwithstanding the provisions of **Article 19.02** (Notice of Commencement of Civil Action), and in addition thereto, the Lessee, if a corporation, shall designate a registered office and a registered agent, as required by Section 48.091, Florida Statutes, such designations to be filed with the Florida Department of State in accordance with Section 607.0501, Florida Statutes. If the Lessee is a natural person, he and his personal representative hereby submit themselves to the jurisdiction of the Courts of this State for any cause of action based in whole or in part on an alleged breach of this Agreement.

ARTICLE 20. TRUST AGREEMENT

20.01 Incorporation of Trust Agreement by Reference: Notwithstanding any of the terms, provisions and conditions of this Agreement, it is understood and agreed by the parties hereto that, 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 provisions of the Trust Agreement dated as of the 15th day of December, 2002 by and among the County and the JP Morgan Chase Bank as Trustee and Wachovia Bank, National Association as Co-trustee ("the Trust Agreement"), shall prevail and govern at all times during the term of this Agreement. Copies of the Trust Agreement are available for inspection in the offices of the Department during normal working hours.

20.02 Adjustment of Terms and Conditions: If, at any time during the term of this Agreement, a Federal agency or 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 or in any deficiency in revenues necessary to comply with the covenants of the Trust Agreement. In the event the County has modified the terms and conditions of this Agreement, including any adjustment of the rentals, fees and charges required to be paid to the County pursuant to this provision, this Agreement shall be amended to incorporate such modification of the terms and conditions including the adjustment of rentals, fees and charges upon the issuance of written notice from the Department to the Lessee.

ARTICLE 21. OTHER PROVISIONS

21.01 No Representation: The County makes no representation, warranty, guarantee, or averment of any nature whatsoever concerning the physical condition of the Premises, and it is agreed that County will not be responsible for any loss, damage or costs which may be incurred by the Lessee by reason of any such physical condition, except as to costs agreed to be reimbursed by County under this Agreement.

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

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

21.04 Authorized Uses Only: The Lessee shall not use or permit the use of the Premises 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.

21.05 Binding Effect: The terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns. This provision shall not constitute a waiver of any conditions prohibiting assignment or subletting.

21.06 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, and specifically including all grant assurances. 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 States of America shall be suspended.

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

As to the County or Aviation Department:

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

As to the Lessee:

Joshua Gausman
Co-CEO
The Private Suite MIA, LLC
6871 W. Imperial Highway
Los Angeles, California 90045

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

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

21.09 Rights of County at Airport: The County shall have the absolute right, without limitation, to make any repairs, alterations and additions to any structures and facilities at the Airport. The County shall, in the exercise of such right, be free from any and all liability to the Lessee for business damages occasioned during the making of such repairs, alterations and additions, except those occasioned by the sole active negligence of the County, its employees, or agents.

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

21.11 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 non-performance hereof by the other party.

21.12 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 the Lessee that is related in any way to the regulatory or quasi-judicial power of the County; and the County shall be released and held harmless by the 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 reversible 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.

21.13 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.

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

21.15 Payment of Taxes: The Lessee shall pay all taxes and other costs lawfully assessed against its leasehold interests in the Premises, its Improvements and its operations under this Agreement; provided, however, the Lessee shall not be deemed to be in default of its obligations hereunder for failure to pay such taxes pending the outcome of any legal proceedings instituted to determine the validity of such taxes. Failure to pay the taxes upon the adverse ultimate conclusion of such legal proceedings against the Lessee shall constitute a default pursuant to **Article 14.03** (Other Defaults).

21.16 Quiet Enjoyment Of Others: The Lessee shall control the actions of its employees, agents, invitees and those doing business with it, so as to not 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.

21.17 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.

21.18 Force Majeure: Performance by each party shall be pursued with commercially reasonable efforts in all requirements under this Agreement; however, except as otherwise expressly provided herein, neither party shall be liable to the other for any loss or damage for delay due to causes that (i) were beyond the reasonable control and (ii) were not caused by the negligence or lack of commercially reasonable efforts of the affected party or its subcontractors or suppliers. The parties agree that, provided the conditions stated in (i) and (ii) above apply, the following are causes or events of force majeure: acts of civil or military authority (including courts and regulatory agencies), acts of God (excluding normal or seasonal weather conditions), riot or insurrection, inability to obtain required permits or licenses, blockades, embargoes, sabotage, epidemics and unusually severe floods, or acts or decisions of the Federal Aviation Administration, the Department of Transportation, the Transportation Security Administration, or the Environmental Protection Agency. The party affected shall provide written notice to the other party indicating the nature, cause, date of commencement thereof, the anticipated extent of such delay and whether it is anticipated that any completion or delivery dates will be affected thereby, and shall exercise due diligence to mitigate the effect of the delay. The parties agree that the commercial impacts of COVID-19 are currently known to the parties, and that commercial impacts related to COVID-19 shall not constitute force majeure events.

In the event of any delay resulting from such causes, and provided the affected party has promptly notified the other and exercised commercially reasonable efforts as provided above the time for performance under this Agreement (including the payment of monies) shall be extended for a period of time reasonably necessary to overcome the effect of such delay.

21.19 Destruction of Premises: In the event the Premises shall be destroyed or so damaged or injured by fire, windstorm, flood or other casualty (and in each such event the Lessee was not at fault in whole or in part) during the life of this Agreement that the Premises or any portion thereof are rendered untenable, the County shall have the right, but not the obligation, to render said Premises or damaged portion thereof tenantable by repairs completed within a reasonable period of time.

- (A) **Total Destruction:** In the event the County elects not to render the Premises tenantable, if destroyed or damaged in their entirety, the Lessee shall be so notified in writing by the Department, and this Agreement shall be deemed terminated as of the date of the casualty, with the Lessee being liable only for payment of rentals on a pro rata basis as to whatever portion(s) of the Premises which were tenantable and used by the Lessee following the casualty. In such event, the Department shall endeavor to find adequate replacement premises for the Lessee in existing facilities on the Airport.
- (B) If the damaged portion of the Premises is not rendered tenantable by the County within a reasonable period of time, and the Lessee shall determine that: 1) the loss of the damaged portion of the Premises shall have a materially adverse impact on the ability of the Lessee to utilize the Premises for the purposes described in **Article 3**; or 2) would require the Lessee to obtain other space off the Premises in order to substantially conduct the operations of the Lessee originally conducted within the Premises, then, in either such event, upon written notice to the County, the Lessee may cancel this Agreement as of a date which shall be not later than one year from the giving of such notice, if the repairs are not completed within 90 days following such written notice of the intent to cancel, or if the repairs cannot be reasonably completed within such 90-day period the County has not commenced repairs within such time and diligently pursues same to completion. In the event of cancellation, the rent for the untenable portion of the Premises shall be paid only to the date of such fire, windstorm, flood, or other casualty. If the Agreement is not canceled following any such casualty, the rent shall be abated as to the portion of the Premises rendered untenable. If the casualty was caused in whole or in part by the Lessee, its officers, employees, agents, contractors or Trespassers, then the Lessee shall not have the right to terminate this Agreement, and, to the extent the damages are not fully covered by Lessee's existing insurance, shall be responsible under other provisions of this Agreement for payment to the County of all damage to the Premises, plus the loss of rentals attributable to the damaged or destroyed premises.

Quiet Enjoyment: Subject to the terms of this Agreement, specifically including, but not limited to, environmental remediation steps to be taken under **Article 10**, the County's right and obligation to make certain repairs, alterations, and additions under Articles 6 (Maintenance by County) and **21.09** (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 17.10** (Right of Flight), all of which provisions and others in this 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 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.

21.20 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.

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

21.22 Inspector General Reviews:

Independent Private Sector Inspector General Reviews: Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Lessee shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Concessionaire's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision apply to the Concessionaire, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Concessionaire in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Concessionaire or any third party.

Miami-Dade County Inspector General Review: According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Concessionaire. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Implementing Order 3-38; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.***

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

County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Concessionaire, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Concessionaire from the Inspector General or IPSIG retained by the Inspector General, the Concessionaire shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Concessionaire's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements formed with successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

21.23 Federal Aviation Administration (FAA) Provisions

a) Compliance with Nondiscrimination Requirements

During the performance of this Agreement, the Concessionaire, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
2. **Non-discrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the

Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of a Contractor's noncompliance with the Nondiscrimination provisions of this Contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - i. Withholding payments to the Contractor under the Agreement until the contractor complies; and/or
 - ii. Cancelling, terminating, or suspending a contract, in whole or in part.
6. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, Required Contract Provisions Issued on January 29, 2016 Page 19 AIP Grants and Obligated Sponsors Airports (ARP) unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.
7. During the performance of this Agreement, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:
 - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
 - ii. 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
 - iii. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 - iv. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
 - v. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
 - vi. Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
 - vii. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and Contractors, whether such programs or activities are Federally funded or not);
 - viii. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems,

- places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- ix. The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123 (prohibits discrimination on the basis of race, color, national origin, and sex));
 - x. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
 - xi. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
 - xii. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).
- b) All contracts and subcontracts that result from solicitation RFP-01555 incorporated by reference the provisions of 29 CFR Part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The Contractor/Consultant has full responsibility to monitor compliance to the referenced statute or regulation. The Contractor/Consultant must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

- c) All contracts and subcontracts that result from solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

21.24 Miami-Dade County United States Soccer Federation 2026 World Cup

The terms of this agreement are subordinate to the terms of the Airport Agreement submitted by Miami-Dade County to the United States Soccer Federation on February 21, 2018. In carrying out its obligations under this Agreement, the Consultant shall not take or omit any action which is inconsistent with, or in derogation of, the County's obligations under the Airport Agreement. Where the Consultant's rights or obligations under this Agreement are in conflict with the County's obligations under the Airport Agreement, and upon notice by the County to Consultant, the terms of this Agreement shall be deemed conformed to the County's obligations under the Airport Agreement. Where such conformance would cause a material change in this Agreement, Consultant shall have the right, upon written notice to the County within five (5) Days of receipt of notice of such a conflict, to terminate this Agreement for convenience; in such termination, the Consultant shall have no cause of action for money damages of any kind, including but not limited to direct damages, unamortized costs or debt, stored or ordered materials, indirect damages, lost profits, loss of opportunity, loss of goodwill, or otherwise. In the event that the County does not elect to terminate this Agreement within the time specified herein, this Agreement

shall be deemed to have been amended via consent of the parties to conform its terms to the requirements of the Airport Agreement, but only to the extent needed to avoid conflict with same.

21.25 VENDOR REGISTRATION/CONFLICT OF INTEREST

a) Vendor Registration: The Contractor shall be a registered vendor with the County – Internal Services Department, Strategic Procurement Division, for the duration of this Agreement. In becoming a registered vendor with Miami-Dade County, the Contractor confirms its knowledge of and commitment to comply with the following:

1. Miami-Dade County Ownership Disclosure Affidavit

(Section 2-8.1 of the Code of Miami-Dade County)

2. Miami-Dade County Employment Disclosure Affidavit *(Section 2.8.1(d)(2) of the Code of Miami-Dade County)*

3. Miami-Dade County Employment Drug-free Workplace Certification

(Section 2-8.1.2(b) of the Code of Miami-Dade County)

4. Miami-Dade County Disability and Nondiscrimination Affidavit

(Section 2-8.1.5 of the Code of Miami-Dade County)

5. Miami-Dade County Debarment Disclosure Affidavit

(Section 10.38 of the Code of Miami-Dade County)

6. Miami-Dade County Vendor Obligation to County Affidavit

(Section 2-8.1 of the Code of Miami-Dade County)

7. Miami-Dade County Code of Business Ethics Affidavit

(Sections 2-8.1(i), 2-11.1(b)(1) through (6) and (9), and 2-11.1(c) of the Code of Miami-Dade County)

8. Miami-Dade County Family Leave Affidavit

(Article V of Chapter 11 of the Code of Miami-Dade County)

9. Miami-Dade County Living Wage Affidavit

(Section 2-8.9 of the Code of Miami-Dade County)

10. Miami-Dade County Domestic Leave and Reporting Affidavit *(Article VIII, Section 11A-60 - 11A-67 of the Code of Miami-Dade County)*

11. Miami-Dade County E-Verify Affidavit

(Executive Order 11-116)

12. Miami-Dade County Pay Parity Affidavit

(Resolution R-1072-17)

13. Miami-Dade County Suspected Workers' Compensation Fraud Affidavit

(Resolution R-919-18)

14. Subcontracting Practices

(Section 2-8.8 of the Code of Miami-Dade County)

15. Subcontractor/Supplier Listing

(Section 2-8.1 of the Code of Miami-Dade County)

16. Form W-9 and 147c Letter

(as required by the Internal Revenue Service)

17. FEIN Number or Social Security Number

In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes

relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:

Identification of individual account records

- To make payments to individual/Contractor for goods and services provided to Miami-Dade County
- Tax reporting purposes
- To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records

18. Office of the Inspector General

(Section 2-1076 of the Code of Miami-Dade County)

19. Small Business Enterprises

The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.1.1.1.1, 2-8.1.1.1.2 and 2-8.2.2 of the Code of Miami-Dade County and Title 49 of the Code of Federal Regulations.

20. Antitrust Laws

By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

- b) Conflict of Interest and Code of Ethics:** Section 2-11.1(d) of the Code of Miami-Dade County requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethics Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. All autonomous personnel, quasi-judicial personnel, advisory personnel, and employees wishing to do business with the County are hereby advised they must comply with the applicable provisions of Section 2-11.1 of the Code of Miami-Dade County relating to Conflict of Interest and Code of Ethics. In accordance with Section 2-11.1 (y), the Miami-Dade County Commission on Ethics and Public Trust (Ethics Commission) shall be empowered to review, interpret, render advisory opinions and letters of instruction and enforce the Conflict of Interest and Code of Ethics Ordinance.

21.26 PAYMENT CARD INDUSTRY DATA SECURITY STANDARD

Lessee must maintain compliance with the Payment Card Industry Data Security Standard (PCI DSS), which is a set of requirements designed to ensure that ALL companies that process, store or transmit credit card information maintain a secure environment.

21.27 VENDOR COMPLIANCE WITH IO 8-4

During the performance of Lessee's construction work under this Agreement, the Lessee shall comply with Implementing Order (IO) 8-4 and BCC Resolution (Reso. 129-22). The Lessee shall provide quarterly notarized status reports to the County, with a copy to the Commission District 11 office in which the property lies, regarding compliance with each project milestone set forth in this Agreement.

IO 8-4 <https://www.miamidade.gov/aopdfdoc/aopdf/pdffiles/IO8-4.pdf>

Reso. 129-22 <https://www.miamidade.gov/govaction/legistarfiles/MinMatters/Y2022/220285min.pdf>

21.28 CONTRACT MEASURES AIRPORT CONCESSION DISADVANTAGE BUSINESS ENTERPRISES (ACDBE)

It is the policy of the County that ACDBE's shall have the maximum practical opportunity to participate in the performance of County agreements. ACDBE applicability under this contract and any other appropriate goals, if applicable, shall be determined by the County in its sole discretion after contract execution but prior to the start of commercial operations, if applicable. The Contractor, 30 days prior to commencing commercial operations, shall provide the County with description of all services Contractor intends to offer at the Premises, so that the County can determine the applicability of ACDBE goals and measures, if any. Additionally, the Contractor shall comply with Miami-Dade County Certified Small Business Enterprises (SBE's) pursuant to Sections 2-8.1.1.1.1 and 2.1.1.1.2 of the Code.

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

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

By: _____
Deputy Aviation Director

Date: _____

ATTEST: Clerk Ad Interim

By: _____

Date: _____

(Seal)

LESSEE NAME: THE PRIVATE SUITE MIA, LLC

By: _____
Director

Joshua Gausman

Print Name

Date: 8/17/2022

ATTEST: _____
Corporate Secretary

AMINA BELWIZDAD PORTER

Print Name

Date: AUG 17 2022

(CORP SEAL)

**See Attached
Notarial Certificate**

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles

On August 17, 2022 before me, Jennifer Jaye Fraser, Notary Public
(Here insert name and title of the officer)

personally appeared Joshua Gausman & Amina Belmizood Porter

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Jennifer Jaye Fraser
Signature of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

RFP-01555

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages 62 Document Date 08.17.22

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

Individual (s)

Corporate Officer

Director & Secretary
(Title)

Partner(s)

Attorney-in-Fact

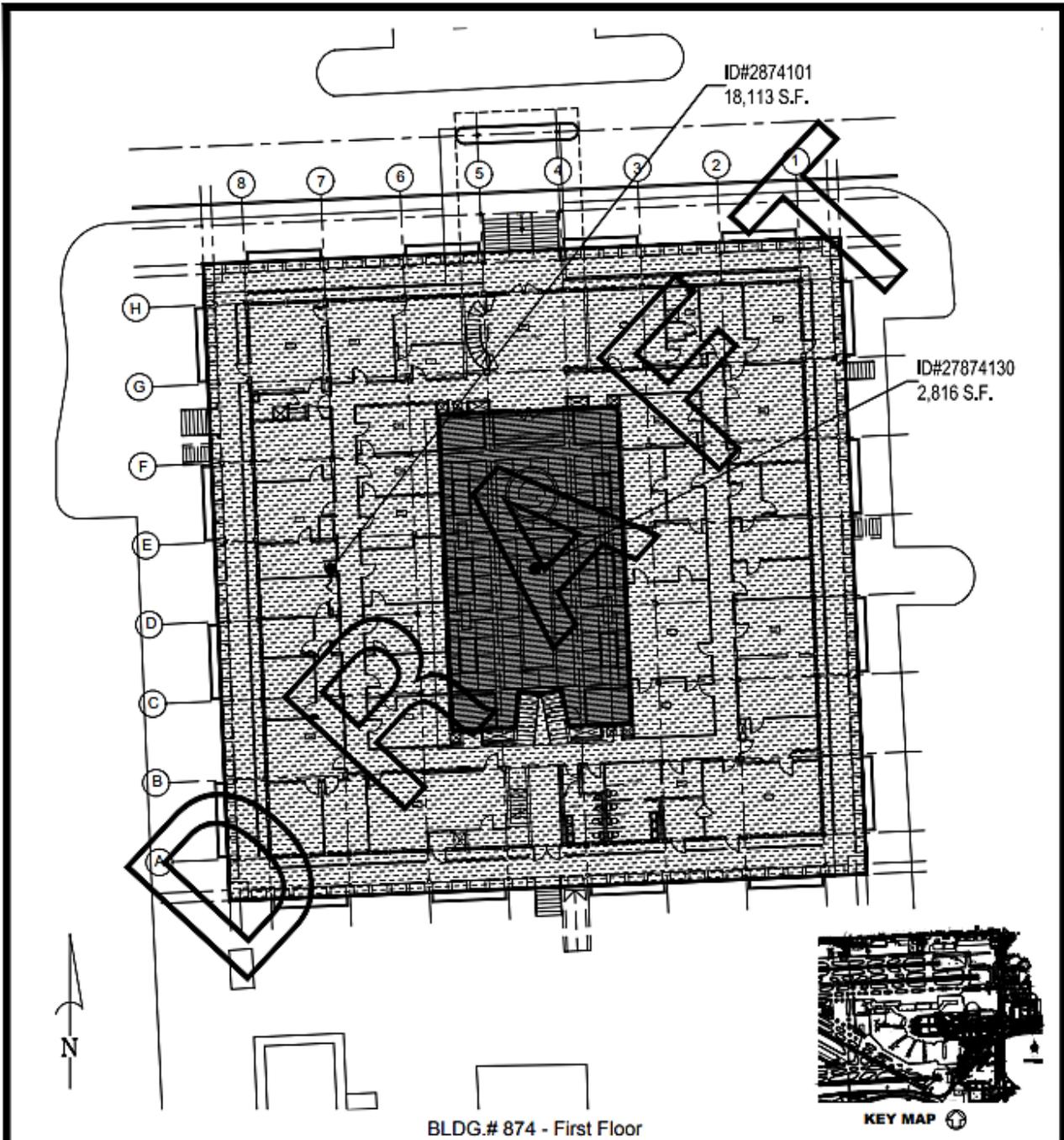
Trustee(s)

Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

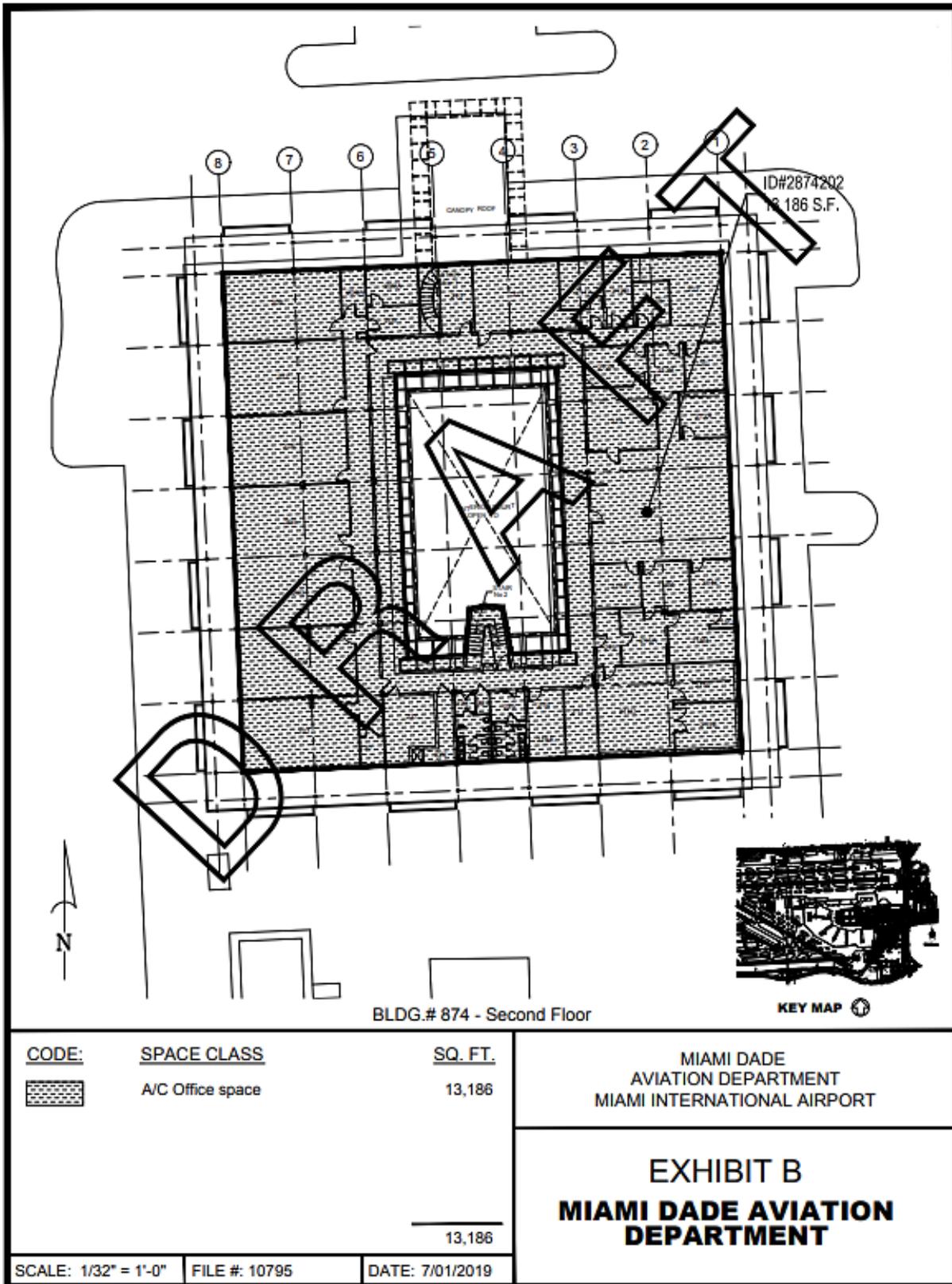


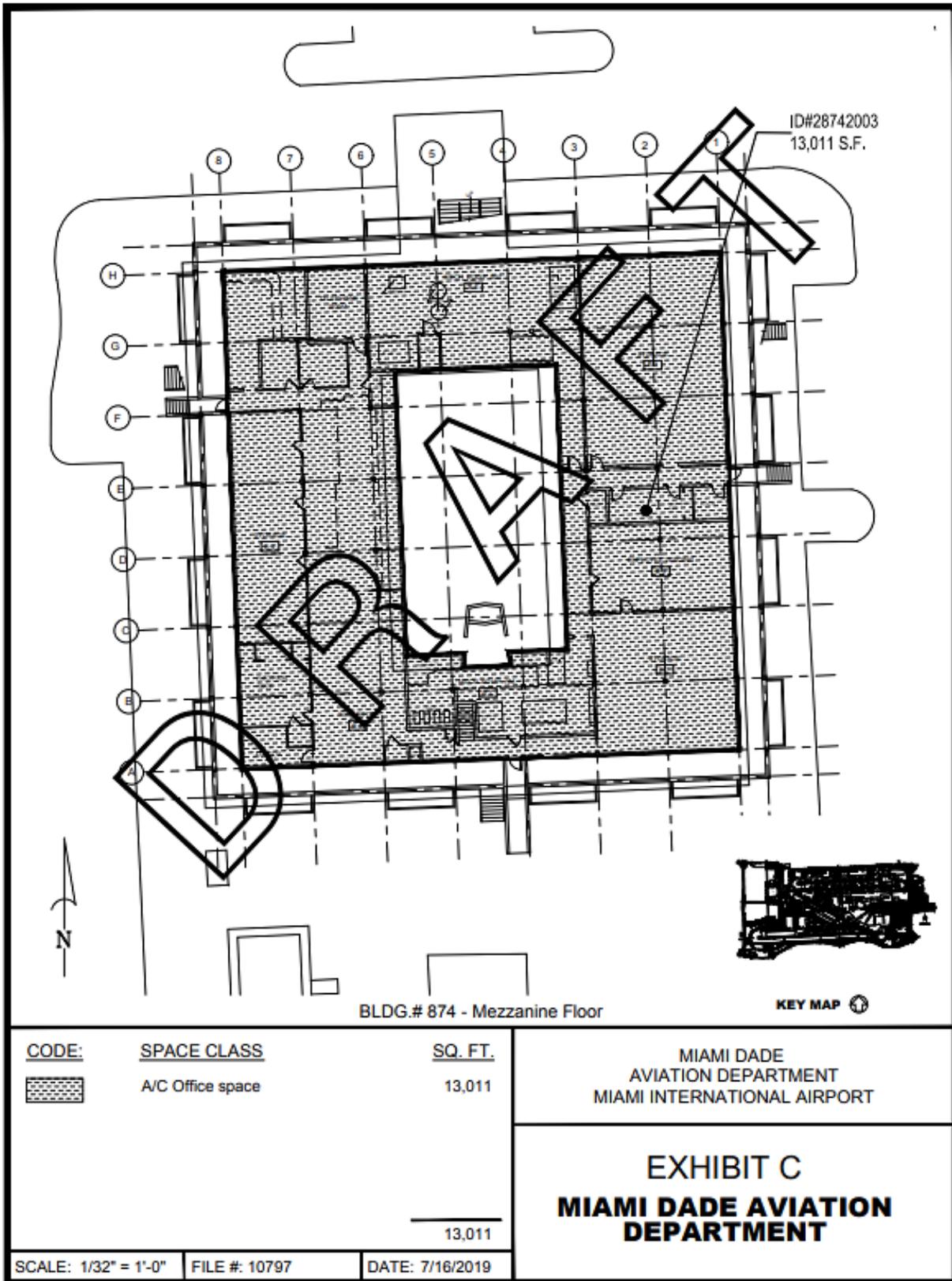
BLDG.# 874 - First Floor

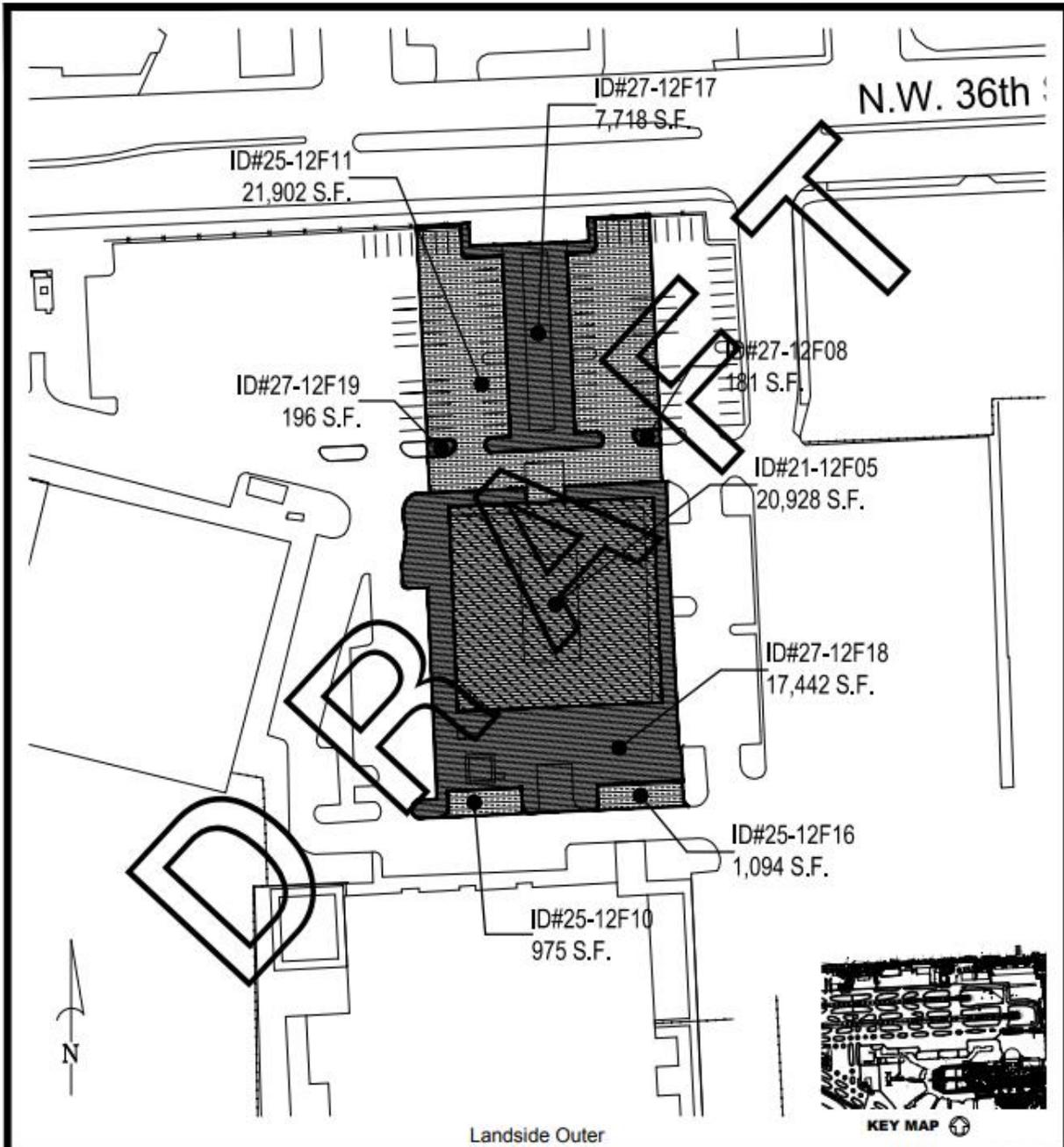
CODE:	SPACE CLASS	SQ. FT.
	A/C Office space	18,113
	Landscaped/Other Land	2,816
		20,928
SCALE: 1/32" = 1'-0"	FILE #: 10794	DATE: 7/03/2019

MIAMI DADE
AVIATION DEPARTMENT
MIAMI INTERNATIONAL AIRPORT

EXHIBIT A
MIAMI DADE AVIATION
DEPARTMENT







CODE:	SPACE CLASS	SQ. FT.
	Landside Vehicular Pavement	23,971
	Buildings	20,928
	Landscaped/Other Land	25,537
		70,437

MIAMI DADE
 AVIATION DEPARTMENT
 MIAMI INTERNATIONAL AIRPORT

EXHIBIT P
MIAMI DADE AVIATION
DEPARTMENT

SCALE: 1" = 100' FILE #: 14821 DATE: 9/01/2020