

# MEMORANDUM

Agenda Item No. 8(A)(1)

---

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

**DATE:** December 12, 2023

**FROM:** Geri Bonzon-Keenan  
County Attorney

**SUBJECT:** Resolution declaring property surplus and approving, pursuant to section 125.045, Florida Statutes, a development lease agreement between the County and BTZ Operations, LLC for an approximately 14-acre parcel at Miami Executive Airport, for development of an automobile dealership with a minimum investment of \$15,000,000.00, for an initial term of 30 years with two 5-year renewal option terms, at an estimated \$77,871,000.00 in total rent and other revenue for the initial term; authorizing the County Mayor to execute the Lease, to take all actions necessary to effectuate same, and to exercise all rights conferred therein, including the termination rights; and directing the County Mayor to provide an executed copy of the Lease to the Property Appraiser's Office within 30 days of Lease execution

---

The accompanying resolution was prepared by the Aviation Department and placed on the agenda at the request of Prime Sponsor Commissioner Roberto J. Gonzalez.


  
Geri Bonzon-Keenan  
County Attorney

GBK/gh

MDC001

**Date:** December 12, 2023

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

**From:** Daniella Levine Cava   
Mayor

**Subject:** Resolution Approving a Development Lease Agreement Between Miami-Dade County and BTZ Operations, LLC to Finance, Construct, Operate and Maintain an Automobile Dealership at Miami Executive Airport

---

## Executive Summary

On March 3, 2023, BTZ Operations, LLC (BTZ) submitted a proposal to Miami-Dade County that proffers to finance, construct, operate, and maintain an Automobile Dealership (i.e., a Subaru dealership) and ancillary facilities on approximately 14 acres of vacant County-owned land at Miami Executive Airport (TMB) for a term of 30 years with two five-year renewal options, subject to certain conditions. The proposal also requires BTZ to invest a minimum of \$15,000,000.00 to design and construct the improvements and related infrastructure. This item is recommending the County enter into a non-competitive Development Lease Agreement pursuant to Section 125.045 of the Florida Statutes (FS) for Economic Development with BTZ to lease and develop approximately 14.23 acres (or 619,952 square feet) of land for economic development purposes at TMB.

The proposed development project will benefit the County as it will promote economic expansion countywide by providing residents with 82+ temporary jobs during the construction period and 70 permanent jobs related to the operation and maintenance of the Automobile Dealership with average salaries between \$65,000.00 and \$75,000.00. Additionally, BTZ is committing to donating \$50,000.00 per year for one or more non-affiliated automotive job training programs, and another \$50,000.00 annually to the Nicklaus Children's Hospital Foundation located at 3100 SW 62 Avenue, Miami, FL 33155.

## Implementing Order No. 8-4

On March 17, 2023, the Internal Services Department (ISD) initiated a review of BTZ's proposal in collaboration with the Aviation Department (or MDAD) and other County departments including the Regulatory and Economic Resources Department (RER) and the Water and Sewer Department (WASD) to make certain that all requirements under I.O. 8-4 and the aforementioned economic development statutes are observed. The departments began the portion of the review that determines whether there are any impediments on the proposed County-owned property that would preclude the construction of the Automobile Dealership described in BTZ's proposal. Through this review process, all due diligence required under I.O. 8-4 was completed by the Administration, and it was concluded that the vacant County-owned land being proposed for development by BTZ can be declared County surplus property, and the items bulletined below, which were identified and addressed as required by the review process, will be BTZ's sole responsibility to comply with in order to develop the development site as contractually agreed upon. The results of the review are summarized below and have been documented in the attached Findings and Recommendation Memorandum (labeled as Exhibit A) dated May 1, 2023, from the ISD Director to the Miami-Dade County Mayor.

- Circulating the proposed development site to County departments to ascertain whether there is planned use for the property.
  - Result: No planned use was identified.
- A preliminary title search was provided by the County to BTZ in good faith to assist in identifying easements, restrictions, and rights-of-way on the property which could affect the proposed project.
  - Result: BTZ is contractually responsible for producing an American Land Title Association (ALTA) survey to identify easements, restrictions and rights-of-way that fall within and/or impact the property. Contractual language has been included to address all restrictions and ensure that the County retains all appropriate easements to include applicable rights-of-way and other encumbrances.
- Identifying any funding restrictions that may result in a significant financial impact to the County.
  - Result: MDAD did not identify any funding restrictions associated with the property.
- Determining whether the proposed development site is zoned consistently with the proposed land use.
  - Result: BTZ, with MDAD's assistance, is responsible for seeking a land use amendment for the property to allow for non-aviation use as the land is currently designated for aviation-use in the County's Comprehensive Development Master Plan (CDMP).
- Listing the applicable requirements for drainage and flood protection, environmental assessments, endangered species, and natural resources, in addition to any documented contamination on the property.
  - Result: Per a preliminary report from RER's Division of Environmental Resources Management (DERM), there is no known contamination on the site. Furthermore, it was determined that the property is within the consultation area of the endangered bonneted bat and is a nesting area for the burrowing owl, and moreover, may contain one Rockland habitat. BTZ shall be solely responsible, at its sole cost, for complying with all DERM requirements to obtain the needed building permits.
- Confirming as to whether the property is connected to or has access to a sanitary sewer system and/or whether there is any conflict with a sewer or water main.
  - Result: Per a preliminary report from WASD, the property is located within a WASD water and sewer service area and connection to each will be required. Regarding any potential water or sewer main conflicts, the preliminary site drawings show a potential water main conflict that needs to be addressed by BTZ. All final points of connection are subject to WASD's Rules and Regulations, Specifications and Standards. BTZ shall be solely responsible, at its sole cost, for complying with all WASD requirements to obtain building permits.

Additionally, a "Responsibility Entity Due Diligence Review" was also conducted by ISD in conjunction with the Aviation Department to determine whether the potential lessee, BTZ, is a responsible entity. The responsibility review required a look into the ownership composition of BTZ,

its financial condition and obligations, as well as its capabilities, integrity, past performance, experience, and capacity for performing under a lease contract that includes economic development provisions. The Responsible Entity Due Diligence Memorandum (attached as Exhibit B) dated July 6, 2023, addressed to the Aviation Director from the ISD Director advises that BTZ has a record of capability to develop the proposed automobile dealership and has no significant responsibility issues.

#### Section 125.045 of the FS for Economic Development

Section 125.045 of the FS seeks to promote economic activity in Florida's counties through the award of non-competitive contracts to the development community in return for the inclusion of economic development requirements in the awarded contracts. In accordance with State law, Article 7.06 of the attached non-competitive Development Lease Agreement meets the intent of an economic development agreement, which requires the development project to enhance and expand economic activity by attracting and retaining business enterprises and creating jobs. In that regard, as mentioned previously, it is anticipated that 82+ temporary jobs will be created during the construction period of this development project in addition to a maximum of 70 permanent jobs as detailed in the attached "Economic Impact Assessment" that was prepared by Lambert Advisory, LLC, reviewed by the RER Department, and labeled as Exhibit C.

In order to comply with Miami-Dade County Resolution No. R-407-19, which requires written notification to the public prior to the non-competitive sale or lease of County-owned property for certain purposes, an advertisement was published in the Daily Business Review.

#### Pending Approvals

Implementation of this non-competitive Development Lease Agreement is contingent upon the occurrence of the following conditions: (i) the proposed development site must be designated for non-aviation use and will require revisions to the CDMP and zoning designation to allow for the permitted uses, (ii) MDAD's receipt of the 707 Certificates from both the Traffic Engineers and the Consulting Engineers determining that the improvements to be constructed meet the requirements of the Trust Agreement, and (iii) review and approval from the Federal Aviation Administration (FAA). In the event the FAA determines that the provisions of Development Lease Agreement are inconsistent with Federal requirements, the parties will be required to adjust the terms of the lease to meet such requirements. Failure to address FAA regulatory concerns could impact MDAD's ability to receive federal and state grant funding for airport projects.

#### Recommendation

It is recommended that the Board of County Commissioners (Board) adopt the attached resolution approving a lease between Miami Dade County and BTZ entitled: "Development Lease Agreement Between Miami-Dade County, as Lessor, and BTZ Operations, LLC as Lessee, at Miami Executive Airport" (Development Lease Agreement) with an initial term of thirty years plus two (2) five-year renewal options. This Development Lease Agreement authorizes BTZ to lease and develop +/-14.23 acres of vacant land at TMB and establish an Automobile Dealership over a development period of 37 months, pursuant to Section 125.045 of the Florida Statutes.

#### Scope of Work

The Development Lease Agreement allows BTZ to lease a portion of Folio No. 30-5915-000-0010 located on the northwest corner of S.W. 137 Avenue and S.W. 136 Street at TMB to design and construct an automotive dealer complex with a minimum investment of \$15,000,000.00. The total



development site is 619,952 sq. ft. or 14.23 acres and will consist of no less than 53,227 square feet of structures including but not limited to an automotive showroom with related vehicle/equipment storage and service areas, office space, a customer lounge area and related amenities, vehicle parking spaces, employee and customer parking, as well as the associated infrastructure needed for the development of an Automobile Dealership.

#### The Due Diligence Period and the Development and Operation Period

Per the terms and conditions of the Development Lease Agreement, the initial 30-year term is divided into two (2) phases, the Due Diligence Period (DDP) and the Development and Operation Period (DOP). The DDP, which begins on the effective date of the Development Lease Agreement and runs for a maximum of 18 months, provides BTZ with the opportunity to perform due diligence. During the DDP, BTZ will obtain the necessary approvals to begin development such as surveys, environmental site assessments, tests, permits, and changes related to the County's CDMP including use changes and zoning changes. During this period, BTZ is not allowed to conduct any business, perform any development, or alter the leasehold premises, and given these restrictions, BTZ will pay a reduced rent during the DDP, as described further below in the Fiscal Impact section. BTZ may also terminate the agreement without penalty during the DDP.

The DOP begins immediately after the DDP ends and allows BTZ to develop the premises and operate the Automobile Dealership business for the remainder of the 30-year term, and if certain conditions are met, the two (2) five-year renewal options.

#### Major Contractual Development Milestones

1. Submit 100% development plans to MDAD for review and approval, no later than nine (9) months from the DOP Commencement Date.
2. Submit MDAD approved plans to other governmental agencies for approval, as applicable, no later than thirty (30) days from the date upon which MDAD's written approval of the plans.
3. Obtain construction permits no later than eighteen (18) months from the DOP Commencement Date.
4. Commence construction no later than nineteen (19) months after the DOP Commencement Date.
5. Complete construction no later than thirty-seven (37) months from the DOP Commencement Date.
6. Commence operations no later than forty (40) months from the DOP Commencement Date.

#### Scope

TMB is located within District 11, which is represented by Commissioner Roberto J. Gonzalez, however, the impact of this item is countywide as TMB is a regional asset.

#### Delegation of Authority

The Development Lease Agreement delegates to the County Mayor or County Mayor's designee the authority to execute the Development Lease Agreement and to exercise the termination rights conferred therein.

#### Fiscal Impact/Funding Source

As per the terms and conditions of this Development Lease Agreement, the Miami-Dade Aviation Department (Aviation Department or MDAD) estimates that the County will receive, at minimum,

\$77,871,000.00 inclusive of estimated escalations in revenues during the DDP and DOP periods over the 30-year term, in addition to improvement fees, ad valorem taxes, sales and other taxes.

A. Due Diligence Period (DDP) Fee- Total Estimated Payment over 18 Months: \$135,000.00

From the effective date of the Development Lease Agreement until the end of the DDP period, which shall not exceed 18 months, BTZ will pay \$7,500.00 per month, which represents a reduced amount in light of the fact that BTZ may not conduct any business or perform any development during the DDP Period. If the effective date is other than the first day of the month, the amount shall be prorated, and payment of the DDP Fee thereafter shall be due on the first of each month. It is estimated that BTZ will pay the County a total of \$135,000.00 during the DDP.

B. Development and Operation Period (DOP)– Total Estimated Payment over 342 Months: \$72,561,000.00

Upon the commencement date of the DOP period, which could take effect prior to the expiration of the 18-month period allowed for the DDP Period, BTZ will pay Regular Ground Rent (estimated at \$1,512,000.00 for the first year) as established by the County within 30 days after the effective date of the Development Lease Agreement based on appraisals of non-aviation use land. The Regular Ground Rent amount will be set at \$2.44 per square foot based on the average of two (2) appraisals. The appraisals are subject to FAA review and acceptance.

On each anniversary of the first day of the month immediately following the month in which the DOP Period began, the Regular Ground Rent will be increased by two percent (2%) for the 12-month period immediately following each such adjustment date, and on the year following the 5<sup>th</sup> year and each 5<sup>th</sup> anniversary thereafter the rate shall be adjusted by appraisal but shall not increase by more than 115 percent (115%) of the first year's rate of the preceding five-year period.

C. Regular Facility Rent

In addition to the fee paid during the DDP Period and Regular Ground Rent during the DOP Period, BTZ shall pay the County, starting on the first day of Year 31 of the Lease Agreement, fair market value rent for buildings constructed by BTZ at the then-current rates established by an appraisal and approved by the Board as part of MDAD's Annual Rates and Charges as published.

It should be noted that under the terms and conditions of the Development Lease Agreement, BTZ has the option to cancel the first five-year renewal option within 60 days of receiving the County's appraisal rate of the Regular Facility Rate, which is applicable to the first day of the start of the first five-year renewal term. The appraisal value must be provided to BTZ by the County within 90 days prior to the expiration of the initial term.

D. Improvement Fees - Total Estimated Payment over 240 Months: \$5,175,000.00

Starting on Year 10 of the Development Lease Agreement effective date, BTZ will pay the County an improvement fee based on a percentage of the value of the minimum investment of \$15,000,000.00 for the improvements constructed. As such, beginning on the 10<sup>th</sup> anniversary (the start of Year 11) of the Regular Ground Rent Commencement Date, and each anniversary of the Regular Ground Rent Commencement Date thereafter to the 15<sup>th</sup> anniversary of the Regular Ground Rent Commencement Date, BTZ will pay the greater of one percent (1.0%) of the value of the minimum investment of \$15,000,000.00 or \$150,000.00, (ii) Starting on the 16<sup>th</sup> Year of the Regular

Ground Rent Commencement Date, and each anniversary of the Regular Ground Rent Commencement Date thereafter through the 20<sup>th</sup> anniversary of the Regular Ground Rent Commencement Date, BTZ shall pay the greater of one point five percent (1.5%) of the value of the minimum investment of \$15,000,000.00 or \$225,000.00; and (iii) Starting on the 21<sup>st</sup> Year of the Regular Ground Rent Commencement Date, and each anniversary of the Regular Ground Rent Commencement Date thereafter through the 30<sup>th</sup> anniversary of the Regular Ground Rent Commencement Date, BTZ shall pay the greater of two (2%) of the value of the minimum investment of \$15,000,000.00 or \$300,000.00, making for a grand total of \$5,175,000.00 over the 30-year term. Improvement fees continue until Regular Facility Rent begins in the 31<sup>st</sup> year of the Development Lease Agreement.

#### E. Tax Revenues

Per the Economic Impact Assessment attached as Exhibit C, it is estimated that the Automobile Dealership will yield (in 2023 dollars) approximately \$175,000.00 in incremental annual ad valorem tax revenue to the County and designated taxing districts, as well as \$1,830,000.00 in sales and other taxes and special assessments to the County per annum upon stabilized operations.

#### Track Record/Monitor

MDAD's Division Director for Real Estate Management, Michele Raymond, will monitor the Development Lease Agreement with the exception of the economic development compliance component which will be monitored by the County's Office of Economic Development.

#### Background

As mentioned previously, in March 2023, BTZ submitted a non-competitive proposal to finance, construct, operate, and maintain an Automobile Dealership on approximately 14 acres of vacant County-owned land at TMB. Listed below are the most significant contractual terms of the Development Lease Agreement that have not yet been addressed in this memorandum.

#### Significant Contractual Terms

1. Beneficial Occupancy - The scope of work consists of the design and construction of an automotive dealership complex with the necessary infrastructure. BTZ must achieve "Beneficial Occupancy" of the newly constructed facilities no later than 37 months from the commencement of the DOP Period provided that delays are not caused by Force Majeure events. Beneficial Occupancy shall be deemed to have been achieved by BTZ on the date which is the earlier of: (i) the date upon which substantial completion of the improvements has occurred or a Temporary Certificate of Occupancy (TCO) or Certificate of Completion (CO) is issued that enables BTZ to occupy or utilize the improvement in any manner for its intended use, or (ii) the date upon which BTZ commences the use of any improvement for its intended use, 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 TCO or CO but for the occurrence of BTZ caused delays, all as determined in the sole reasonable discretion of the County.
2. Renewal Options - BTZ has the option to extend the initial 30-year term by five (5) years by exercising the first five-year renewal option by providing notice to MDAD in writing no later than 180 days prior to the expiration of the term so long as BTZ (i) meets the Beneficial Occupancy for the improvements within 37 months of the DOP Commencement Date, (ii) invests a minimum of \$15,000,000.00 for development of the premises, and (iii) has not

defaulted under Article 13-Termination of the Development Lease Agreement at the time BTZ exercises the first five-year renewal option and at the time the first renewal option is to begin. As mentioned previously, BTZ has the option to cancel the first five-year renewal option within 60 days of receiving the County's appraisal rate of the Regular Facility Rate applicable to the first day of the start of the first renewal term.

BTZ has the option to further extend the term of the Development Lease Agreement by exercising the second five-year renewal option by providing notice to MDAD in writing no later than 180 days prior to the expiration of the first five-year renewal option term and so long as BTZ has not defaulted beyond any applicable cure under Article 13-Termination of the Development Lease Agreement at the time BTZ exercises the second five-year renewal option and at the time the second renewal option is to begin.

3. Miami-Dade County Policies - The attached Development Lease Agreement reflects the negotiated terms and conditions between BTZ and the County, and includes among other things, all small business enterprise provisions applicable to architects and engineers in Section 2-10.4.01 of the Code of Miami-Dade County (Code); small business enterprise provisions applicable to construction activities under Section 10-33.02 of the Code; Art in Public Places under Section 2-11.15 of the Code; the "Little Davis-Bacon Ordinance" under Section 2-11.16 of the Code, Responsible Wages Ordinance under Section 2-11.16 of the Code; Residents First Training and Employment Program under Section 2-11.7; Employ Miami-Dade under Administrative Order (AO) 3-6; Responsible Wages and Benefits for County Construction Contracts - Implementing Order No. 3-24; Guidelines and Procedures for the Sale, Lease, and Conveyance of County Real Property - Implementing Order 8-4, and any other program of the County applicable to BTZ's activities, including the Department's Tenant Airport Construction Program in effect, as such procedures, programs, ordinances, or code provisions may be amended from time to time.
4. Economic Development Requirements - Pursuant to Section 125.045 of the Florida Statutes for Economic Development, as part of this development project, BTZ must comply with the requirements described on the next page.
  - Per Article 4.01 the Development Lease Agreement, BTZ, shall commence construction no later than nineteen (19) months after the project's DOP Commencement Date and complete construction (or reach Substantial Completion) no later than thirty-seven (37) months from the DOP Commencement Date as evidenced by a TO or a CO and the provision of equipment and furnishings necessary to begin operations of an Automobile Dealership, which is defined as substantial completion. BTZ must commence operations no later than forty (40) months from the DOP Commencement Date.
  - BTZ shall have invested a minimum of \$15,000,000.00 inclusive of a maximum of \$2,550,000.00 for associated soft costs for the proper functioning and operation of the Automobile Dealership within thirty (30) days after reaching the construction completion deadline date.
  - Beginning on the date of Beneficial Occupancy throughout the lease term including the renewal options, BTZ is required to contribute \$50,000.00 per year to one or more non-

affiliated automotive job training programs within the County to prepare interested individuals for careers in the automotive industry, including careers at an Automobile Dealership. Additionally, with revenues generated by the Automobile Dealership, BTZ will donate another \$50,000.00 annually to the Nicklaus Children's Hospital Foundation located at 3100 SW 62 Avenue, Miami, FL 33155.

- With respect to the Florida state requirements, this development project will provide for the economic empowerment of communities throughout the County by engaging in job creation, maintenance, and certification in accordance with the procedures outlined in Article 7.06 of the attached Development Lease Agreement. In that regard, during Years 1-2, BTZ shall create and maintain a minimum total of 50 jobs with an average salary of no less than \$65,000 per year. During Years 3-4, BTZ shall create and maintain an additional 10 jobs for a minimum total of 60 jobs with an average salary of no less than \$70,000.00 per year and finally, during Years 5 through 20, BTZ shall create and maintain an additional 10 jobs making for a minimum total of 70 jobs with an average salary of no less than \$75,000.00 per year. Specific certification procedures will assist the County to determine whether BTZ has complied with the job requirements for each year of the development lease, as appropriate. Should BTZ not meet the job requirements stipulated above, the firm will pay the County liquidated damages that range between \$16,250.00 and \$30,000.00 for each job shortage number depending on the lease year in which the job target number is not met.

The 100 percent (100%) owner of BTZ, Craig A. Zinn, has dealerships he has built and managed over the past 15 years in North Miami and in Broward County, and is also an authorized dealer for Lexus, Acura, and Subaru vehicles in the following franchised dealerships: Toyota of Hollywood, Lexus of North Miami, Lexus of Pembroke Pines, Acura of Pembroke Pines, and Subaru of Pembroke Pines.

It is estimated that over the thirty-year lease term, this Development Lease Agreement will generate at minimum \$77,871,000.00 in revenues to the County through the fees and rent. Moreover, the construction, operation, and maintenance of the proposed Automobile Dealership will provide job training prospects and employment opportunities for communities in District 11 and throughout the County, as well as quicker access to a Subaru car dealership as the closest one is located in North Miami. Overall, it is in the best interest of the County to proceed with the proposed development project as it will benefit the County's residents and communities.



---

Jimmy Morales  
Chief Operations Officer

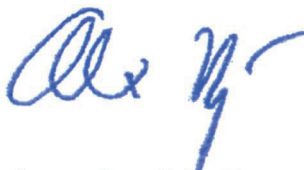


**Date:** May 1, 2023

**To:** Daniella Levine Cava  
Mayor

**From:** Alex Muñoz, Director  
Internal Services Department

**Subject:** Findings and Recommendations for the Proposal Received from BTZ Operations, LLC for Lease of a Portion of Folio Number: 30-5915-000-0010



This report provides the due diligence review, as required in Implementing Order 8-4 (IO 8-4) for the Internal Services Department (ISD) to review and determine if there are any impediments for a leasehold interest on approximately 14.22 acres within Miami Executive Airport (TMB) to establish a Subaru dealership. The due diligence was conducted in conjunction with the Miami-Dade County Aviation Department (MDAD).

As more particularly described in the findings below, ISD recommends that the Property may be declared surplus for the proposed lease so long as all of the pending items identified below are addressed, including the confirmation that any applicable easements and restrictions on title either are removed or determined to not affect the project, that BTZ adjust the design or relocate the existing water main, and that BTZ obtain all necessary approvals from all applicable regulatory agencies, all at BTZ's sole cost and expense.

While IO 8-4 requires this report be provided by May 1<sup>st</sup>, there are some remaining items that need to be accomplished.

**Background**

On March 17, 2023, ISD commenced review of the proposal submitted by BTZ, which requested a leasehold interest over a vacant portion of MDAD-owned property within TMB identified by Folio number 30-5915-000-0010 and located on the Northwest corner of SW 137<sup>th</sup> Avenue and SW 136<sup>th</sup> Street (Property). BTZ proposes to lease approximately 14.22 acres of the Property (pending final survey) in order to establish an automotive dealership for purposes of economic development pursuant to section 125.045, Florida Statutes. ISD conducted due diligence on the Property in collaboration with MDAD and the Office of Economic Development. The results of such due diligence are as follows:

**Circulation**

The Property was circulated to the appropriate County departments and agencies to determine if there is a planned use or anticipated need for the Property. As a result of the circulation, no planned use or anticipated need was identified.

**Title**

A title search was conducted on the entire Property and such report identified a number of easements, restrictions, and rights-of-way. It is currently unclear whether such easements, restrictions, and rights-of-way fall within or otherwise affect the portion of the Property considered for this project. ISD will work with MDAD so that MDAD may confirm that the subject easements either are not located within the footprint of the subject Property or that the restrictions identified do not preclude the conveyance of the leasehold interest.

**Funding Restrictions**

The Property was originally acquired in phases between 1964 and 1966 with the use of grant funds from the Federal Aviation Authority (FAA). However, MDAD advised that there are no repayment



restrictions associated with such grant funds. MDAD has not identified any other funding restrictions that would result in a significant financial impact to the County in the event of the proposed leasehold conveyance.

#### Regulatory and Economic Resources

Pursuant to IO 8-4, the Regulatory and Economic Resources Department (RER) was consulted to provide its review and determination as to whether the Property is zoned consistent with the proper land use planning for the area or whether there should be a change in zoning on the Property. RER indicated that the Property is not properly zoned for the proposed use. In order to achieve the appropriate zoning, an amendment to the Comprehensive Development Master Plan (CDMP) and Zoning ordinance would be required. MDAD is proceeding with the amendment of the CDMP and Zoning ordinance which will amend the zoning code of the property from Aviation Use to Non-Aviation Use. MDAD expects this process to take 8 to 12 months and MDAD will request reimbursement of the amended costs from BTZ. The proposed land use will be changed from aeronautical use to non-aeronautical use. Accordingly, MDAD will be required to coordinate with the FAA and seek approval for this change.

Additionally, RER Division of Environmental Resources Management (DERM) provided the attached memorandum providing preliminary comments and setting forth various environmental considerations associated with the Property. DERM confirmed that the proposed lessee will be required to comply with all applicable requirements for drainage and flood protection, environmental assessments, endangered species, and natural resources. The memorandum notes that DERM had no record of known or documented contamination on the Property. It was also noted that the Property is within the consultation area for the endangered Florida bonneted bat and is a nesting habitat for the burrowing owl, which is a Federally listed Threatened species. The Property also may contain pine rockland habitat. Due to the species and natural resources in the area, DERM recommended, at a minimum, coordination regarding the preservation and maintenance of any unique and natural resources in the proposed project area prior to the leasing of County-owned land.

#### Water and Sewer Connections

IO 8-4 further requires confirmation as to whether the Property is connected to or has access to a sanitary sewer system. The Water and Sewer Department (WASD) has provided the attached memorandum confirming that the Property is located within WASD's water and sewer service areas. There is an existing 16-inch water main and corresponding WASD Utility Easement within the proposed 14-acre site that appears to be in direct conflict with the Dealership Operation's building identified in the preliminary site plan, and the same must be relocated or the proposed building must be shifted to avoid conflict with the water main. There is a 20-in water main abutting the site along SW 136<sup>th</sup> Terrace; however, per WASD's Rules and Regulations, a 20-inch water main is not considered frontage, and a 16-inch water main extension along SW 136<sup>th</sup> Terrace will be required to provide frontage to both sites. Additionally, there is an abutting 8-inch gravity sewer along SW 136<sup>th</sup> Terrace to where connection can be made to provide sewer service to the future development. The future flows will be transmitted to Pump Station No. 0573 which is in OK Moratorium Status. The final points of connection and capacity approval to connect to water and sewer infrastructure are ultimately subject to WASD's Rules and Regulations and Specifications and Standards and will be set forth in the WASD Developer Agreement.

#### Recommendation

Based on the above findings, ISD notes that the Property may be declared surplus for the proposed lease provided that such lease is subject to compliance with all applicable laws and the various restrictions and recommendations referenced above, including, but not limited to, confirmation that the aforementioned easements and restrictions on title do not affect the proposed project, that BTZ

adjust the design or relocate the existing water main, and that BTZ obtain all necessary approvals from all applicable regulatory agencies, all at BTZ's sole cost and expense.

Should you agree with this recommendation, please advise and ISD will commence the responsible entity due diligence and ownership confirmation pursuant to IO 8-4. ISD will continue to work with MDAD to finalize the ongoing due diligence referenced above. If additional information or further due diligence is required, please advise and ISD and MDAD will work diligently to obtain the necessary information.

#### Attachments

- c: Oliver G. Gilbert III, Chairman, Commission District 1
- Roberto J. Gonzalez, Commissioner, Commission District 11
- Geri Bonzon-Keenan, County Attorney
- Gerald K. Sanchez, First Assistant County Attorney
- Jess M. McCarty, Executive Assistant County Attorney
- Office of the Mayor Senior Staff
- Yinka Majekodunmi, Commission Auditor
- Ralph Cutié, Director, Miami-Dade Aviation Department
- Basil A. Binns, Deputy Director, Miami-Dade Aviation Department



## Memorandum



**Date:** April 27, 2023  
**To:** Ms. Kristina Guillen  
Miami-Dade Aviation Department  
**From:** Maria A. Valdes, CSM, LEED® Green Associate  
Chief, Planning & Water Certification Section  
Water & Sewer Department (WASD) *Maria Valdes*  
**Subject:** Request for water and sewer infrastructure information for potential Subaru Dealership within Miami Executive Airport

---

The Water and Sewer Department has received your request for water and sewer infrastructure information for a potential Subaru Dealership within 14 acres of the Miami Executive Airport owned by Miami-Dade Aviation Department.

Below please find information on the water and sewer infrastructure for the potential Subaru Dealership. A WASD Developer Agreement will be required for the connection to water and sewer. Any future development will have to be done by the developer at their own expense and according to WASD's Rules and Regulations and Specifications and Standards. The information provided below is preliminary, and final points of connection and capacity approval to connect to the water and sewer infrastructure will be provided at the time the WASD Developer Agreement is offered.

Project Name: Subaru Dealership

Location: The proposed project is located north of SW 136<sup>th</sup> Street, approximately between SW 138<sup>th</sup> Avenue and SW 142<sup>nd</sup> Avenue, within 14 acres of the Miami Executive Airport with Folio No. 30-5915-000-0010, in Unincorporated Miami-Dade County.

Proposed Development: Subaru Dealership

Water: The subject project is located within WASD's water service area. There is a 20-inch water main abutting the site along SW 136<sup>th</sup> Terrace; however, per WASD's Rules and Regulations, a 20-inch water main is not considered frontage, and a 16-inch water main extension along SW 136<sup>th</sup> Terrace (Section Line) will be required to provide frontage to the proposed site.

Also, please note that there is an existing 16-inch water main, within a WASD Utility Easement, within the proposed site, that per site plan provided, it appears to be in direct conflict with the Dealership Operation's building and must be relocated or the proposed building must be shifted to avoid conflict with the water main. The existing 16-inch water main is located within the Miami Executive Airport property, approximately 380 feet east of SW 139<sup>th</sup> Court.

Sewer: The subject project is located within WASD's sewer service area. There is an abutting 8-inch gravity sewer along SW 136<sup>th</sup> Terrace to where connection can be made to provide sewer service to the future development. The future flows will be transmitted to Pump Station No. 0573 which is in OK Moratorium Status.

Should you have any questions, please contact me at 786-552-8198 or via email at [mavald@miamidade.gov](mailto:mavald@miamidade.gov).

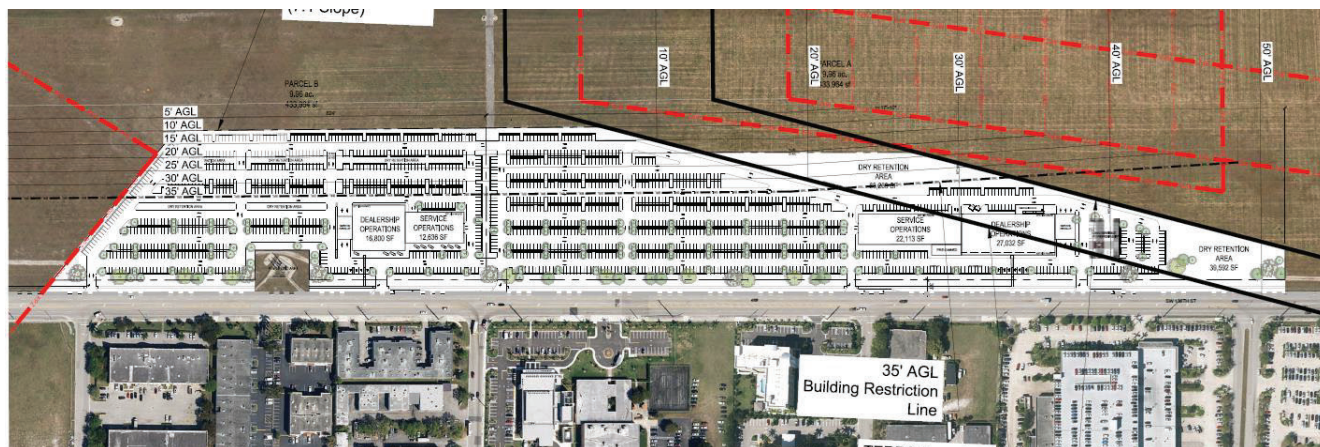
**Date:** March 23, 2023

**To:** Alex Muñoz, Director  
Miami-Dade County Internal Services Department

**From:** Rashid Istambouli, P.E. Senior Division Chief  
Division of Environmental Resources Management  
Regulatory and Economic Resources

**Subject:** Miami-Dade Aviation Department Property Considered for Lease Designation of up to a 21 Acre Portion of Folio No. 30-5915-000-0010

The Division of Environmental Resources Management (DERM) has reviewed the below conceptual site plan for potential commercial uses on up to a 21-acre portion of the Miami Executive Airport operated by the Miami-Dade Aviation Department (MDAD), and offers the following preliminary comments:



#### Public water and public sanitary sewer requirements

According to DERM records, the property is connected to public water and sewer. In accordance with Chapter 24 of the Miami-Dade County Code (the Code), any new development will require connection to the public water supply system and sanitary sewer system. Please note, only the Miami-Dade Water and Sewer Department can provide the actual points of connection.

#### Drainage and flood protection requirements

Pursuant to Section 24-48.1(1)(f) of the Miami-Dade County Code, a DERM Class VI permit is required prior to DERM approval of development orders that would allow the installation of a drainage (or surface water management).

At a minimum, the County Flood Criteria adopted in Miami-Dade County in October 2022, or subsequent standards in effect at the time of review and approval shall be complied with. Most current and groundwater level data available at the time of the review and approval, from the county or other agencies, shall be used.

For compliance with Miami-Dade County stormwater management requirements, stormwater shall be retained on-site for the 25-YR 72-HR design storm event utilizing a properly designed seepage or



infiltration drainage system. The developer or lessee shall provide signed and sealed calculations to prove that the minimum retention on site is being met.

The developer or lessee shall provide a certified letter that the minimum stormwater retention shall be maintained operational and undisturbed as long as the facility does not change use, density, increases the impervious area or the height of buildings. Such changes to the property will only be approved after submittal of new signed and sealed calculations and plans showing that minimum retention requirements and other standards in the Federal, State, and local regulations are met.

If the level of service required for any public conveyance system is negatively impacted because of the proposed commercial uses, the developer, lessee, and/or subsequent owner(s) shall be responsible to implement capital improvements of the stormwater infrastructure, as required by DERM.

The stormwater from the existing Miami Executive Airport ditch discharges into the Lindgren Road secondary canal and provides flood protection for the surrounding neighborhoods. Therefore, the Engineer of Record for the proposed project shall provide signed and sealed calculations demonstrating there are no adverse impacts in the pre- vs post-project canal stages in the Miami Executive Airport ditch or the Lindgren Road secondary canal including water quality impacts, and to ensure that the level of flood protection service provided is maintained.

If any runoff from the Miami Executive Airport property folio no. 30-5915-000-0010 is discharged into the area of the proposed development, proper mitigation must be constructed to avoid flooding impacts in the airport property or surrounding properties. Therefore, the Engineer of Record for the project shall provide signed and sealed calculations demonstrating there are no adverse impacts in the pre- vs post-project conditions including water quantity and water quality impacts, and to ensure that the level of flood protection service provided is maintained.

The developer or lessee (and/or subsequent owners), or the property owner (MDAD, in the event that there is no longer a lessee), shall be responsible to maintain and operate the stormwater retention system associated with the proposed development once it is approved and built. Any required improvements/development will be subject to review and approval by RER-DERM and will also include application for necessary permits and completing/certifying the improvements after completion.

The applicant is advised to contact the DERM Water Control Section at (305)372-6681 or [dermwatercontrol@miamidadegov](mailto:dermwatercontrol@miamidadegov) for further information regarding permitting procedures and requirements.

#### Environmental Assessment requirements

DERM has no records of known or documented contamination on this portion of the property. However, based on the current use of the site (part of an active airport property) DERM review and approval of a Phase 1 and Phase 2 Environmental Site Assessment prepared in accordance with ASTM standards shall be required prior to any development at the site, as applicable. Additionally, any construction plans (inclusive of drainage) and dewatering plans may require the review and approval from the Environmental Monitoring and Restoration Division of DERM as it relates to environmental contamination.

#### Endangered Species requirements

The proposed project area is within the consultation area for the federally endangered Florida bonneted bat and provides a combination of open land and water that is similar to other sites in Miami-Dade County where foraging or roosting by the Florida bonneted bat has been documented. Additionally, the proposed project area is a nesting habitat for the burrowing owl, which is a Federally listed Threatened species. Due to the presence of these listed species, the project as proposed may need to be re-designed. **DERM recommends, at a minimum, coordination regarding the preservation and maintenance of any unique and natural resources in the proposed project area prior to the leasing of County-owned land.**

MDAD and the future lessee are advised that habitat and utilization of resources by listed species is protected by the Code and is subject to specific policies in the Miami-Dade County Comprehensive Development Master Plan.

Any questions regarding endangered species can be directed to the United States Fish and Wildlife Service (USFWS) in the Vero Beach office at (772) 562-3909 or the Natural Resources Division of DERM at (305) 372-6575.

#### Natural Resources Requirements

Portions of the subject property (folio no. 30-5915-000-0010) may contain pine rockland habitat. Please be advised that tree resources, including those within pine rockland habitat, will require a Miami-Dade County Tree Removal Permit. The subject project area contains tree resources and may include specimen trees (trees with a trunk diameter at breast height of 18 inches or greater). Specimen trees are protected by Section 24-49.2(II) of the Code. The applicant is advised that a tree survey that includes a tree disposition table will be required during the tree removal permit application process.

DERM notes the following:

1. This preliminary review is not an authorization to remove and/or relocate tree resources that are subject to the Tree Preservation and Protection provisions of the Code without a Miami-Dade County Tree Permit. A Miami-Dade County Tree Permit is required prior to the removal and/or relocation of any tree that is subject to the Tree Preservation and Protection provisions of the Code. Projects and permits shall comply with the requirements of Sections 24-49.2 and 24-49.4 of the Code, including the specimen tree standards. This Division recommends that the Aviation Department contact the Tree and Forest Resources Section at (305) 372-6574 or [tfrs@miamidadade.gov](mailto:tfrs@miamidadade.gov) for further information regarding permitting procedures and requirements.
2. Future site plan development of the area associated with the proposed development must be consistent with the requirements to preserve specimen trees except in cases where DERM has determined that a specimen tree cannot be preserved pursuant to section 24-49.2(4)(II)(2) of the Code. This memo shall not be construed as an approval to remove specimen trees due to a determination of unreasonable loss of usable space pursuant to section 24-49.2(4)(II)(2)(b) of the Code.
3. All prohibited species listed in section 24-49.9 that exist within the proposed project area shall be removed prior to development or redevelopment and any developed parcels shall be maintained to prevent the growth or accumulation of prohibited species in accordance with section 24-49.9 of the Code.

Lease Agreement Recommendations:

1. **Tree Canopy**. In an effort to meet the 30% tree canopy goal in Miami-Dade County, the Miami-Dade County Department of Regulatory and Economic Resources-Division of Environmental Resources Management (“DERM”), or successor agency recommends that the Lessee provide a proposed tree canopy plan for DERM review and approval in the Project Area or the Lessee provide tree planting in a mutually acceptable area to provide additional tree canopy.
2. **Rare, Threatened and Endangered Species Survey**. No later than ninety (90) days prior to the expiration of the due diligence period within the Initial Lease, the Lessee shall provide at the Lessee’s expense a Biological Survey of the lease area that identifies any County, state and federally listed rare, threatened and endangered species including any listed species of special concern to the Miami-Dade County Department of Regulatory and Economic Resources-Division of Environmental Resources Management (“DERM”), or successor agency, for review and approval.



3. **Prohibited species in the Lease area.** In the event that there are prohibited species listed in section 24-49.9 of the Code within the project area, the Lessee shall remove all prohibited species within one year of the lease agreement Effective Date.
4. **Environmental Site Assessment.** Within ninety (90) days of the Effective Date of the initial Lease Agreement, Lessee shall, at Lessee's sole cost and expense, furnish to the Miami-Dade County Department of Regulatory and Economic Resources-Division of Environmental Resources Management ("**DERM**"), or successor agency, an environmental site assessment of the Project area that meets the standards for a Phase I Environmental Site Assessment report acceptable to the DERM in order to determine the existence and extent, if any, of Hazardous Materials (as defined herein) or toxic substances and hazardous waste within the Project area in violation of any laws, ordinances, rules or restrictions of any governmental authority having jurisdiction. "Hazardous Materials" shall mean any hazardous or toxic substance, material or waste, it shall also include solid waste or debris of any kind or any other substance which is regulated by any environmental law. If the Phase I Environmental Site Assessment requires further investigation and/or testing then Lessee shall undertake, at Lessee's sole cost and expense, a Phase II Environmental Site Assessment report to confirm that the environmental condition is the same, or better, as that set forth in the Phase 1 Environmental Site Assessment report or test for, specifically, contamination (as defined in Section 24-5 of the Code of Miami-Dade County (the Code) and/or Chapter 62-780 Florida Administrative Code (FAC) or the presence of Hazardous Materials on the Property in violation of any environmental laws, ordinances, rules or restrictions of any governmental authority having jurisdiction over the Property. Lessee shall, within five business days' of its receipt of any such Phase II Environmental Site Assessment report but no later than sixty (60) days' prior to Closing, provide a copy thereof to DERM. All environmental site assessment reports shall be certified to the Lessee and the date of certification shall be as of the date in which work was performed or reviewed by the environmental professional but in no case more than six (6) months prior to Closing.
5. **Drainage and dewatering.** All construction and site development plans (inclusive of drainage) and dewatering plans for the Project for the Improvements and any other construction undertaken on for the Project during the Term, shall require the review and approval from the Miami-Dade County Department of Regulatory and Economic Resources-Division of Environmental Resources Management ("**DERM**"), or successor agency, as it relates to environmental contamination issues. Furthermore, the Lessee shall prepare and submit to DERM for review and approval a Soil Management Plan, Dust Control/Air Monitoring Plan, and Health and Safety Plan prior to site development and construction in any area of the Property where there is documented soil or groundwater contamination as determined by a Phase 2 Environmental Site Assessment and site investigation conducted in accordance with ASTM Standards and Chapter 24, Code of Miami-Dade County. Lessee shall not itself use and shall not permit any third parties to use on-site groundwater or surface water without prior DERM review and approval.

This memorandum *does not* constitute DERM approval of the proposed project. DERM review and approval is required for development permits, environmental permits, other additional approvals, and additional development permits to complete the project in compliance with the Code or environmental regulations in effect at the time of application.

If you have any questions concerning the comments or wish to discuss this matter further, please contact Christine Velazquez at (305) 372-6764.

# Memorandum



**Date:** July 6, 2023

**To:** Ralph Cutié, Director  
Miami-Dade Aviation Department

**From:** Alex Muñoz, Director  
Internal Services Department

A handwritten signature in blue ink, appearing to read "Alex Muñoz", is written over the "From:" field.

**Subject:** Responsible Entity Due Diligence  
Proposed Lease to BTZ Operations, LLC pursuant to Section 125.045, Florida Statutes for the purpose of Economic Development  
Location: Approximately 14.23 acres within Miami Executive Airport  
Folio Number 30-5915-000-0010

## Executive Summary

This memorandum sets forth the responsible entity due diligence review, as required in Implementing Order (IO) 8-4 to confirm the ownership composition, and provide details concerning the responsibility, of proposed tenant, BTZ Operations, LLC (BTZ) for a long-term lease to develop a Subaru dealership for economic development purposes. IO 8-4 provides that “the County Mayor or the County Mayor’s designee (i) shall perform due diligence necessary to determine whether or not the contracting entity is a responsible entity, and (ii) shall confirm the ownership composition provided by the requestor.” BTZ has provided a record of capability to develop similar dealerships and no significant responsibility issues were identified.

## Background Information

In accordance with IO 8-4, the Internal Services Department (ISD), in collaboration with MDAD, conducted the necessary due diligence in response to a request by BTZ to lease the County-owned property at Miami Executive Airport (TMB) described below for the purpose of constructing, operating and maintaining a Subaru dealership with ancillary facilities for a term of thirty years with two five year renewal options.

This responsible entity due diligence memorandum is limited to providing the information required within IO 8-4 and relies upon the information received from BTZ to conduct the responsibility review of the single-purpose entity formed on July 9, 2021 and its principals. Pursuant to IO 8-4, determinations regarding a Proposer’s “responsibility” are ultimately made by the Board and, where the delegated authority exists to contract, by the County Mayor, and are fundamentally issues of business judgment and policy. The term “responsible entity” relates to the entity’s financial condition, capability, experience, and past performance, and includes honesty and integrity, skill and business judgment, experience and capacity for performing under the contract, and previous conduct, including but not limited to, meeting its financial obligations. Analysis of previous conduct shall include but not be limited to consideration as to whether the requestor, or other entity in which the requestor has a controlling financial interest, was previously conveyed or leased County-owned property which was later the subject of an involuntary reverter or lease termination by the County.

<b>Commission District:</b>	11, Commissioner Roberto Gonzalez
<b>Managing Department:</b>	Miami-Dade Aviation Department
<b>Lot Size/Description:</b>	Approximately 14.23 acres located on the Northwest corner of SW 137th Avenue and SW 136th Street within Miami Executive Airport (Property)
<b>Folio Number:</b>	Portion of 30-5915-000-0010



### **Departmental Due Diligence**

The results of the Responsible Entity Due Diligence as detailed in IO 8-4 are as follows:

#### **Entity contracting with the County**

The entity contracting with the County is BTZ Operations, LLC (BTZ), a single-purpose Florida entity with no employees, as of yet. The Florida Department of State Division of Corporations website (Sunbiz.org) shows the principal address listed as 1841 North State Road 7, Hollywood, FL 33021. Articles of Organization were signed by Patricia A. Parke as an authorized representative and Alan N. Jockers as a registered agent and filed on Sunbiz.org on July 9, 2021. The County received an ownership disclosure affidavit for BTZ on March 3, 2023, which shows one owner, Craig Mitchell Zinn (100%). An annual report for BTZ filed on April 20, 2022, by Mr. Craig Zinn, reflects the Manager (MGR) of BTZ to be Craig M. Zinn. The County received an executed IRS W-9 Form which reflects BTZ possesses the following Employer Identification Number: 88-2052658.

#### **Capability, Experience, and Past Performance**

BTZ is proffering the experience and history of the affiliated entity, Craig Zinn Automotive Group Company (CZAG), to demonstrate wherewithal to develop, finance, operate and maintain the project. Based on Sunbiz.org records, CZAG is similarly managed by Craig M. Zinn and has been so since its incorporation in 2009.

The application provides that BTZ's sole manager, Craig M. Zinn, has built CZAG and its related businesses since 1981. These businesses collectively employ over 950 employees and have 2022 revenues exceeding \$1,700,000,000. The application further states that Mr. Zinn has engaged in nine large-scale construction and development projects over the last 15 years involving construction costs exceeding \$155,000,000, plus the cost of land. The application also notes that Craig Zinn is an authorized dealer for Lexus, Acura and Subaru vehicles, including the following franchised dealerships: Toyota of Hollywood, Lexus of North Miami, Lexus of Pembroke Pines, Acura of Pembroke Pines, and Subaru of Pembroke Pines.

The County has no existing or previous agreements with BTZ or the affiliate entity identified as Craig Zinn Automotive Group Dealer Services, LLC (CZAG).

BTZ has submitted the following individuals and firms as key personnel and first-tier contractors to fulfill the contractual obligations of the agreement:

Marc Adler, Esq. (CZAG Vice President of Corporate Development and Government Relations): Prior experience includes serving as the Secretary of Commerce for the State of Florida under Governor Ron DeSantis. Additionally, in State Government, Mr. Adler served as the Chief Executive Officer for the Florida Development Finance Corporation (FDFC) and as the Executive Director for the Florida Opportunity Fund (FOF). Prior to his government service, Mr. Adler worked at Blackstone, one of the largest Private Equity Firms in the world. Mr. Adler holds a Juris Doctorate from the University of Florida.

Alan Jockers, Esq. (CZAG In-house Counsel): Mr. Jockers has served as the In-House General Counsel of the Craig Zinn Automotive Group, for the last 19 years. Mr. Jockers oversees all legal matters for the Craig Zinn Automotive Group. Prior to employment with the Crain Zinn Automotive Group, Mr. Jockers practiced Commercial Litigation and Employment Law for Greenberg Taurig. Mr. Jockers hold a Juris Doctorate from the University of Miami.

KTMB Acquisitions, LLC Team:

Eric Greenwald: Mr. Greenwald's experience includes the planning and execution of the 220-acre development at the Miami-Opa Locka Executive Airport (KOPF) as President of AA Acquisitions. Mr. Greenwald spent 15 years planning and constructing master infrastructure, aviation terminal, hangars, private automotive club and largest maintenance, repair, and overhaul (MRO) facility in North America for Bombardier Aerospace.

Ronnie Vogel: Mr. Vogel has experience in the Automotive & Motorsport industry and is a licensed pilot with airport development expertise. Since 2019, Mr. Vogel has focused on aviation development, to include a 25-acre parcel at KOPF where the application notes he is currently constructing a build-to-suit hangar campus for Signature Flight Support. Additional improvements will include the first hotel at KOPF in phase 2.

Stiles Construction and Architectural Group:

Russell Biffis: Mr. Biffis is currently the Vice President of Business Development at Stiles Construction. Mr. Biffis has over 45 years of experience in the Construction Industry, of which 39 years are with Stiles Construction. Mr. Biffis is noted as having successfully facilitated over 125 Automotive Projects from inception to completion, totaling more than 9 Million Square Feet, and delivered more than 20 brands of dealerships.

Alejandro Echeverry CDT, AIA: Mr. Echeverry is currently the President of the Stiles Architectural Group. Mr. Echeverry is a licensed architect with over 15 years of professional experience in architecture and construction management. Mr. Echeverry holds a Masters in Architecture and Masters in Construction Management from Florida International University.

**Financial Information**

A complete application in accordance with IO 8-4 must include an estimate of the costs of construction and operation and the manner in which the requester intends to finance the development, operations and maintenance of the requested property, including proposed sources of funds and revenues. The application contained: 1) a proforma and project projections summary reflecting \$108,000,000 in annual gross revenues, annual gross profit of \$21,535,000 and estimated annual net income of \$6,315,000; 2) \$15,000,000 estimated cost of construction to include all improvements on the property; and 3) a commitment from Mr. Zinn to self-fund all costs of the project in addition to a statement of assets and net worth.

Should you have any questions or require additional information please contact Alex Muñoz, Director, ISD, at (305) 375-2308.

Attachments: ISD Real Estate Development Division Conveyance Due Diligence Checklist  
ISD Findings and Recommendations Memorandum

c: Geri Bonzon-Keenan, County Attorney  
Gerald K. Sanchez, First Assistant County Attorney  
Jess M. McCarty, Executive Assistant County Attorney  
Office of the Mayor Senior Staff  
Francesca de Quesada Covey, Chief, Innovation and Economic Development Officer  
Yinka Majekodunmi, Commission Auditor  
Basil A. Binns, Deputy Director, Miami-Dade Aviation Department  
Andrew Schimmel, ISD Real Estate Development, Division Director



**ECONOMIC IMPACT ASSESSMENT:  
South Dade Subaru Automobile Dealership**

*- Prepared by -  
Lambert Advisory, LLC*

*- Prepared for -  
BTZ Operations, LLC*

*April 2023*



## Economic Impact Assessment BTZ Operations

### *Introduction and Summary of Key Findings*

Lambert Advisory has completed an economic impact assessment for the proposed development of the South Dade Subaru Automobile Dealership (Dealership), located at the Miami Executive Airport in Miami Dade County, FL. The analysis estimates select tangible direct and indirect/induced economic benefits that will be derived from the construction and operation of the development and based upon the inputs and assumptions set forth herein. This report identifies and quantifies the benefits created by the proposed Dealership within Miami Dade County. The methodology, assumptions, and analysis governing this document are detailed in the *Methodology, Analysis and Results* section below, with a summary of economic benefit headlines included at the end of this section.

The proposed Dealership is situated on a 14±-acre parcel bounding the Miami Executive Airport and is planned for: a 55,000 square foot building comprising the Dealership's reception, sales, and service areas; an open surface area accommodating 1,020± total parking spaces; and, a 1,770± square foot observation deck viewing the airport runway.

Considering the proposed plan and investment the assessment herein identifies the economic benefits associated with development. Namely, there are two key areas of focus for this analysis and each of which is described in detail in following sections: 1.) *Impact from Short-term Construction Employment and Expenditure; and, 2.) Long-term/Recurring Impact and Benefit from the Dealership.*

The proposed Dealership provides the surrounding area with a business that will serve as a catalyst for on-going and longer-term investment in the area. Importantly, it will provide the County with numerous tangible positive economic benefits such as employment and ad valorem tax revenue, while at the same time having other positive effects by way of its comparatively minimal impact on County resources such as Police and Fire Rescue given the relatively modest development density in relationship to the overall site size. Furthermore, it is noteworthy that the BTZ Operations (through its parent company Zinn Automotive) will be also be providing other significant contributions to the surrounding community in the way of charitable contributions and community events that has long been a staple of the organizations operations. These contributions are generally defined by environmental causes and sustainability, partnerships supporting healthcare initiatives, educational-related support for under-privileged youth/students, and partnership with the Humane Society.

In sum, the most notable economic impact benefit headlines from the South Dade Subaru Dealership development include:

- **82± direct and indirect/induced construction (and related) jobs** average annually during the proposed two-year construction period, which generates a total of **\$11.2 million in direct and indirect/induced labor income** during the construction period that will flow to the local and regional economy -
  - including an estimated **\$1.35± million to the County** in impact fees;
- **70 net new direct full time equivalent (FTE) jobs** generating **\$5.3 million** (2023 \$'s) in total annual wages (or, an average annual wage of approximately \$75,000) available for expenditure within surrounding businesses -



- with an additional 25± indirect/induced jobs within the region;
- **incremental annual ad valorem tax revenue** to the County and designated taxing districts of approximately **\$175,000** upon stabilized operations; and,
- **\$1.83 million in sales tax and other revenue** (special assessments) upon stabilized operations to Miami Dade County.

The following table provides a summary of the long-term/recurring fiscal benefits to Miami Dade County:

**Figure 1: Summary of Estimated Long-term Incremental Fiscal Benefits to Miami Dade County from the Proposed South Dade Subaru Dealership (Upon Stabilized Operations, 2020 \$'s)**

Source	Annual (Rd)
Ad Valorem Tax	\$175,000
Sales and Other Tax	<u>\$1,825,000</u>
<b>Total</b>	<b>\$2,000,000</b>

*Methodology, Analysis and Results*

The South Dade Subaru Automobile Dealership (Dealership) represents a proposed automotive dealership complex situated on approximately 14-acres of land abutting the Miami Executive Airport. The development will have a positive impact on the surrounding community in terms of taxes, jobs, and general investment generated, and will also enhance the area's existing commercial/retail demand and the development will help maintain economic stability within the area and attract on-going investment during the next several years.

The analysis herein considers an evaluation of the current plan to measure the incremental economic benefits of the Dealership that will accrue to Miami Dade County. We have completed this analysis based on generalized development and performance information (i.e., development program, development timing, development costs, operating metrics, and employment) that is estimated based upon information provided by BTZ Operations. Importantly, Lambert has not independently verified through a market study, or otherwise, the development cost and/or operating performance data and cannot attest to the accuracy of those estimates herein.

The analysis herein has been prepared to reflect both the short-term economic impacts from construction and the long-term recurring impacts from operations once the Dealership has reached stabilized levels. The economic impacts as stated herein from construction and operation of the Dealership are presented in current (2023) dollars. Any change in development and/or operating assumptions from those utilized as part of this analysis can have a material impact on the direct and indirect economic indicators stated herein.

There are elements of the economic impact analysis that are based on the application of the IMPLAN Economic Impact Model. This model is nationally highly recognized and one of the leading analytic tools for measuring the economic impact that includes, but not limited to, real estate developments, including, going-concern operations among commercial, residential establishments. Lambert applied the IMPLAN Economic Impact Model for assessing the short-term (construction) and select long-term (stabilized operations) economic impact of the Dealership and its various operating components. The IMPLAN model examines inter-industry relationships in a state, regional or local economy and provides indirect and induced output for employment, income and value added based on multipliers for the economy being analyzed.

The analysis provided herein presents estimates of the direct, indirect and induced economic impacts that will be derived from the construction and stabilized operation of the Dealership. The short-term economic impact analysis is based on construction cost of the development and its components over a two-year (24 month) construction period and discussed in more detail further below.

As planned, the Subaru Dealership represents a full-service automotive sales and service operation operating under the umbrella of Zinn Automotive Group - one of the largest automotive groups in South Florida. The key features of the Dealership include: a single-story automotive dealership building of approximately 55,500 square feet comprising a showroom, sales offices, small café, service reception area; roughly 55 service bays (enclosed with A/C ; open surface area accommodating approximately 1,020 total parking spaces; and, a 1,770± square foot observation deck facing the Airport's runway.

As noted, the construction of the Dealership will be completed over a 24-month period and will be fully operational shortly thereafter. Based upon the information provided and estimates made, construction and subsequent operations of the Dealership will generate considerable benefits to the immediate area and the broader Miami-Dade County community. There are two key areas in which the project will provide positive economic impacts:

1. Short-term construction employment and expenditure
2. Long-term economic and fiscal benefits from Dealership employment, facility operations, maintenance, and client/visitor expenditure.

For both short-term and long-term impacts, which are detailed in the following analysis, the economic benefit to the area is the result of projected increases in revenue from primary sources, including employment, wages, and taxes. Accordingly, the impact from these key sources comes from two distinct measures:

- Direct Expenditures – disbursements for site acquisition and development (hard and soft costs), resident/worker/visitor expenditure, and expenditures associated with the operation of the grounds and building
- Indirect/Induced Expenditures – net additional expenditures that flow into the local economy as a result of the new development.

Economic impacts from the four key sources are detailed in the following sections.

### 1. Short-Term Construction Employment and Expenditure

The impact from short-term construction employment and expenditure is directly associated with the project’s development. The total development cost is estimated to be a minimum of **\$15 million** for site and vertical development components. The estimate includes both hard and soft costs, but not inclusive of land value.

For Short-term construction, the investment activity is supported by NAISC Sector Code 236220 and a summary of direct, indirect/induced benefits is summarized in the following table:

**Figure 2: Summary of Short-Term Economic Impacts (Rd) from Construction of South Dade Subaru Dealership** (Source: IMPLAN; BTZ Operations)

Impact Type	Employment	Labor Income	Output
Direct Effect	110	\$7,926,000	\$15,000,000
Indirect Effect	20	\$1,351,000	\$4,324,000
Induced Effect	33	\$1,908,000	\$5,944,000
<b>Total Effect</b>	<b>163</b>	<b>\$11,185,000</b>	<b>\$25,268,000</b>

As outlined above, the construction of the Dealership will create significant short-term economic benefits within Miami Dade County including an average **82± direct and indirect/induced construction (and related) jobs** annually during the proposed improvement period, which generates a total of **\$11.2 million**

in direct and indirect/induced labor income during the construction period that will flow to the local and regional economy.

Most development-related expenditures will be made in Miami-Dade County and the proposed development will generate measurable direct impact and other fees payable to the County during the construction period which will be available for public expenditures and, namely, as it relates to roadways, fire rescue, and police. Based upon preliminary construction budgeting, these primary impact fees to Miami Dade County will total more than **\$1.35 million** over the construction period.

## **2. Long-Term (On-Going) Economic Benefits from the South Dade Subaru Dealership**

The Subaru Dealership is a full-service automotive operation selling new and used vehicles, as well as providing vehicle maintenance and service. The development will contribute to the surrounding area's aesthetic and physical improvement through modern building design and street front enhancements. It will help to serve as a stimulus for on-going and longer-term investment in the broader area.

As part of this analysis, there are three primary aspects of long-term impacts that the Dealership will have on the County, including: 1.) Net New Job and Wage Creation; 2.) Incremental Ad Valorem Tax Revenue; and, 3.) other select County taxes and fees.

The following provides a summary of methodology and analysis, and findings associated with the three primary categories of long-term/recurring benefits from the new South Dade Subaru Dealership.

### **2a.) Net New Job and Wage Creation**

Considering that the South Dade Subaru Dealership comprises both sales and maintenance/service, there will be a wide range of new jobs created among executive, management, sales, technical (ie. auto repair technician), administrative, facility maintenance and security. Based upon input from the operator, there is estimated to be 70 full-time equivalent employees (FTE's) that will be newly created upon stabilized operations which is anticipated to occur within approximately five years of its opening. Accordingly, the average total wage among the aggregated employment base is estimated to be \$75,000, which is nearly 10 percent higher than the average wage among all private sector jobs in Miami Dade County.<sup>1</sup> Note, there will be additional support service positions (ie. finance and accounting); however, some of these positions will be based outside of the region and, therefore, are not accounted for herein.

---

<sup>1</sup> Florida Department of Economic Opportunity (FDEO), Quarterly Census of Wages, Miami Dade County, Q3 2022 (\$69,034)

Figure 3: Summary of Estimated Annual Wages from Net New Direct and Indirect/Induced FTE Jobs (RD) – South Dade Subaru (Source: IMPLAN; BTZ Operations)

Impact Type	Employment	Avg. Annl. Wage	Total Wages
Direct FTE	70	\$75,000	\$5,250,000
Indirect FTE	11	\$59,500	\$878,500
Induced FTE	<u>14</u>	<u>\$57,100</u>	<u>\$601,100</u>
TOTAL	95	\$70,600	\$6,729,600

As illustrated above, the **70 net new direct FTE jobs** from the Dealership generate annual wages totaling **\$5.3 million** (2023 \$'s), with an additional **25 indirect and induced jobs** created throughout the County based upon the IMPLAN model and utilizing the Automotive Rental and Leasing and Automotive Repair and Maintenance industry categories. In sum, the FTE jobs create **\$6.7 million in total direct and indirect/induced wages** and a large portion of which will be expended on housing, transportation, retail/restaurants, and other goods and services within the County.

2b.) Incremental Ad Valorem from South Dade Subaru Dealership

The development of the Dealership will provide measurable benefit County by way of real property and personal property (ad valorem) taxes. As we understand, BTZ Operations will be entering into a long-term ground lease with Miami Dade County; therefore, ownership of the underlying land remains with the County with no taxable value. However, the Dealership facility and any ancillary improvements will be owned by BTZ Operations and will be eligible for property tax revenue to the County.

In this early phase of planning, it is difficult to ascertain the taxable value that will be assigned to the Dealership improvements. However, it is reasonable to assume a valuation for improvements that is commensurate with the estimated development costs. Moreover, real property is typically assessed at between 70 and 80 percent of Fair Market Value (FMV); or, for the purposes of this analysis, we calculate ad valorem taxes for the Dealership based upon an estimated taxable value of approximately \$11.3 million associated with the building and site improvements. As a result, the development should generate approximately \$175,000 in real property taxes (in 2023 \$'s) to Miami Dade County and designated districts and detailed as follows:

**Figure 4: South Dade Subaru – Ad Valorem Tax Estimate Upon Stabilization**

Source: Miami Dade County Property Appraiser; BTZ Operations

<i>Item</i>	<i>Millage</i>	<i>Annual Tax</i>
Miami Dade County Unincorporated	1.7461	\$19,731
Miami Dade County Operating	4.1944	\$47,397
Miami Dade County Debt	0.4853	\$5,484
Miami Dade County Fire Rescue	2.1699	\$24,520
Miami Dade County Library	0.2549	\$2,880
Miami Dade County Schools (State)	3.2422	\$36,637
Miami Dade County Schools (Local)	1.7872	\$20,195
Miami Dade County School Debt	0.165	\$1,865
Miami Dade County School Voting Operating	0.750	\$8,475
South Florida Water Mgmt.	0.0948	\$1,071
Okeechobee Basin	0.1026	\$1,159
Everglade Construction	0.0327	\$370
Children's Services	0.449	\$5,073
FIND	0.0287	\$324
<b>TOTAL</b>	<b>15.5027</b>	<b>\$175,181</b>

**3c.) Select County Taxes**

In accordance with preliminary budgets provided by BTZ Operations, the Dealership is estimated to have gross sales of approximately \$108 million upon stabilized operations including automotive sales, automotive service and parts. Utilizing the IMPLAN model, the Dealership will generate \$1.83 million in sales and other taxes, and special assessments, to the County per annum upon stabilized operations (2023 \$'s).

**Figure 5: South Dade Subaru – Annual County Tax Revenue from Select Sources Upon Stabilized Operations** (Source: IMPLAN; BTZ Operations)

<b>Description</b>	<b>Amount</b>
TOPI: Sales Tax	\$1,232,045
TOPI: Other Taxes	\$364,946
TOPI: Special Assessments	\$228,816
<b>TOTAL</b>	<b>\$1,825,808</b>



**DEVELOPMENT SITE LEASE AGREEMENT**

**MIAMI-DADE COUNTY, FLORIDA**

**MIAMI EXECUTIVE AIRPORT**

**MIAMI-DADE COUNTY**

**and**

**BTZ OPERATIONS, LLC**

TABLE OF CONTENTS

	<u>PAGE</u>
<b>ARTICLE 1 Term and Premises .....</b>	<b>1</b>
1.01. Effective Date:.....	1
1.02. Term: .....	2
1.03. Lessee Due Diligence Period and Due Diligence Termination Right: .....	2
1.04. Renewal Options:.....	5
1.05. Premises:.....	6
1.06. Suitability of Premises:.....	6
1.07. Title to Improvements; Standards of Construction: .....	6
1.08. Other Required Approvals: .....	7
1.09. Review by Other Government Agencies: .....	7
1.10. Termination or Suspension to Meet Public Emergency: .....	7
1.11. Intentionally Omitted. ....	8
1.12. Intentionally Omitted. ....	8
1.13. Reimbursement of Costs by the Lessee to the Lessor:.....	8
1.14. Lessor Cooperation:.....	8
<b>ARTICLE 2 Use of Premises .....</b>	<b>8</b>
2.01. Intentionally Omitted. ....	8
2.02. Use of Premises:.....	8
2.03. Intentionally Omitted. ....	9
2.04. Intentionally Omitted. ....	9
2.05. Lessee's Rights Not Exclusive:.....	9
<b>ARTICLE 3 Rentals and Payments .....</b>	<b>9</b>
3.01. DDP Fee: .....	9
3.02. Regular Ground Rent:.....	9
3.03. Regular Facility Rent:.....	10
3.04. Administrative Rent Amendments:.....	10
3.05. Improvement Fee:.....	10
3.06. Sales Taxes and Other County Charges: .....	10
3.07. Intentionally Omitted. ....	11
3.08. Late Payment Charge: .....	11
3.09. Dishonored Check or Draft: .....	11
3.10. Utilities: .....	11
3.11. Intentionally Omitted. ....	11
3.12. Other Fees and Charges: .....	11
3.13. Security Deposit:.....	11
3.14. Rental Rate Review: .....	12
3.15. Double Rental: .....	13
3.16. Methods of Payment: .....	13
3.17. Concession Services: .....	14

<b>ARTICLE 4 Development and Improvements to Premises.....</b>	<b>14</b>
4.01. Improvements to Premises: .....	14
4.02. The Project .....	16
4.03. Design of Improvements: .....	18
4.04. Development Schedule:.....	19
4.05. Failure to Complete on a Timely Basis: .....	21
4.06. Construction of Improvements: .....	21
4.07. Construction Completion Documents:.....	21
4.08. Certain Construction Contract Terms:.....	22
4.09. Intentionally Omitted. ....	22
4.10. Construction Bonds and Insurance Required; Insurance Company Rating: .....	22
4.11. Final and Approved Improvements Costs: .....	23
4.12. Temporary Structures: .....	24
4.13. Review of Construction: .....	24
4.14. Tenant Airport Construction Contracts:.....	24
4.15. Standards of Construction: .....	25
<b>ARTICLE 5 Maintenance and Repairs by Lessee.....</b>	<b>25</b>
5.01. Cleaning:.....	25
5.02. Removal of Trash:.....	25
5.03. Maintenance and Repairs: .....	25
5.04. Excavation of Land: .....	26
5.05. Water and Sewerage System: .....	26
5.06. Industrial Waste Facilities: .....	26
5.07. Grassed Areas and Shrubbery:.....	26
5.08. Inspections:.....	27
5.09. Failure to Maintain: .....	27
5.10. Building Recertification Requirements: .....	27
<b>ARTICLE 6 Maintenance by Lessor.....</b>	<b>27</b>
6.01. Lessor Maintenance:.....	27
6.02. Lessor's Limited Obligation for Other Maintenance: .....	28
6.03. Maintenance of Airport Facilities: .....	28
6.04. County Maintenance Subject to Certain Conditions:.....	28
<b>ARTICLE 7 Regulations, Licenses and Permits .....</b>	<b>28</b>
7.01. Rules and Regulations:.....	28
7.02. Violations of Rules and Regulations: .....	29
7.03. Permits and Licenses.....	29
7.04. Penalties, Assessments and Fines .....	29
7.05. Compliance with Responsible Wages and Benefits for County Construction Contracts (Implementing Order #3-24): .....	29
7.06. Economic Development Requirements:.....	30
7.07. Other Programs: .....	34
7.08. Art in Public Places: .....	36
7.09. Inspector General Reviews/Audit & Compliance:.....	36

<b>ARTICLE 8 Alteration of Premises and Erection of Signs.....</b>	<b>38</b>
8.01.    Alterations:.....	38
8.02.    Intentionally Omitted: .....	38
8.03.    Signage:.....	38
<b>ARTICLE 9 Environmental Compliance .....</b>	<b>39</b>
9.01.    DERM Requirements:.....	39
9.02.    Definitions: .....	39
9.03.    Lessee’s Acceptance of the Risks and Condition of Premises As-Is: .....	41
9.04.    Responsibilities for Hazardous Materials:.....	42
9.05.    Intentionally Omitted .....	43
9.06.    Lessee Audit: .....	43
9.07.    Environmental Maintenance of Premises:.....	43
9.08.    Lessee’s Use of Hazardous Materials:.....	43
9.09.    Entry by County: .....	44
9.10.    Permits and Licenses:.....	45
9.11.    Notice of Discharge to County: .....	45
9.12.    Reports to County:.....	45
9.13.    Periodic Environmental Audits: .....	46
9.14.    Remediation of Hazardous Material Releases: .....	46
9.15.    Indemnity: .....	48
9.16.    Dispute Resolution:.....	48
9.17.    Waiver and Release:.....	49
9.18.    Surrender of Premises:.....	49
9.19.    Breach: .....	49
9.20.    Survivability of Terms:.....	49
9.21.    Right to Regulate: .....	49
<b>ARTICLE 10 Indemnification and Hold Harmless .....</b>	<b>49</b>
<b>ARTICLE 11 Assignment and Subletting and Conditions of Financing.....</b>	<b>50</b>
11.01.    Assignment and Transfer:.....	50
11.02.    Transfer or Assignment Fee:.....	50
11.03.    Subletting:.....	50
11.04.    Conditions of Financing for Approved Improvement Costs: .....	51
<b>ARTICLE 12 Insurance .....</b>	<b>56</b>
12.01.    Insurance Required:.....	56
12.02.    Insurance Certificates Required:.....	57
12.03.    Compliance:.....	58
12.04.    Right to Examine:.....	58
12.05.    Personal Property: .....	58
<b>ARTICLE 13 Termination.....</b>	<b>58</b>
13.01.    Payment Defaults:.....	58
13.02.    Insurance Defaults: .....	59
13.03.    Other Defaults:.....	59



13.04.	Habitual Default: .....	59
13.05.	Termination by Abandonment: .....	59
13.06.	Actions at Termination: .....	60
13.07.	Lien Waiver: .....	61
13.08.	Right to Show Premises: .....	61
13.09.	County Defaults: .....	61
13.10.	Other Terminations: .....	61
<b>ARTICLE 14 Special Conditions .....</b>		<b>61</b>
14.01.	Quality of Services: .....	62
14.02.	Nondiscriminatory Service Prices: .....	62
<b>ARTICLE 15 Equal Employment Opportunity, Nondiscrimination and Affirmative Action .....</b>		<b>62</b>
15.01.	Equal Employment Opportunity .....	62
15.02.	Employment Discrimination: .....	62
15.03.	Affirmative Action .....	63
15.04.	Nondiscriminatory Access to Premises and Services: .....	63
15.05.	Breach of Nondiscrimination Covenants: .....	64
15.06.	Nondiscrimination in Employment and Sub-Contracts: .....	64
15.07.	Title VI Clauses for Compliance with Nondiscrimination Requirements: .....	64
15.08.	Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program: .....	65
15.09.	Title VI List of Pertinent Nondiscrimination Acts and Authorities: .....	66
15.10.	Occupational Safety and Health .....	67
<b>ARTICLE 16 Security and Special Provisions .....</b>		<b>67</b>
16.01.	Security: .....	67
16.02.	Drug-Free Workplace Default: .....	68
16.03.	Special Programs: .....	68
16.04.	Intentionally Omitted .....	68
16.05.	Intentionally Omitted: .....	68
16.06.	Intentionally Omitted .....	68
16.07.	Additional Security Requirements .....	68
16.08.	Compliance by Lessee's Contractors; Lessee's Responsibility for Security Failures .....	68
16.09.	Right of Flight: .....	69
16.10.	Height Restrictions: .....	69
<b>ARTICLE 17 Employees .....</b>		<b>69</b>
17.01.	Control of Employees: .....	69
17.02.	Reserved .....	69
17.03.	Lessee's Responsibility for Employee Violations: .....	69
<b>ARTICLE 18 Civil Actions .....</b>		<b>70</b>
18.01.	Governing Law; Venue: .....	70
18.02.	Notice of Commencement of Civil Action: .....	70
18.03.	Registered Office/Agent; Jurisdiction: .....	70

<b>ARTICLE 19 Other Provisions .....</b>	<b>70</b>
19.01. Incorporation of Trust Agreement by Reference: .....	71
19.02. Adjustment of Terms and Conditions: .....	71
19.03. Modifications Caused by DOT Order .....	71
<b>ARTICLE 20 Other Provisions .....</b>	<b>71</b>
20.01. No Representation: .....	71
20.02. Headings: .....	72
20.03. Interference: .....	72
20.04. Authorized Uses Only: .....	72
20.05. Binding Effect: .....	72
20.06. Subordination to Federal Requirements: .....	72
20.07. Notices: .....	72
20.08. Rights Reserved: .....	74
20.09. Rights of County at Airport: .....	74
20.10. Rights to be Exercised by the Lessor: .....	74
20.11. No Waiver: .....	74
20.12. Right to Regulate: .....	74
20.13. Severability: .....	75
20.14. Inspections: .....	75
20.15. Payment of Taxes: .....	75
20.16. Quiet Enjoyment of Others: .....	75
20.17. Radon Disclosure: .....	75
20.18. Force Majeure: .....	75
20.19. Destruction of Premises: .....	76
20.20. Quiet Enjoyment: .....	76
20.21. Interpretation of Agreement: .....	77
20.22. Entirety of Agreement: .....	77
20.23. Special Definitions: .....	77
20.24. Applicability of Terms: .....	77
20.25. Construction of Turn Lane: .....	77
20.26. County Retains All Existing Easements: .....	78

**EXHIBITS:**

- Exhibit "A"      Boundary Survey and Legal Description**
- Exhibit "B"      Development Concept**
- Exhibit "C"      Resilience and Sustainability Requirements**
- Exhibit "D"      Division of Environmental Resource Management (DERM) Memorandum**
- Exhibit "E"      Water and Sewer Department (WASD) Memorandum**
- Exhibit "F"      Job Certificate**

**DEVELOPMENT LEASE AGREEMENT BETWEEN MIAMI-DADE COUNTY, FLORIDA, AS LESSOR, AND  
BTZ OPERATIONS, LLC, AS LESSEE, AT MIAMI EXECUTIVE AIRPORT**

THIS DEVELOPMENT LEASE AGREEMENT (this "Lease" or this "Agreement") is made and entered into as of the Effective Date (as defined in in Article 1.01) by and between MIAMI-DADE COUNTY ("Lessor" or "County"), through its Aviation Department ("MDAD" or "Department"), the, and BTZ Operations, LLC, a Florida limited liability company authorized to do business in the State of Florida (the "Lessee" or "Tenant").

**WITNESETH**

**WHEREAS**, the County is the owner of Miami Executive Airport (the "Airport" or "TMB") and operates it through MDAD; and

**WHEREAS**, the Lessor and the Lessee have agreed to enter into a new development lease agreement at TMB with respect to the Premises (as defined below); and

**WHEREAS**, the Lessee acknowledges that all development activity must occur in strict compliance with requirements of the Federal Aviation Administration (FAA) and with all regulatory requirements of the State of Florida and the County; and

**WHEREAS**, the Lessee acknowledges that the Premises (defined below) may be subject to the Comprehensive Development Master Plan (CDMP) and zoning approval for proposed development activity; and

**WHEREAS**, the Lessor acknowledges that the Lessee intends to engage in the non-aeronautical uses described herein at the Premises; and

**WHEREAS**, the Lessor, pursuant to this Lease, authorizes Lessee to develop and construct a project on the Premises for the operation and maintenance of an automobile dealership, as more fully described herein, in order to spur economic development and attract a new business to Miami-Dade County.

**NOW THEREFORE**, for and in consideration of the foregoing recitals, and of the mutual covenants and agreements contained herein, the parties agree as follows:

**ARTICLE 1**

**TERM AND PREMISES**

**1.01. Effective Date:**

The Effective Date of this Agreement shall be the date that this Agreement is executed by the County Mayor or Mayor's designee following approval by the Board of Commissioners of Miami Dade County (the "Board") ("Board Approval"). Board Approval shall not be effective until the later of (a) the lapse of ten (10) days following the date that this Agreement is passed at a meeting of the Board without the Mayor's veto; or (b) in the event that the County Mayor vetoes the passing of this item, the date the Board overrides the County Mayor's veto at the next regularly scheduled meeting of the Board after such veto occurs. The actions of the Board in connection with the approval of this Lease rests solely in the discretion of the Board, as does the Mayor's power to veto any action of the Board.

## **1.02. Term:**

As of the Effective Date, the Lessor hereby leases to the Lessee, and the Lessee leases from the Lessor, the premises, as described in Article 1.05 (the "Premises"), for the purpose(s) and use(s) set forth in Article 2.02 (Use of Premises) and Article 4 (Development and Improvements to Premises) for a term of thirty (30) years, subject to the conditions set forth below, commencing on the Effective Date as herein defined (the "Term"). Two (2) five (5) year Renewal Options are described in Article 1.04.

## **1.03. Lessee Due Diligence Period and Due Diligence Termination Right:**

(A) The Term shall be divided into two distinct phases: (1) the Due Diligence Period ("DDP") and (2) the Development and Operation Period ("DOP").

(B) The DDP shall begin on the Effective Date and end on the earlier of the "Due Diligence Expiration Date" or the "Construction Commencement Date."

(1) The "Construction Commencement Date" shall mean the earlier of: (i) the filing of the notice of commencement under Florida Statutes, Section 713.13; or (ii) the visible start of construction work on the Required Improvements, including on-site utility, excavation or soil stabilization work (but specifically excluding any necessary testing, environmental remediation or ceremonial groundbreaking).

(2) The "Due Diligence Expiration Date" shall be the earlier of (a) the last day of the eighteenth (18<sup>th</sup>) month after the Effective Date; or (b) if Lessee is ready to commence development of the Premises earlier than the last day of the eighteenth (18<sup>th</sup>) month after the Effective Date, the date on which Lessee notifies the County in writing that it is ready to proceed beyond the DDP and proceed with development of the Premises as set forth elsewhere in this Agreement.

(C) The DOP shall begin on the day immediately following the Due Diligence Expiration Date or the Construction Commencement Date, whichever occurs earlier (the "DOP Commencement Date").

(D) During the DDP, the Lessee shall have the right, as set forth below, to conduct due diligence with respect to the Premises and to seek other required approvals as set forth in Article 1 with respect to this Agreement and the intended development and operation of the Premises. The Lessee may, at its sole expense, perform due diligence, seek necessary approvals to commence development, pursue any necessary CDMP use change and/or zoning change, perform surveys, and perform environmental and other testing that Lessee desires to perform prior to committing to proceeding with development of the Premises (the "Due Diligence Activities"). During the DDP, Lessee is strictly prohibited from performing any development or altering the Premises and is required to keep the Premises in a good state of repair.

(E) Requirements During the DDP. Lessee expressly agrees that it will not conduct any business operations or build, construct, create, or permit others to build, construct or create any buildings, structures or other improvements on or over the Premises at any time prior to the expiration of the DDP. Lessee's rights on the Premises are limited to the Due Diligence Activities including, but not limited to, environmental investigation(s), CDMP change and/or zoning change, surveying, and geotechnical testing and such other testing as the Lessee deems necessary or desirable. Lessee shall only enter upon and access the Premises in the manner consistent with this Lease. Lessee shall coordinate with the Lessor prior to the commencement of any investigations on the Premises, such that all Due Diligence Activities are done in a manner that does not interfere with Lessor's ownership and/or use of the Premises. Lessee shall not use the Premises or otherwise enter onto the Premises during the DDP for any purpose other than those set forth herein or



approved by MDAD in writing, which approval shall not be unreasonably withheld, conditioned or delayed. Due Diligence Activities may include the following:

- 1) American Land Title Association (ALTA) Survey. No later than one-hundred twenty (120) days from the Effective Date, the Lessee at its sole cost and expense, shall provide the Lessor with an ALTA survey of the Premises prepared and certified by a professional land surveyor licensed by the State of Florida which provides legal descriptions and contains a certification of the number of square feet and calculated acreage contained in the Property certified to Lessee, the Lessor and the title company. Formats required to be submitted to MDAD shall include PDF, AutoCAD and in State Plane Coordinate System for the required reviews.
- 2) Environmental Site Assessment. Within one-hundred twenty (120) days of the Effective Date, Lessee shall, at Lessee's sole cost and expense, furnish to the Miami-Dade County Department of Regulatory and Economic Resources-Division of Environmental Resources Management ("DERM"), or successor agency, an environmental site assessment of the Project area that meets the standards for a Phase I Environmental Site Assessment (the "Phase I") report acceptable to the DERM in order to determine the existence and extent, if any, of Hazardous Materials (as defined herein) or toxic substances and hazardous waste within the Project area in violation of any laws, ordinances, rules or restrictions of any governmental authority having jurisdiction. For purposes of this Article, "Hazardous Materials" shall mean any hazardous or toxic substance, material or waste, as well as solid waste or debris of any kind or any other substance which is regulated by any environmental law. Subject to Lessee's termination rights during the DDP, if DERM, after reviewing the Phase I, requires that Lessee perform further investigation and/or testing that Lessee is not already performing, then Lessee shall undertake, at Lessee's sole cost and expense, a Phase II Environmental Site Assessment report to confirm that the environmental condition is the same, or better, as that set forth in the Phase I report or test for, specifically, contamination (as defined in Section 24-5 of the Code of Miami-Dade County (the Code) and/or Chapter 62-780 Florida Administrative Code (FAC) or the presence of Hazardous Materials at the Premises in violation of any environmental laws, ordinances, rules or restrictions of any governmental authority having jurisdiction over the Property. Lessee shall, within five (5) business days of its receipt of any such Phase II Environmental Site Assessment report, but no later than ninety (90) days prior to the expiration of the DDP, provide a copy thereof to DERM. All environmental site assessment reports shall be certified to the Lessee by the environmental professional engaged by Lessee to perform the assessment and the date of certification shall be as of the date in which work was performed or reviewed by the environmental professional, but in no case more than ninety (90) days prior to the expiration of the DDP.
- 3) Rare, Threatened and Endangered Species Survey. No later than ninety (90) days prior to the expiration of the DDP, the Lessee shall provide, at the Lessee's expense, a Biological Survey of the Premises that identifies any County, state and federally listed rare, threatened and endangered species including any listed species of special concern to the Miami-Dade County Department of Regulatory and Economic Resources-Division of Environmental Resources Management ("DERM"), or successor agency, for review and approval.
- 4) Permits/Regulations. Lessee hereby covenants and agrees that during the DDP it shall secure and maintain any and all necessary permits, licenses, and/or approvals required in connection with the performance of its Due Diligence Activities on the Premises, and that any and all Due Diligence Activities shall be performed in accordance with any and all applicable laws and

regulations, including, but limited to Miami-Dade County's Regulatory and Economic Resources Department, the Florida Environmental Protection Department, and the United States Environmental Protection Agency.

- 5) Restoration. Lessee shall use its best efforts to minimize any impact upon or to the Premises in carrying out its Due Diligence Activities on the Premises and agrees that any and all cost or expense associated with its Due Diligence Activities on the Premises shall be borne solely by Lessee. Upon completion of any such Due Diligence Activities, Lessee shall restore the Premises, including repairing any damage to the Premises which occurred during, or was the result of, Lessee's work on or about the Premises. The provisions of this paragraph shall survive the termination of this Contract.
- 6) Insurance. Prior to Lessee, its officers, employees, licensees, agents, and vendors entering upon or onto the Premises for any reason whatsoever during the DDP, Lessee shall furnish the County with a certificate of insurance that meets or exceeds the insurance requirements as found in Article 12 (Insurance).
- 7) Mechanic's Materialmen's and other Liens. Lessee hereby agrees that it shall not permit any mechanic's materialmen's and/or any other lien to exist on the Premises as a result of its Due Diligence Activities or any other action undertaken by Lessee; it being provided, however, that Lessee shall have the right to contest the validity thereof for a period of up to thirty (30) days. Lessee shall immediately pay any judgment or decree rendered against it or the County in relationship with the Due Diligence Activities, with all costs and charges, and shall cause any such lien to be released off record without cost to the County. The provisions of this paragraph shall survive the termination of this Contract.

(F) Commencing on the DDP Commencement Date, Lessee may begin developing the Premises and operating its business according to the terms and conditions set forth throughout this Agreement.

(G) Unless expressly stated otherwise in this Article 1.03, all general terms, conditions, and requirements set forth throughout the entirety of this Agreement, including the requirement to carry any insurance that would be applicable to the Due Diligence Activities as determined by the County's Risk Management Division, shall apply to Lessee during the DDP. Notwithstanding anything in this Agreement to the contrary, the Lessor acknowledges that not every term, condition and/or requirement set forth in this Agreement will be applicable during the DDP (while there is no construction or business activity occurring at the Premises) including, without limitation, the Lessee's obligation to carry certain insurance coverages (i.e., Business Interruption and Advertising Injury) or construct permanent fencing. As such, Lessor's enforcement of this Article 1.03(G) shall be subject to its reasonable determination of the applicability of such terms, conditions and/or requirements during the course of the DDP.

(H) At any time prior to the end of the DDP, Lessee shall have the right to terminate this Agreement, in its sole and absolute discretion, by providing written notice to the County and, thereafter, shall have no further obligations except for (1) those obligations that survive the termination of this Agreement as set forth herein, and (2) the obligation, within fifteen (15) calendar days from the date of such notice, to remove all personal property from the Premises and surrender the Premises to the County in the same condition that the Premises were in at the Effective Date. .

(I) Regardless of whether Lessee elects to terminate during the DDP or proceed beyond the Due Diligence Expiration Date, Lessee shall be required to provide the County with all reports generated with respect to any and all conduct and activities relating to Lessee's performance of the Due Diligence Activities.

#### 1.04. Renewal Options:

The Lessee shall have two (2) five (5) year Renewal Options as described below.

(A) The Lessee shall have the option (the "First Renewal Option") to extend the Term by the first of two (2) - five (5) year options (the "First Renewal Term") by providing notice to MDAD in writing no later than 180 days prior to the expiration of the Term, so long as all the following conditions are met:

(1) The Lessee has achieved the DBO, as defined below in Article 1.04(E), for the improvements to the Premises (the "Improvements), within thirty-seven (37) months of the DOP Commencement Date; and

(2) The Lessee has invested not less than fifteen million dollars (\$15,000,000.00) in improvements (the "Investment Commitment"); and

(3) The Lessee is not in default beyond any applicable cure period under Article 13 (Termination) at the time it seeks to exercise the First Renewal Option and at the time that the First Renewal Term is set to begin.

(B) Lessee's Right to Cancel First Renewal Option:

- i. No later than ninety (90) days prior to the expiration of the initial Term, Lessor will provide an appraisal of the Regular Facility Rent (defined herein) applicable to the first day of the First Renewal Term. Notwithstanding, the Regular Facility Rent is subject to change on October 1 of each year of the Renewal Terms in accordance with MDAD's standard appraisal and rate-setting practices, as described below.
- ii. Within sixty (60) days of Lessee receiving the Regular Facility Rent appraisal rate, Lessee may cancel its First Renewal Option and this Lease shall expire at the expiration of the initial Term.

(C) The Lessee shall have the option (the "Second Renewal Option") to extend the term of this Lease by the second of the two (2) five (5) year options (the "Second Renewal Term") by providing notice to MDAD in writing no later than 180 days prior to the expiration of the First Renewal Term so long as the Lessee is not in default beyond any applicable cure period under Article 13 (Termination) at the time it seeks to exercise the Second Renewal Option. The "First Renewal Term" and "Second Renewal Term" may be referred to herein as a "Renewal Term." The expiration of the initial Term or, if applicable, the First Renewal Term or the Second Renewal Term, shall be known as the "Expiration Date."

(D) Notwithstanding anything in the foregoing to the contrary, up to eighteen (18) months prior to the expiration of the initial Term, the Lessee may request an appraisal of the current Regular Facility Rent, which Lessor will provide to Lessee within 90 days of receipt of such request. Because such appraisal would reflect the value of the Regular Facility Rent at a point in time that is 18 months prior to the beginning of the potential First Renewal Term, such appraisal rate shall serve no purpose other than to provide Lessee with a general idea of rates at the time that the appraisal is conducted. The actual Regular Facility Rent rate applicable to the first day of the First Renewal Term shall be the rate reflected in the appraisal required in Article 1.04(B)(i).

(E) Date of Beneficial Occupancy of the Required Improvements: The Date of Beneficial Occupancy of the Required Improvements (the "DBO") is defined to be the earliest of (i) the date on which

substantial completion of the Improvements has occurred and the appropriate code enforcement agency has issued a Certificate of Occupancy ("CO") or a Temporary Certificate of Occupancy ("TCO") that enables the Lessee to occupy or utilize the Improvements in any manner for their intended use, (ii) the date on which the Lessee commences the use of any of the Improvements (but specifically excluding use of Temporary Structures as permitted by Article 4.11 hereof) for its intended use (with or without a TCO or CO), or (iii) the date on which substantial completion of such Improvements would have occurred and on which the appropriate code enforcement agency would have issued a CO or TCO but for the occurrence of delays within the sole control of Lessee and not the result of an event of force majeure as defined in Article 20.18 below, all as determined in the reasonable discretion of the County.

#### **1.05. Premises:**

The Premises leased herein consist of the existing parcel as described in the attached Exhibit A. The term "Airport Facilities" shall mean all areas of the Airport other than the Premises, provided, however, that Lessee's rights to use of utility and/or drainage areas outside of the Premises shall not be considered use of Airport Facilities pursuant to the terms of this Lease.

#### **1.06. Suitability of Premises:**

The Lessee acknowledges that (a) the Lessor has made no representations as to the Premises or the suitability of the Premises for the purposes of the Lessee, (b) the Lessor has no obligation to perform or cause to be performed any maintenance, repairs, renovations, cleanups, painting, or the like of the existing facilities on the Premises, which are to be leased in an as-is condition, (c) subject to the Lessee's rights in connection with the Due Diligence Period, the 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, and (d) the Lessee has otherwise satisfied itself that the conditions of the Premises, and utilities in their current state, are satisfactory to the Lessee. Except for MDAD's obligations in Article 1.14 (Lessor Cooperation), the Lessee's obligations under this Agreement, such as in Article 7.03 (Permits & 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 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 Lessee's use and to satisfy the County's building, life, safety, fire and occupancy requirements, and that Lessor shall have no obligation to the Lessee to compensate or reimburse the Lessee for such cost, risk, expense, investment, and improvements.

#### **1.07. Title to Improvements; Standards of Construction:**

Unless the Lessee's financing documents require otherwise, the Lessee shall have the option, to be exercised not later than one hundred and eighty (180) days following the DBO, of (i) placing in the name of the Lessor its Improvements installed or constructed by the Lessee upon the Premises, free and clear of all liens and encumbrances, except for any financial interests or liens specifically approved by the Lessor under the loan documents as provided under Article 11.04(B) (Lessor Approval of Financing Documents), or (ii) retaining title to such Improvements in Lessee's name for the duration of the Term. For the Improvements whose title is to remain in the Lessee's name, the Lessee shall be entitled to use modified standards for its design and construction, as approved by the Lessor, but must nonetheless comply with all applicable building, fire, and life/safety codes,



comply with the Lessor's requirements under Article 4 (Development and Improvements to the Premises) as to the useful life of the improvement.

**1.08. Other Required Approvals:**

(A) Review by FAA:

This effectiveness of this Agreement is contingent upon review by the Federal Aviation Administration (the "FAA"). Prior to the Construction Commencement Date, if the FAA formally indicates that any material 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 Lessor or Lessee shall have the right in its sole discretion to either (i) declare this Agreement to be null and void or (ii) subject to Lessee's and Lessor's approval, change the terms of this Agreement so as to overcome the reasons for the FAA's statements or objections. In the latter event, Lessor shall prepare a revised lease that incorporates the changes required by the FAA, and submit to the Lessee this Agreement as so changed.

In the latter event, the Lessee shall respond to such proposed changes promptly, and in any case, not later than sixty (60) days from the date the Lessor provides such changes to the Lessee. If the Lessee accepts such changes, the parties will execute a revised Agreement as changed, subject again to FAA review. No compensation of any sort shall be payable to the Lessee in the event that (a) the Lessor declares this Agreement to be null and void or (b) the parties are unable to agree to the terms of a revised Agreement that will overcome the concerns raised by the FAA.

(B) Section 707 of the Lessor's Restated and Amended Trust Agreement:

In addition to the above, this Agreement and the enforcement of each party's obligations hereunder are contingent upon the occurrence of the Lessor's receipt of certificates under Section 707 of the Lessor's Restated and Amended Trust Agreement from both the Traffic Engineers and the Consulting Engineers determining that the Improvements to be constructed by Lessee meet the standards provided in Section 707.

If any of the foregoing are not given or provided, the parties will take reasonable steps to amend this Agreement so as to modify any provision hereof to overcome any reason for the above entities' failure to consent, give, or provide what is required; provided, however, Lessor shall not be required to agree to a modification that is inconsistent with its obligations under federal law or the Trust Agreement.

**1.09. Review by Other Government Agencies:**

As of the Effective Date, the use of the site is designated aeronautical use in the current Comprehensive Development Master Plan ("CDMP"). It is understood that certain portions of the Premises need to be designated for non-aeronautical use and will require appropriate changes to the CDMP and zoning designation to allow for the Permitted Uses. The Lessee shall reimburse MDAD for the total cost of the required CDMP and zoning changes for the Lessee to operate the Project (as defined herein) on the Premises. The County shall issue invoice(s) to Lessee prior to the expiration of the Due Diligence Period and Lessee shall reimburse MDAD no later than 30 days after the receipt of invoices. Should payment not be received as required, MDAD reserves the right to issue a notice of default pursuant to the terms of this Lease.

**1.10. Termination or Suspension to Meet Public Emergency:**

Pursuant to I.O. 8-4 and County Resolution No. R-64-16, Lessor shall have the right to terminate or suspend this Agreement in the event that the Premises are required to meet an emergency public purpose

("Emergency Suspension/Termination Right"); provided, however, that such Emergency Suspension/Termination Right shall be null and void as the Construction Commencement Date.

**1.11. Intentionally Omitted.**

**1.12. Intentionally Omitted.**

**1.13. Reimbursement of Costs by the Lessee to the Lessor:**

The Lessee acknowledges that MDAD will incur costs from the County's Internal Services Department ("ISD") for the review and processing of the non-competitive proposal received from BTZ on March 3, 2023 and the subsequent requirements directly related to Implementing Order 8-4 to include actual costs for required due diligence, which shall include but not be limited to, title work, appraisals, advertisements and hourly rates for ISD staff (the "ISD Review"). Hourly rates estimated by ISD shall not exceed 100 hours charged at \$120.00 per hour plus a \$1,200.00 contingency, in total, for the ISD Review. MDAD shall issue invoice(s) to Lessee and Lessee shall reimburse MDAD no later than 30 days after the receipt of same.

**1.14. Lessor Cooperation:**

MDAD, solely in its capacity as operator of the Airport system, agrees to act in good faith and use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or proper to make effective the transactions contemplated by this Agreement, including, without limitation, such actions as may be reasonably necessary for Lessee to obtain the Approvals and any other consents, permits, licenses and change of zoning; provided, that Lessor shall not be required to incur out of pocket expenses in connection therewith (other than as expressly required pursuant to the terms and conditions of this Agreement).

**ARTICLE 2**

**USE OF PREMISES**

**2.01. Intentionally Omitted.**

**2.02. Use of Premises:**

Lessor, in order to enhance and expand economic activity near the Premises by attracting and retaining business enterprise, entered into this Lease with Lessee to permit Lessee to develop, operate and maintain the Premises for the Permitted Uses. During the Term, Lessee shall use the Premises solely for the Permitted Uses and no other use.

The Lessee shall use the Premises and the Improvements constructed thereupon only for the purposes specifically authorized below (the "Permitted Uses") and pursuant to the uses set forth by the CO issued for each Improvement, MDAD's Minimum Standards (Operational Directive No. OD 09-01) and Chapter 25 of the Code of Miami-Dade County.

Such services and uses may only be provided on the Premises developed by the Lessee, provided that the services and uses are in compliance with Article 7 (Regulations, Licenses and Permits) of this Agreement. Lessee is authorized to use the Premises for the following purposes:

- (A) Non-aeronautical Uses. Any and all uses and activities (including promotional activities) commonly undertaken at an automobile dealership including, without limitation, the sale, financing, leasing,

and servicing and repair of new and used automobiles and automobile-related products commonly sold at automobile dealerships and as otherwise developed during the Term, restaurants or other food services for Lessee's customers, and other customer activities (including, without limitation, a customer lounge, exercise area, animal play area, beauty salon, meditation area) and ancillary and support uses which may be found at an automobile dealership (including, without limitation, sales and service areas, a vehicle showroom, body shop, warehouse(s) and/or parking decks, support offices, and customer and employee parking areas); provided, however, that such non-aeronautical uses shall not include overnight lodging or rentals.

(B) Prohibited Uses, Products and Services. The Lessee agrees that the Premises shall be utilized solely for the uses permitted herein and for no other purpose whatsoever. The Lessee shall not provide any products or services that are not specifically authorized by this Lease or by the County. The Lessee further agrees that its customers shall only be permitted to park vehicles on the Premises while utilizing Lessee's services or facilities, or while providing operations on the Premises. The Lessee shall not do or allow any act arising from or related to the Premises (inclusive of any acts from employees, vendors, customers and visitors) that poses aviation-related safety risks to the Airport related operations, including, but not limited to, feeding that encourages birds or other animals to congregate (provided that the animal play area referenced herein shall be permitted).

**2.03. Intentionally Omitted.**

**2.04. Intentionally Omitted.**

**2.05. 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 the 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 Airport property for any lawful purpose) that the Lessor is permitted to take under federal, state, and local law pertaining to the Airport.

**ARTICLE 3**

**RENTALS AND PAYMENTS**

**3.01. DDP Fee:**

Beginning on the Effective Date and continuing until the DOP Commencement Date, Lessee shall pay a due diligence fee in the amount of \$7,500.00 per month (the "DDP Fee"). If the Effective Date is a date other than the first of the month, the amount shall be prorated, and the payment of the Initial Fee thereafter shall be due on the first of each month.

**3.02. Regular Ground Rent:**

"Regular Ground Rent" shall be due and payable for the period commencing on the DOP Commencement Date (the "Regular Ground Rent Commencement Date") and continuing through the balance of the Term. The Regular Ground Rent in effect as of the Regular Ground Rent Commencement Date shall be the amount initially set by the County ("Initial Regular Ground Rent") through appraisal of non-aviation land (the "Land FMV"). The Initial Regular Ground Rent shall be \$2.44 PSF and shall not be subject to adjustment based on the FMV Challenge Mechanism, as provided hereunder. For the avoidance of doubt, the Initial Regular Ground Rent shall be increased by 2% annually for the period between the Effective Date and the Regular Ground Rent

Commencement Date. If the Regular Ground Rent Commencement Date is a date other than the first of the month, the amount shall be prorated, and the payment of Regular Ground Rent thereafter shall be due on the first of each month. Subject to adjustment as provided herein, on each anniversary of the first day of the month immediately following the month in which the Regular Ground Rent Commencement Date occurred (each, an "Adjustment Date") that is not a Rent Change Date (as defined herein), Regular Ground Rent will be increased 2% for the 12-month period immediately following each such Adjustment Date, and, on each fifth (5<sup>th</sup>) year anniversary thereafter (each a "Rent Change Date"), the Regular Ground Rent will be adjusted as provided in Article 3.14.

### **3.03. Regular Facility Rent:**

In addition to Regular Ground Rent, commencing on the first (1<sup>st</sup>) day of the First Renewal Term (the "Regular Facility Rent Commencement Date"), and adjusted annually thereafter (and continuing through the Second Renewal Term, if applicable), Lessee shall pay, on the first day of each month in advance and without billing, FMV building rent ("Building FMV") at the then-current rates established by the Board of County Commissioners for the buildings constructed by the Lessee at the Premises (the "Regular Facility Rent").

### **3.04. Administrative Rent Amendments:**

Whenever the rental rate for any of the various categories of rent set forth in this Agreement is adjusted, such revised rental rates shall be reflected herein by means of a letter between the Lessor and the Lessee and shall constitute an administrative amendment of the Lease. Payments for any retroactive rental adjustments shall be due upon billing to the Lessee by the Lessor and payable by the Lessee within thirty calendar days of same.

### **3.05. Improvement Fee:**

In addition to the Regular Ground Rent discussed above, Lessee shall pay an amount based on the Improvements as provided in this Article (the "Improvement Fee"). Improvement Fee is based on the hard construction costs invested by the Lessee prior to the DBO (the "Improvement Fee Basis") and the terms set forth herein. For purposes of this Article, the Improvement Fee Basis shall be no less than \$15,000,000.00. Beginning on the: (i) 10<sup>th</sup> anniversary of the Regular Ground Rent Commencement Date and each anniversary of Regular Ground Rent Commencement Date thereafter through the of the 15<sup>th</sup> anniversary of the Regular Ground Rent Commencement Date, Lessee shall pay the greater of one percent (1%) of the Improvement Fee Basis or \$150,000.00; (ii) 16<sup>th</sup> anniversary of the Regular Ground Rent Commencement Date, and each anniversary of Regular Ground Rent Commencement Date thereafter through the 20<sup>th</sup> anniversary of the Regular Ground Rent Commencement Date, Lessee shall pay the greater of one point five percent (1.5%) of the Improvement Fee Basis or \$225,000.00; and (iii) 21<sup>st</sup> anniversary of the Regular Ground Rent Commencement Date, and each anniversary of the Regular Ground Commencement Date thereafter through the 30<sup>th</sup> anniversary of the Regular Ground Rent Commencement Date, Lessee shall pay the greater of two (2%) of the value of the Improvement Fee Basis or \$300,000.00. The Improvement Fee shall be due and payable in twelve (12) equal monthly installments. For the avoidance of doubt, the Improvement Fee shall continue until Regular Facility Rent commences.

### **3.06. Sales Taxes and Other County Charges:**

The 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 the 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 charges are applicable to all similarly situated lessees at the Airport.



**3.07. Intentionally Omitted.**

**3.08. Late Payment Charge:**

In the event the Lessee fails to make any payments as required to be paid under the provisions of this Agreement, within ten (10) days after same shall become due, interest at the rates established from time to time by the BCC (currently set at 5% per month), shall accrue against the delinquent payment(s) from the original due date until the Lessor actually receives payment. 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 termination of this Agreement, and to pursue other remedies provided by law.

**3.09. Dishonored Check or Draft:**

In the event that the Lessee delivers a dishonored check or draft to the Lessor in payment of any obligation arising under this Agreement, the Lessee shall incur and pay a service fee assessed in accordance with the Lessor's practice for dishonored checks plus penalties as may be imposed by law, such as Articles 832.08 and 125.0105, Florida Statutes, as such statutes may be amended or renumbered. Further, in such event, the Lessor may require that future payments required pursuant to this Agreement be made by cashier's check or other reasonable means acceptable to the Lessor.

**3.10. Utilities:**

The Lessee shall pay for all utilities it uses or is imposed on the Lessee as a matter of law. The Lessor shall have no obligation to provide utilities to the Premises except to maintain or repair any utilities that may exist on the Premises as of the Effective Date. Lessee shall be liable, at its own cost and expense, to relocate any utilities currently providing service to the Airport Facilities, to the extent such relocation is necessary or desired by Lessee in order to construct the Improvements. Lessee shall ensure that utility service to the Airport Facilities is maintained at all times during the course of any such relocation.

**3.11. Intentionally Omitted.**

**3.12. Other Fees and Charges:**

The Lessee acknowledges that the BCC has or may establish or direct the establishment, from time to time, of various fees and charges for the use of land, facilities, equipment, and services provided by the County. Provided that such charges are applicable to all similarly situated lessees at the Airport, Lessee shall pay such charges, if any, upon billing. For such charges that 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 Lessor. Notwithstanding the absence of any identification of such charges in this Agreement that may be imposed by the BCC, if such charges are imposed following the Effective Date (the "Subsequent Charges"), Lessee agrees to pay such Subsequent Charges. Notwithstanding anything herein to the contrary, Lessee shall not be responsible for any such charges that relate exclusively to the conducting of aviation-related activities or the providing of services to aviation-related tenants at the Airport.

**3.13. Security Deposit:**

Prior to occupancy or use of any Improvement on the Premises (and not including the use of any Pre-DBO Facilities (as defined herein), the Lessee shall pay to the Lessor an amount equal to two times the monthly Regular Ground Rent (the "Security Deposit"), as determined pursuant to Article 3.02, plus applicable State sales

tax on such Security Deposit amount, as security for the payment of the Lessee's obligations hereunder. The Security Deposit shall be in addition to any rental payments required hereunder, and the Lessor shall be entitled to apply such payment to any debt of the Lessee to the Lessor that may then exist, as permitted by law, including but not limited to the rentals, fees, and charges imposed by the County hereunder or otherwise. In lieu of the Security Deposit being made in cash, the Lessor, in its sole discretion, may authorize the Lessee to provide an irrevocable Letter of Credit, in a form approved by the Lessor, in like amount. The amount of the Security Deposit is subject to adjustment by the Lessor at any time there is a change in the annual or monthly rentals pursuant to the terms of this Agreement; provided, further, that the Lessor shall have the right to demand an increase in the Security Deposit requirement of up to an additional four months rental to provide the Lessor 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 Lessor 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.

### **3.14. Rental Rate Review:**

(A) Subject to the provisions of Article 3.02, effective as of the first day following each Rent Change Date the Regular Ground Rent shall be adjusted for the following year and shall be adjusted to be the lesser of (i) the amount determined by multiplying the Regular Ground Rent in effect as of the immediately preceding Rent Change Date (or the Regular Ground Rent Commencement Date with respect to the first Rent Change Date) by 115% or (ii) the applicable Land FMV as of the applicable Rent Change Date as reasonably determined by Lessor as provided in this Article 3.14 and adjusted pursuant to the FMV Challenge Mechanism described below.

(B) For the purposes of this Article 3.14, the Land FMV and Building FMV (collectively the "FMV") shall, subject to the terms hereof, be determined based on an MAI Appraisal performed by Lessor's appraiser at Lessor's sole cost, utilizing comparable rental rates for non-aviation parcels and/or the Improvements thereon, as applicable, in those areas in the vicinity of the Airport or elsewhere and considering the location of the Premises at the Airport as determined by the appraiser of then-applicable and current MAI appraisal principles to result in an FMV determination for the Premises for the Land FMV or the Building FMV, as applicable (the "Lessor Proposed Rent"). FAA guidance regarding rental rates dictates a percentage within 8-12% of the Fair Market Value of the sale price per square foot. If the Lessee disagrees with the Lessor Proposed Rent for the Land FMV and/or Building FMV as determined by the Lessor's appraiser, the Lessee may, within thirty (30) and at its expense, engage an MAI appraiser of Lessee's choosing to determine the applicable Land FMV and/or Building FMV utilizing the same appraisal standards as set forth above which must comply with all FAA regulations and guidance to include FAA Airport Compliance Manual Order 5190.6B and CG 2018-01, Appraisal Standards for the Sale and Disposal of Federally Obligated Airport Property. If the Lessee's appraiser determines that the Land FMV and/or Building FMV is within 10% of the Lessor Proposed Rent determined by Lessor's appraiser, then the Lessor Proposed Rent shall apply. If the Lessee's appraiser determines that the Land FMV and/or Building FMV rental rate is more than 10% lower than that determined by the Lessor's appraiser, and the parties cannot agree on a mutually acceptable rental rate for same, then, the two (2) appraisers engaged by the Lessor and Lessee shall designate a third MAI appraiser, whose cost will be shared equally by Lessor and Lessee, which third appraiser shall determine the Land FMV and/or Building FMV rental rate utilizing the same appraisal standards as set forth above, and the Land FMV and/or Building FMV rental rate determined by such appraiser shall be binding on the parties and shall be the Land FMV and/or Building FMV, unless the parties mutually agree to the contrary; provided, however, in no event shall the Land FMV and/or Building FMV, as determined by the third MAI appraiser, be greater than the applicable FMV rental rate determined by the Lessor's appraiser or lesser than the applicable FMV rental rate determined by the Lessee's appraiser, unless the parties

mutually agree to the contrary. The process for challenging the applicable Lessor Proposed Rent is referred to herein as the "FMV Challenge Mechanism."

(C) Not less than ninety (90) days prior to each Rent Change Date, Lessor will notify Lessee in writing of the Lessor Proposed Rent that will be in effect as of such Rent Change Date for the Premises, subject to the Lessee's agreement and the FMV Challenge Mechanism set forth in Article 3.14(A). If the Lessee decides to engage its own appraiser in response to its receipt of the County appraiser's FMV rental rate, it shall have 30 days to submit its appraiser's applicable FMV rental rate to the County. In the event that the process in Article 3.14(A) for engaging a third appraiser is triggered and is not completed by the applicable Rent Change Date, the current rate shall continue to apply until the final FMV rental rate is established. Once the final FMV rental rate is established, (i) in the event such established Land FMV rate exceeds the then current rental rate, Lessee shall pay such FMV rate retroactive to the applicable Rent Change Date; or (ii) in the event that such established FMV rate is less than the then current rental rate, the then current rental rate shall remain unchanged.

(D) The mechanism for determining FMV as set forth in this Article 3.14 shall be similarly utilized in connection with the determination of Regular Ground Rent as of the Regular Ground Rent Commencement Date and the Regular Facility Rent as of the Regular Facility Rent Commencement Date.

### **3.15. 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 Lessee after the Lessor 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 then applicable in whole or in part to the Premises.

### **3.16. Methods of Payment:**

The Lessee shall pay, by any of the four methods described in this Article, all rentals, fees and charges required by this Agreement:

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 Lessor during normal working hours to the following:

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

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

BANK: Bank of America  
9000 Southside Blvd  
F19-200-02-04  
Jacksonville FL 32256

ABA#: 026 009 593

Bank account #: 00 118 0000 120  
SWIFT Code#: BofAUS3N (effective 11/18/06)  
Account name: Miami-Dade Aviation Department  
PO Box 526624  
Miami FL 33152-6624

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

Note: Email address for remittances: mia-pay@miami-airport.com

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

BANK: Bank of America  
9000 Southside Blvd  
F19-200-02-04  
Jacksonville FL 32256

ABA#: 063 100 277  
Bank account #: 00 118 0000 120  
Account: Miami-Dade Aviation Department  
PO Box 526624  
Miami FL 33152-6624

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

Note: Email address for remittances: mia-pay@miami-airport.com

### **3.17. Concession Services:**

The operation of concession services is subject to the County's permit requirements and fees established by the BCC annually for the operation of commercial activities on Airport property, reflected in the Aviation Department's Annual Rates, Fees, and Charges, and as further required by Article 7 and MDAD Operational Directive 99-01.

## **ARTICLE 4**

### **DEVELOPMENT AND IMPROVEMENTS TO PREMISES**

#### **4.01. Improvements to Premises:**

(A) As authorized pursuant to Chapter 125.012(24) and 125.045, 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 2 (Use of Premises) hereof, in accordance with all applicable FAA and County requirements and all building, fire and environmental codes and the Americans with Disabilities Act.

(B) Lessee shall develop the Improvements in accordance with the overall initial site plan and renderings of the structures and facilities required to accommodate the Permitted Uses set forth in Article



2.02 (the "Development Concept"). Lessee shall design, develop and construct the Improvements in accordance and compliance with the County's Sustainable Building Program, Sea Level Rise legislation and other required resilience and sustainability practices as set forth in Exhibit "C."

(C) Lessee's Investment. The Lessee agrees to invest not less than the Investment Commitment to design and construct Improvements and related infrastructure, which shall be limited to actual expenditures made by the Lessee that relate directly to the design and construction of the Improvements, as reasonably determined by the Lessor, but as further described in Article 4.11 (Final and Approved Improvement Costs) below, specifically excluding (i) costs associated with the design, purchase and installation of personal property, and (ii) accounting, permanent financing fees, and legal fees.

(D) Development Milestones. Lessee shall:

(1) Submit 100% development plans, as further described in Article 4.04 and defined as the "Plans", to MDAD for review and approval, no later than nine (9) months from the DOP Commencement Date.

(2) Submit MDAD approved Plans to other governmental agencies for approval, as applicable, no later than thirty (30) days from the date upon which MDAD's approval of the Plans is evidenced by written notice of such approval to Lessee.

(3) Obtain construction permits, no later than eighteen (18) months from the DOP Commencement Date.

(4) "Commence Construction" no later than nineteen (19) months after the DOP Commencement Date (the "Construction Commencement Deadline"). "Commence Construction" shall mean the later of: (x) the filing of the notice of commencement under Florida Statutes, Section 713.13; and (y) the visible start of construction work on the Improvements, including on-site utility, excavation or soil stabilization work (but specifically excluding any necessary testing, environmental remediation or ceremonial groundbreaking). In order to meet the definition of "Commence Construction," the filing of the notice of commencement and visible start of work must occur after Lessee has secured the necessary building permits for the work and issued the notice to proceed to its prime contractor for the horizontal improvements.

(5) Complete construction no later than thirty-seven (37) months from the DOP Commencement Date (the "Completion Deadline"), as evidenced by: (x) a temporary certificate of occupancy or a certificate of occupancy or its equivalent (jointly referred to as a "Completion Certificate"), and (y) the provision of equipment and furnishings necessary to begin operations the Premises for the Permitted Uses, which shall be "Substantial Completion".

(6) "Commence Operations" no later than forty (40) months from the DOP Commencement Date.

During the course of the development of the Premises, Lessee shall provide (1) all the required documents as provided for in Implementing Orders (IO) 8-4 and BCC Reso. R-129-22 and (2) quarterly status reports to the Lessor, with a copy to the Commission District 11 office in which the Premises lies, regarding compliance with each milestone set forth in this Article 4.01(D)(1)-(4).

Notwithstanding anything herein to the contrary, so long as the Lessee is diligently pursuing completion of the applicable Development Milestone as of the expiration of each such milestone, Lessor may, in good faith and in its sole discretion, extend any such milestone up to twelve (12) months.

#### 4.02. The Project:

(A) Description – The Lessee agrees that it shall construct, operate and maintain, at its sole cost and expense, a car dealership on the Premises (collectively, the “Project”) which shall include, among other things:

(1) An automobile dealership complex, consisting of not less than 53,227 square feet devoted to sales and service functions, which shall include, but not be limited to, a showroom and related vehicle/equipment storage and services areas. All service of vehicles shall be performed within an enclosed structure.

(2) Office space, customer lounge and associated amenities.

(3) Associated pavement, associated vehicle parking space together with employee and customer parking, and all associated infrastructure and improvements necessary for the development of the Premises.

(4) To the extent applicable, all roadways, driveways, turn lanes, intersection improvements, electric, water and sewer improvements, cable, drainage, lighting, removal or relocation of potential obstacles to the Lessee and such other utilities necessary for the operation of the Premises.

(5) Airside Operations Area (“AOA”) perimeter fencing as required by the Lessor and any improvements required by the FDOT to enable the safe operation to public roadways, and from public roadways to the Premises.

The foregoing items (1) through (5) shall collectively be referred to herein as the “Required Improvements.” For the avoidance of doubt, the Improvements specified above are minimum requirements, which may be exceeded and reference to the term “Improvements” herein shall include the Requirement Improvements.

#### (B) MDAD Cooperation

MDAD agrees to use its best reasonable efforts to facilitate, cooperate and support, and to grant usual and customary access agreements, to the extent such agreements do not impact or limit the ability of MDAD to use the Airport Facilities for aviation purposes or otherwise impact or diminish aviation uses of the Airport Facilities during the Term, as it may be extended, for (i) any and all of Lessee’s efforts in connection with permitting and the obtaining of any governmental approvals necessary for the construction and operations of the Improvements, and (ii) those necessary off-site improvements or work for infrastructure necessary to support the Project, including, without limitation, granting any customary access agreements required to complete Improvements or work outside of the Premises but on the Airport Facilities, within areas under the control of the Lessor, so long as such agreements do not impact or limit the ability of MDAD to use the Airport Facilities for aviation purposes or otherwise impact or diminish aviation uses of the Airport Facilities during the Term, as it may be extended; provided, however, the Lessee shall use commercially reasonable efforts to minimize impacts operations on the Airport Facilities. Nothing in this paragraph shall be construed as requiring the Lessor to provide a temporary construction easement or license for off-Premises storage of materials or equipment or to perform any work or expend any money with respect thereto. In addition, the MDAD agrees to use its best reasonable efforts to facilitate the review and approval or disapproval process for matters under MDAD’s jurisdiction and to provide reasonable cooperation with the Lessee with respect to Lessee’s efforts to obtain review and approval of matters under the jurisdiction of another County department or Federal or State jurisdiction (collectively, “MDAD Cooperation”). MDAD Cooperation should include the timely signing of any applications that require MDAD’s signature needed for permitting and the obtaining of any governmental approvals, as well as any access or other

agreements that may be required in connection with the development and construction of the Project, to the extent such agreements do not impact or limit the ability of MDAD to use the Airport Facilities for aviation purposes or otherwise impact or diminish aviation uses at the Airport Facilities.

(C) Project Cost.

Lessee shall bear and be solely responsible for all costs arising out of the Project, including, but not limited to, the following:

(1) All costs as described in Article 4.02(A).

(2) Any and all existing environmental conditions that exist on site and assumes full responsibility for remediating the site to a condition that allows construction of the site as well as all necessary environmental approvals under the National Environmental Policy Act ("NEPA").

(3) If and to the extent that the use of the Premises, as described in Article 2.01 above, requires review and approval of an amendment to the Airport Layout Plan (the "ALP"), any and all costs associated therewith.

(4) Any land use approvals, development fees, concurrency fees, and permit fees for the design, construction, and subsequent use of the Improvements and infrastructure for the Project.

(D) Additional Project Requirements.

(1) The Lessee shall provide to Lessor within six (6) months of the Effective Date, a traffic study to determine the impact of the additional traffic to be generated to the area in connection with the Project.

(2) The Lessee shall be solely responsible for adhering to the drainage requirements of the most recent storm water master plan (dated April 21, 2022) and shall accommodate the required drainage within the boundaries of the Premises; however, Lessee shall be entitled to satisfy this requirement by constructing (subject to MDAD's and any other agency having jurisdiction's approval) a suitable dry retention pond in the Runway Protection Zone at the Airport or by connecting to any acceptable County facility approved by any applicable agency having jurisdiction.

(3) Lessee shall provide to Lessor for approval, within 120 days of the Effective Date, a detailed description, layout and Master Plan for the Project, and Lessor shall provide such approval, or a detailed reason for not providing approval, within 45 days of such submission.

Unless otherwise provided for in this Agreement, Lessee acknowledges that the Lessor shall have no maintenance responsibility for any of the Improvements, utilities and infrastructure to be constructed by the Lessee at the Premises.

(E) All Improvements constructed or placed on the Premises, including, but not limited to, drainage, landscaping and landscaping irrigation, shall be at least of the same quality as commonly found with respect to other similar improvements at the Airport of and first-class design and construction; comply with all applicable governmental laws, regulations, rules, and orders; follow standard construction methods; and be constructed in accordance with applicable requirements of this Article. The Lessee shall have the right to make such additions, alterations and improvements to the Premises, including, but not limited to the Project, as it may deem necessary for its operations hereunder, subject to the Lessor's prior written consent and other applicable

terms herein, which consent shall not be unreasonably withheld, conditioned, delayed or denied, subject to Article 8 herein.

#### **4.03. Design of Improvements:**

(A) Prior to the commencement of construction of any Improvement at 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, and the terms of this Agreement and any other related item(s) to the extent applicable. The 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 ensure 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 the Lessee's construction of non-reimbursable projects under Article 4.14 (Tenant Airport Construction Contracts). The Lessee shall be responsible for obtaining and confirming as-built drawings and information pertaining to the design of the Improvements.

(B) The 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 Lessee's authority to apply for and obtain the building permit. The Lessor 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 of the Improvements, including compliance with the Tenant Airport Construction, Non-reimbursable ("TAC-N") procedures, submission of approved Contract Documents as that term is defined in Article 4.03(C)(1) 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 and the Regulatory and Economic Resources Management.

(C) As described in sub-Article (1) below, the Lessee shall submit to the Facilities Division of the Department the Contract Documents (defined below) for each Improvement which requires a building permit to construct for the Lessor's review, modifications, and approval. In no event shall the Lessor's review hereunder be unreasonably withheld, conditioned or delayed. The Lessor's failure to submit modifications within thirty (30) calendar days from the date the complete Contract Documents are submitted by the Lessee to the Lessor shall be deemed a consent by MDAD for Lessee to apply for permits from the appropriate County Departments; provided, however, that if the Lessor has requested changes to any component of such Contract Documents, Lessee shall submit modified documents for Lessor's consideration and shall not go forward until approved or deemed approved. If Lessor does not provide written objections to such resubmitted documents within thirty (30) calendar days from submission, such failure shall be deemed to be Lessor's approval to apply for permits.

(1) The Lessee shall submit to the Lessor ten (10) sets of the Contract Documents consisting of: (i) 100% complete construction plans and specifications; (ii) project schedule based upon calendar days without dates for the design, bid and construction, 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 (collectively, as referenced in this Article 4.03, the "Contract Documents"). The Lessor 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 any such reasonable request. The Lessee acknowledges that failure to comply with Lessee's obligations to submit

complete Contract Documents may delay the Lessor'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 Lessor's remedies specified herein for not meeting said deadlines. The Lessor 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 Lessor for design review, the Lessor shall also review the plans for compliance with the following:

(i) Conformance with the Airport Master Plan (AMP), Comprehensive Master Development Plan (CDMP), and Airport Layout Plan (ALP), and the approval of the FAA.

(ii) Compliance with environmental requirements, utilities master plan, and storm water master plan and permitting requirements.

(iii) Compliance with Implementing Order (IO) 8-4 and BCC Resolution (Reso. 129-22), during the development phase, wherein the Lessee at its sole cost, is required to connect to the existing sanitary sewer system prior to the TCO or CO, whichever occurs first.

(3) The Lessor shall comment in writing on the Contract Documents within fourteen (14) calendar days of such submission. All comments by the Lessor shall be incorporated into the Contract Documents unless Lessee may request reconsideration of any of the Lessor's comments. Such request shall include documentation supporting the Lessee's position. The Lessor shall review the request for reconsideration and shall either approve or disapprove the request or alter its initial comments in light of the reconsideration, which shall not be unreasonably withheld or delayed. The determination of the Lessor 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 Lessor reviews the plans and specifications as submitted by the Lessee, the Lessee may not make a material change in the plans and specifications or their scope without the Lessor's further review, which shall not be unreasonably withheld or delayed. The Lessor's review for Lessee's design and compliance with all applicable codes and regulations does not constitute certification or warranty by the Lessor (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 Lessor.

(D) If, with respect to the Project, the Lessee fails to provide the Contract Documents for review to the Lessor or delays the start of the construction by more than sixty (60) calendar days from the agreed upon Project Schedule, any reviews theretofore provided by the Lessor will become null and void at the option of the Lessor and in such event will require the Lessee's re-submission of the documents for the Lessor's review.

#### **4.04. Development Schedule:**

Except as otherwise provided for herein, prior to constructing any Improvements, the Lessee, without cost to the County, shall prepare and deliver to the Lessor for review, comment, and adjustment detailed preliminary construction plans and specifications for the improvements, including, but not limited to, a Layout Plan to be



incorporated into the Airport Layout Plan or as a separate plan as required by the FAA (hereinafter collectively referred to as the "Plans"), in accordance with standards established by the Lessor. .

The County reserves the right, in its discretion, to withhold approval of any Improvements within the Premises determined by the Lessor, County and/or the FAA to be a potential hazard to air navigation in connection with the Airport, or which the FAA determines would affect the current or future Airport operations or development as set forth on the FAA-approved Airport Layout Plan or in the TMB Master Plan as of the date hereof, or which would decrease the Airport's airfield or airspace capacity. The preceding sentence shall not apply if the FAA final determination through the 7460 process has produced a positive recommendation to proceed with the Plans previously approved pursuant to this Article 4.

The Lessee acknowledges and agrees that the Lessee shall be responsible, at the Lessee's sole cost and expense, for any required improvements, modifications or alterations required to be made to the Premises prior to the DDP to ensure compliance with applicable design standards.

At least ten (10) days prior to the Construction Commencement Date, Lessee shall comply with the following requirements with respect thereto:

(A) Lessee shall submit the following to the Lessor'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 4.10 (Construction Bonds and Insurance Required), and Article 12 (Insurance).
- (3) Proof of the Pollution and Remediation Legal Liability Insurance required under Article 12; 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 to the Department's Finance Manager:

(1) A check made payable to the Lessor in the amount that represents one percent (1%) of the budgeted construction hard costs for reimbursement of Building Department fees pursuant to Article 7.05 together with a copy of the awarded construction contract. 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 the Lessee to the Lessor if the resulting number is a positive amount in accordance with the time frame established under Article 4.10 herein or refunded to the Lessee by the Lessor if the resulting number is negative. Such fee shall be non-refundable. In addition, if the Lessee obtains a building permit and allows the permit to expire prior to completion of the Improvements then the 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 4.04(B)(1) and (2).

- (2) Copy of Lessee Audit pursuant to Article 9.06.

(C) Lessee shall submit a copy of Lessee's leasehold financing documents, if applicable, pursuant to Article 11.04(B) to the Lessor's Assistant Director Business Retention and Development.

(D) Lessee shall not be authorized to begin construction until the above-listed items have been submitted to the Lessor. If the Lessee begins construction prior to submission of the documents and fees in the required form and amounts, satisfactory to the Lessor, as required pursuant to this Article 4, the Lessor shall be authorized to halt the 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 Lessor 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.

#### **4.05. Failure to Complete on a Timely Basis:**

In the event the Lessee fails to comply with the Development Milestones as specified in this Article 4, the County, in its sole discretion but subject to the terms of Article 4.01, shall have the right to:

(A) Consider the Lessee in default and terminate this Agreement pursuant to Article 13.03; or

(B) Consider the Lessee in default and after providing the Lessee an opportunity to cure pursuant to Article 13.03, terminate the Lessee's rights with respect to the construction of the Improvements or portions thereof and thereafter assume the obligations of Lessee under this Article 4 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; provided, however, that if Lessee has one or more construction lenders, the County's right to have such contracts and permits assigned shall arise only if Lessee's construction lenders decline to exercise their rights to assume Lessee's obligations under this Agreement pursuant to Article 11.04(D)(2) and (4); or

(C) Reduce the Term by a period of five (5) years with no option to extend and allow Lessee to complete construction. In the event the County elects this remedy, the Lessee shall be allowed an additional 365 days to achieve the DBO. In the event Lessee does not achieve the DBO within such extended time frame, the County shall have the discretion to terminate the Lease as provided for in (A) above.

#### **4.06. Construction of Improvements:**

Promptly following the Lessor's approval of the Contract Documents in accordance with Article 4.03 (Design of Improvements), but not more than one hundred and eighty (180) days 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 use commercially reasonable efforts to cause the construction of the Improvements to be completed prior to the Completion Deadline, unless an extension of such period is approved, in writing, by the Department. In no event shall any approval hereunder be unreasonably withheld, conditioned or delayed.

#### **4.07. Construction Completion Documents:**

Within sixty (60) days following the completion of construction of any Improvement for which a CO is issued, the Lessee shall furnish the following documents to the Lessor:

(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 Lessor, along with any final affidavit of the general contractor required by Chapter 713, Florida Statutes.

(C) Certificate(s) 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 Lessor, including all pertinent shop and working drawings and such other as-built drawings as the Lessor may reasonably require; and

(G) Copies of all releases of contractor claims and liens (other than with respect to punch list items).

#### **4.08. 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 compliance with applicable legal and/or code requirements, and, with respect to the general contractor for the Project, shall contain, unless otherwise authorized by the Lessor, reasonable provisions for the payment of actual or liquidated damages in the event the Lessee's contractor fails to complete the construction in accordance with the milestones herein. The Lessee agrees that it will use its best reasonable 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 not less than 10% of contractor billings or such lesser percentage amount as may be approved by the Lessor. Any contracts between Lessee and the general contractor shall provide that the County is a third-party beneficiary thereof.

#### **4.09. Intentionally Omitted.**

#### **4.10. Construction Bonds and Insurance Required; Insurance Company Rating:**

(A) 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:

(1) Separate performance and payment bonds, satisfactory to the County, in the full amount of the improvements, to assure completion of contract work and payment of the costs thereof, free and clear of all claims, liens and encumbrances of subcontractors, laborers, mechanics, suppliers and material men. The required bonds shall be written by or through, and shall be countersigned by, a licensed Florida agent of the surety insurer in accordance with Florida Statutes.

(2) 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.

(3) 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.

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

(5) Workers Compensation as required by Florida Statutes.

(6) Automobile Liability Insurance as specified in Article 12 (Insurance) herein

(7) Pollution and Remediation Legal Liability insurance in an amount not less than \$2,000,000 covering third party claims, remediation expenses, and legal defense expenses arising from on-site and off-site loss, or expense or claim related to the release or threatened release of Hazardous Materials at the Lessee's Premises.

(B) All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and rated no less than "A-" as to financial strength and no less than Class "VII" as to financial size, in accordance with the A.M. Best Company Insurance Guide, or its equivalent as approved by the MDAD Risk Management Division.

The Lessee shall furnish all required insurance certificates to the County for approval as may be required by the MDAD 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 MDAD Risk Management.

#### **4.11. Final and Approved Improvements Costs:**

(A) For purposes of verifying Lessee's expenditure of the Investment Commitment in design and construction costs of the improvements on the Premises, within ninety days of completion of construction of the improvements, the Lessee shall submit to the Finance Division of the Department, a certified audit (the "Report") 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 4.03 (Design of Improvements), prepared by an independent certified public accounting firm (Auditor) approved in advance by the Lessor, which approval shall not be unreasonably withheld, conditioned or delayed. The Report shall provide a detailed list of all expenditures in the design and construction costs of the improvements on the Premises. In accordance with Article 4.02 (The Project) and Article 4.11 (Final and Approved Improvement Costs), 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 Lessor, 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, including all construction approval documents signed by an approved architect licensed by the American Institute of Architects (AIA), and financial documents, whereby the Auditor can validate all costs incurred on the Premises and render an opinion in the Report. The Lessor's failure to disapprove the Report submitted by Lessee as required in this Article 4.11 within one hundred and twenty (120) days from the date of submission shall constitute an unconditional approval. In the event of any disputes between the Lessor 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 19.01 (Incorporation of Trust Agreement by Reference) hereof. The decision of said Consulting Engineers shall be final and binding upon the parties hereto.

(B) Approved Improvements costs shall include the actual expenditures as certified under the Report 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 Report, 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 construction photographs 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.

#### **4.12. Temporary Structures:**

Lessee's use of any trailers and temporary structures or facilities on the Premises before or during the construction of the Improvements (collectively, "Pre-DBO Facilities") shall have no bearing on the determination of the DBO as it relates to Article 1.04(E). Such Pre-DBO Facilities shall be allowed on the Premises before or during the period of construction of the Improvements subject to all required permitting but shall not be allowed prior to the DOP Commencement Date. 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 Project Manager within ten (10) calendar days of issuance to Lessee.

#### **4.13. Review of Construction:**

During the construction of the Improvements, the Lessor 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 Lessor. Failure of the Lessor to make such review or inspection shall not impose any liability on the Lessor or the County, nor constitute the Lessor's acceptance of the improvement as being in accordance with the Contract Documents and the Lessee's obligations hereunder.

#### **4.14. Tenant Airport Construction Contracts:**

The Lessee and the County shall enter into a separate TAC-N contract for the purpose of enabling the Lessee to construct facilities or improvements on the Premises deemed necessary or appropriate for Lessee's use on the Premises. Such contracts shall comply with the Department's TAC-N contract requirements under Article 8.01 (Alterations) and as such requirements may be amended by the Lessor from time to time.



#### **4.15. Standards of Construction:**

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. For Improvements that remain in the Lessee's name, under Article 4.01(B) (Lessee's Investment), the County may require Lessee to provide a Letter of Credit or alternative form of financing security acceptable to Lessor to assure that the Improvements will be demolished or removed at the termination of this Agreement. Such Letter of Credit or financing document shall be periodically adjusted, not more than twice per calendar year, so as to reflect the estimated cost, as of December 31 of the year immediately preceding the year in which the adjustment is made, of demolition or removal of all improvements on the Premises, whether such improvements are completed or not.

The Lessee may construct all improvements in a manner consistent with the design guidelines for construction for Non-Aviation Facilities at the Airport to the extent such guidelines are different from the design guidelines for construction of Aviation facilities.

Unless the parties have otherwise agreed, title to all improvements made on or under the Premises by Lessee shall revert to the Lessor at the end of the Term, as it may be extended. Buildings currently titled to the Lessor on the Premises shall remain at all times in the name of the Lessor. No later than the start of the 26<sup>th</sup> anniversary of the Effective Date, the Lessor shall, itself or through its consultant engineers, inspect all improvements to determine the soundness of same. No later than 25 years and six months from the Effective Date, Lessor shall issue to the Lessee a report on the condition of each improvement to be in effect upon the turnover of each improvement at the end of the Lease.

### **ARTICLE 5**

#### **MAINTENANCE AND REPAIRS BY LESSEE**

##### **5.01. Cleaning:**

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

##### **5.02. Removal of Trash:**

The Lessee shall, at its sole cost and expense, remove or cause to be removed 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 stored temporarily and disposed of in a commercially reasonable manner.

##### **5.03. Maintenance and Repairs:**

(A) Lessee shall be exclusively responsible for maintenance and repair of all Improvements as well as unpaved and landscaped areas, whether or not a CO or TCO have been issued, in good condition, reasonable wear and tear excepted, except for those items for which the Lessor is responsible pursuant to Article 6 (Maintenance by Lessor); provided, however, should the Lessor require the Lessee to demolish the Improvements pursuant to Article 13.06 herein, Lessee's repair obligations during the latter part of the Term will be limited (to making any repairs necessary to comply with applicable codes and laws) in light of the impending occurrence of such demolition. Such repair and maintenance by the Lessee shall include but not be limited to, to the extent applicable to the Premises, fire suppression systems, interior walls, painting,

overhead and personnel doors, hangar doors, windows, pavement, equipment, protection bumpers, furnishings, skylights, fixtures, appurtenances, air conditioning systems, replacement of light bulbs, ballasts and tubes and the replacement of all broken glass, and shall repair all damage caused by the Lessee and its employees, agents, independent contractors, patrons, servants, Trespassers and invitees. Maintenance and repairs shall be of quality and class equal to or better than the original work to preserve the Premises in good order and condition, subject to the aforementioned standard.

(B) Except as provided in Article 6.01, in no event shall the Lessor be responsible or liable for any maintenance or repair of 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 8 (Alteration of Premises and Erection Signs), and to quit and surrender up the Premises in the same good order and condition as it was at the Effective Date and upon completion of construction of any improvement, except for reasonable wear and tear and damage caused by an Act of God, casualty or Force Majeure events; provided however, that such return of the Premises and Improvements in the condition required under this Article 5.03 shall not relieve the Lessee of its obligations for damages to the Premises that may be specifically provided elsewhere in this Agreement.

#### **5.04. 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 or testing purposes, without the prior written approval by the Lessor. The Lessee shall obtain permission for excavation required for construction pursuant to Article 4 herein, which approval shall not be unreasonably withheld, conditioned or delayed.

#### **5.05. Water and Sewerage System:**

Pursuant to Implementing Order (IO) 8-4 and BCC Resolution (Reso. 129-22), during the DOP, the Lessee at its sole cost, is required to connect to the existing sanitary sewer system prior to the TCO or CO, whichever occurs first.

Once connected, the Lessee shall operate and maintain, at its sole cost and expense, all the components of the water and sanitary systems 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.

#### **5.06. 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.

#### **5.07. Grassed Areas and Shrubbery:**

The Lessee shall mow the grassed areas and trim the shrubbery on the leasehold regularly so as 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 at the Airport. All landscaping maintenance required hereunder shall be performed in accordance with landscape maintenance standards, as published from time to time by the Lessor.

**5.08. 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 Lessor; 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 to completion. Failure to complete the corrective work as provided above may result in the Lessor instituting the remedies set forth in Article 5.09 or may constitute a default pursuant to Article 13. Trash and debris problems shall be corrected within 24 hours following receipt of written notice from the Lessor. Failure of the Lessor to inspect as aforementioned shall not impose any liability on the Lessor.

**5.09. 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 5 (Maintenance and Repairs by Lessee), the Lessor 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 (subject to reasonable extensions at the reasonable discretion of the Lessor), the Lessor, in addition to its right to terminate upon the giving of notice pursuant to Article 13.03, shall provide notice of intent to perform repairs or cleanup and 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.

**5.10. Building Recertification Requirements:**

Lessee shall comply with and be responsible for any building recertifications with respect to the Improvements required by applicable laws and regulations during the Term.

**ARTICLE 6**

**MAINTENANCE BY LESSOR**

**6.01. Lessor Maintenance:**

The Lessor shall maintain the existing water and storm water drainage facilities that lie outside the boundaries of the Premises.

**6.02. Lessor's Limited Obligation for Other Maintenance:**

Lessor shall have no obligation for maintenance or repair of any facility, building, improvement, or ground areas within the Premises.

**6.03. 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 2 (Use of Premises) and subject to Article 6.04 below.

**6.04. County Maintenance Subject to Certain Conditions:**

Such maintenance by the County may be subject to interruption caused by repairs, strikes, lockouts, labor controversies, inability to obtain, fuel, power or parts, accidents, breakdowns, catastrophes, national or local emergencies, acts of God, and other conditions beyond the control of the County. Upon any such happening, the Lessee shall have no claim for damages for the County's failure to furnish or to furnish in a timely manner any such maintenance; provided, however, that the Lessor, in its sole discretion, may provide a rent abatement for that portion of the Premises rendered unusable for the period of time that the County is unable to make the repairs required by Article 6.01(Lessor Maintenance). The County shall exercise reasonable diligence to remedy and/or cure any such interruptions, to the extent such interruptions are within the County's control.

**ARTICLE 7**

**REGULATIONS, LICENSES AND PERMITS**

**7.01. Rules and Regulations:**

The Lessee shall comply with all ordinances and requirements of (i) the County, including but not limited to Chapter 25 of the Code of Miami-Dade County, Administrative Orders, Operational Directives issued thereunder, and (ii) all additional laws, statutes, ordinances, regulations, requirements, and rules of the Federal, State and County Governments, and any and all plans and programs developed in compliance therewith, as all of the foregoing may be promulgated and amended from time to time, 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, hazardous waste and materials and natural resources laws, all Regulatory and Economic Resource Department or successor requirements, local labor and wage requirements, regulations and permits.

The Lessee further agrees that the substance of this entire Article 7, inclusive of all sub articles contained herein, shall be included in every sublease or subcontract (but shall exclude those subleases and subcontracts that BTZ enters into with customers, Subaru, suppliers, vendors and those agreements commonly entered into by automobile dealerships) in connection with the Project, and that any such subcontract shall provide that "Miami Dade County Florida is a third-party beneficiary of this and related provision." This provision shall not constitute a waiver of any other conditions of this Agreement prohibiting or limiting assignments, subletting, or subcontracting.

Notwithstanding anything in the contrary contained herein, to the extent that any burrowing owl nests are located on the Premises as of the DOP Commencement Date, Lessee shall within thirty (30) days following the DOP Commencement Date, relocate same in accordance with all applicable laws and provide Lessor with documentary evidence as it relates to such removal. On or promptly following the DOP Commencement Date, Lessor shall provide Lessee with designated burrowing owl nest relocation areas on Airport property.

### **7.02. Violations of Rules and Regulations:**

The Lessee agrees to pay on behalf of the County any penalty, assessment or fine, issued against the County, or to defend in the name of the County any claim, assessment or civil action, which may be presented or initiated by any agency or officer of the Federal, State or County governments, based in whole or substantial part upon a claim or allegation that the Lessee, its agents, employees or invitees, have, during the term of this Agreement or any extension hereof or any holdover period of occupancy of the Premises by the Lessee, violated any law, ordinance, regulation, rule or directive described in Article 7.01 (Rules and Regulations) above or any plan or program developed in compliance therewith as it relates to the Premises; provided, however, that this provision shall remain subject to Article 20.24 herein. This provision as to the Lessee's liability hereunder shall survive the expiration or early termination of this Agreement.

### **7.03. Permits and Licenses.**

The Lessee expressly covenants, warrants and agrees that it, 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 Term, 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. 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 the Miami-Dade County Regulatory and Economic Resources Department (RER). Prior to the DBO, the Lessee shall provide to the Lessor 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 Lessor, the Lessee shall provide to the Lessor copies of any permits and licenses, approvals and applications therefore, which the Lessor may request.

### **7.04. Penalties, Assessments and Fines.**

The Lessee agrees to pay on behalf of the Lessor any penalty, assessment or fine issued against the Lessor, or to defend in the name of the Lessor 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, or invitees have violated any law, ordinance, regulation, rule or directive described in Article 7.01 (Rules and Regulations) above or any plan or program developed in compliance therewith as it relates to the Premises.

### **7.05. Compliance with Responsible Wages and Benefits for County Construction Contracts (Implementing Order #3-24):**

The 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 Article 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.



## **7.06. Economic Development Requirements:**

(A) Commencement of Construction Requirement: Per Article 4.01(D), on or before the Construction Commencement Deadline, Lessee shall: (a) obtain all development approvals and building permits needed for construction of the Required Improvements and (b) shall commence construction of such Required Improvements and thereafter diligently pursue the construction of the Required Improvements until completion thereof.

(B) Completion of Construction Requirement: On or before the Completion Deadline, Lessee shall substantially complete the Required Improvements in accordance with the Development Concept (the "Completion Requirement") and as set forth in Article 4.01(D)(5).

(C) Investment Commitment: The Lessee shall have invested and expended or caused to be invested and expended, within thirty (30) days after the Completion Deadline, no less than Fifteen Million U.S. Dollars (\$15,000,000.00) (the "Investment Commitment") to construct the Required Improvements for the proper functioning and operation of the Project. No more than seventeen percent (17%) or Two Million Five Hundred Fifty Thousand and No/100 U.S. Dollars (\$2,550,000.00) which is actually and demonstrably spent by Lessee for soft costs associated with and necessary for the construction of the Required Improvements shall be counted towards the Investment Commitment.

(D) Investment Commitment Verification: For the purposes of verifying Lessee's expenditure of the Investment Commitment, within one hundred eighty (180) days of the Completion Deadline, the Lessee shall submit to MDAD, (i) a certified audit of the monies expended in the design and construction of the Required Improvements and for the acquisition and installation of equipment on the Premises prepared by an independent certified public accounting firm, which certified public accounting firm is approved in advance by the Department which approval shall not be unreasonably withheld, conditioned or delayed; and (ii) any documents reasonably requested by the County to verify the Investment Commitment, which may include but is not limited to copies of construction contracts, architect/engineer contracts, and contracts for purchase of equipment. Should the audit reveal that less than the Investment Commitment has been spent and invested in the Premises by Lessee, then the Lessee shall immediately pay to MDAD as liquidated damages twenty percent (20%) of the difference by which the Investment Commitment exceeds the audited amount.

(E) Requirement to Operate: The Project must be open to the public and commence operations no later than forty (40) months after the DOP Commencement Date as evidenced by the full functioning operations and use by the public of the Required Improvements which must remain open and in operation for no less than 260 days per year (the "Opening Requirements"). Lessee shall, subject to the force majeure provisions contained in Article 19.19 herein, require that all business entities operating on the Premises shall be subject to, and shall abide by, all applicable Federal, State and local laws in addition to the terms and conditions of this Lease and Lessee shall ensure that all such entities obtain and retain all required and necessary licenses, certifications, permits, and/or any other government authorizations necessary to operate.

(F) Job Requirements to include Job Creation, Maintenance and Annual Job Certification: Lessee acknowledges that this agreement falls under section 125.045 of the Florida Statutes for Economic Development and that, pursuant to such statute, Lessee is being granted this Lease on a non-competitive basis. In exchange for such incentive, Lessee agrees to comply with the following job creation requirements to foster economic development and further agrees that if it fails to satisfy such job creation requirements, it shall satisfy such economic development requirements by paying to the County the amounts described in subsection 5 below.

1. Definitions applicable to this sub-article: the terms "Wage," "Salary," and "Compensation," and the plural forms thereof may be used interchangeably herein and shall mean all compensation reflected

on a W-2 provided to the employee and as reflected on the applicable RT-6 report filed with Florida Department of Revenue.

2. Job Requirements. Lessee shall be required to satisfy the job requirements specified herein for each year of the Agreement, which may begin on a pro-rated basis, on the first day of the fiscal quarter following DBO, and thereafter continue on an annual basis as set forth in Section 7.06(F)(4) herein (“Job Year”) for a total of twenty (20) years. As indicated below, the job requirements are different for the various years following DBO. The job requirement for a given year is calculated by multiplying the number of Jobs comprising the Job Amount (as the term “**Job**” and “**Job Amount**” are defined in the following paragraphs) required for a particular year by the minimum average annual compensation required for such year (“**Job Salary Amount**” as defined below). The product of these two amounts (number of Jobs comprising the Job Amount multiplied by the Job Salary Amount) shall be referred to as the “**Job Requirement**”. For example, if the Job Amount for a given year is 5 and the Job Salary Amount for such year is \$10,000, then the “Job Requirement” for such year is \$50,000.

For purposes of this sub article, a “**Job**” shall mean a job position or a combination of direct job positions where an employee or a combination of such employees are employed by Lessee on a full or part time basis at the Premises, and who have the opportunity to work an average of 36 hours per week; i.e. two part-time jobs of 18 hours per week for 52 weeks per year would equate to one “full-time” job in furtherance of the Job Amount which equates to 1,872 hours per year. Construction and other temporary jobs arising in connection with the development and construction of the Required Improvements shall not be counted towards satisfaction of the Job Amount. A “Job” shall include a job position held by an individual employed directly by Lessee on the Premises which individual is assigned to fulfill a majority of his/her job functions at the Premises and may include, at the election of Lessee, instances in which an individual elects to take temporary paid or unpaid leave, temporary time off, or is on short-term or long-term disability, provided such individual otherwise meets the definition of a full-time or full-time equivalent employee under this Lease and the County receives evidence reasonably satisfactory to the County to evidence such continued employment. For the purposes of this sub-article, the Job Salary Amount shall be comprised of all compensation reflected on a W-2 provided to the employee and as reflected on the applicable RT-6 report filed with the Florida Department of Revenue.

The specific Job Requirements for this Agreement are as follows:

- a. Job Year(s) 1 and 2 following DBO: In each of Job Years 1 and 2 following DBO, Lessee’s Job Requirement shall be a minimum of \$3,250,000.00, based on a minimum of fifty (50) Jobs (the “Job Amount”) at an average annual compensation of at least \$65,000.00 per year (the “Job Salary Amount”).
- b. Job Year(s) 3 and 4 following DBO. In each of Job Years 3 and 4 following DBO, Lessee’s Job Requirement shall be a minimum of \$4,200,000.00, based on a minimum of 60 jobs (the “Job Amount”) at an average annual compensation of at least \$70,000.00 per year (the “Job Salary Amount”).
- c. Job Year(s) 5 through 20 following DBO. In each of Job Years 5 through 20 following DBO, Lessee’s Job Requirement shall be \$5,250,000.00, based on a minimum of seventy (70) Jobs (the “Job Amount”) at an average annual compensation of at least \$75,000.00 per year (the “Job Salary Amount”).

3. Job Calculations. In calculating the average compensation of the full-time or full-time equivalent jobs in order to determine if the Job Requirement has been met, a job with an average annual compensation of less than the Job Salary Amount may be averaged with a job with an annual compensation of more than the Job Salary Amount to satisfy the Job Requirement. The "Average Jobs Number" shall be determined by: (i) multiplying the number of jobs created at a particular compensation by the then-current compensation for such jobs; (ii) adding all of the factors obtained from the multiplication of compensation and jobs; and (iii) dividing by the then current Job Salary Amount. For example, if in Year 1 following DBO, Lessee reports that it has created 40 jobs with a compensation of \$37,000 ( $40 \times \$37,000 = \$1,480,000$ ) and 10 jobs with a compensation of \$75,000 ( $10 \times \$75,000 = \$750,000$ ) and the Job Salary Amount as of that date is \$65,000, then the Average Jobs Number is 34.30 [ $(\$1,480,000 + \$750,000.00 = \$2,230,000) / \$65,000 = 34.30$ ]. In this example, the Job Requirement has not been met because the Average Jobs Number at or above the Jobs Salary Amount is less than the Job Amount of 50 and there shall be a "Job Shortage Number" (as such term is defined below) of 16 [ $50-34=16$ ]. The Average Jobs Number shall always be rounded down to the nearest whole number. Under this example, the Job Requirement of 50 full-time or full-time equivalent jobs with an average annual compensation of no less than the Job Salary Amount will not be satisfied for such Reporting Date, and the LDs will be payable as provided in subsection 4 below. "Job Shortage Number" means (i) the Job Amount minus (ii) the Average Jobs Number plus (iii) the number of employees of Lessee whose hourly wage or equivalent compensation is lower than the compensation required under Section 2-8.9 of the Code of Miami-Dade County, which is updated on October 1<sup>st</sup> of each year and can be found at <https://www.miamidade.gov/global/business/smallbusiness/living-wage.page>. The Lessee will be presumed to be in compliance with the Living Wage rate for each employee whose W-2 Gross Pay for the year equals or exceeds the Living Wage Compensation Threshold (as defined below). In regard to employees whose compensation for a Job is not in excess of the Living Wage Compensation Threshold, Lessee shall provide a Living Wage Calculation for those employees by certifying in the form required by Exhibit "F-2" the applicable employee's W-2 Gross Pay for the Year divided by the percentage of the Year worked (excluding unpaid leave) in order to determine if the Living Wage Compensation Threshold has been met. (Example Employee worked from January 1 to June 30<sup>th</sup> and W-2 Gross Pay for the year = \$25,000.  $\$25,000 / .50 = \$50,000$  which exceeds the applicable Living Wage Compensation Threshold for that year). The Living Wage Compensation Threshold shall be defined as the Living Wage Rate with qualifying health benefits in effect for the applicable portion of the Job Year x 1,872 hours for full time employees (or if qualifying health benefits are not offered by Lessee, the applicable Living Wage Rate in effect without the health benefit credit). (Example if the Lessee offers its employees qualifying health benefits for the Job Year, the Living Wage Compensation Threshold will be  $\$16.51 \times 1872$  full time hours = \$30,906.72). Exhibit F-2 will further define applicable scenarios and definitions in the case of part time employees, etc. As the Living Wage Rate is adjusted on October 1<sup>st</sup> of each year, multiple Exhibit F-1 and F-2 forms may be used to account for a calendar year.
4. Annual Job Certification: Lessee shall be required to Certify the job requirements specified herein for each year, for twenty (20) consecutive years, which may be evaluated on a pro-rata basis for the first year, beginning on the first day of the fiscal quarter following DBO ("Job Year"). No later than 90 days after each full year following the DBO anniversary, Lessee shall Certify Lessee's satisfaction of the Job Requirement for the given year. For purposes of this sub-article, "**Certify**" shall mean to evidence Lessee's satisfaction of the Job Requirement by providing the County with a copy of Lessee's RT-6 filings (or applicable successor replacement form, or comparable information, in the event of a change by the State of Florida) with the State of Florida as well as a completed "Job

Certificate” (as attached as Exhibit “F” hereto) sworn to by (1) Lessee’s Certified Public Accountant; or (2) any person authorized to legally bind Lessee pursuant to the Laws of the State of Florida. The foregoing shall collectively be referred to as the “**Annual Job Certification.**”

5. Liquidated Damages for the Failure to Satisfy the Annual Job Requirements. Lessee acknowledges that it is impossible to ascertain the detrimental economic impact that the failure to satisfy the Job Requirement for any given year would have on the County. Thus, Lessee agrees that, in lieu of being subject to Termination, and as Lessor’s sole and exclusive remedy for Lessee’s failure to meet the Job Requirement, Lessee will pay the following Liquidated Damage amounts (“LD Amounts”) to the County if Lessee fails to satisfy the Job Requirements specified herein:

LD Amounts: If Lessee fails to meet the Job Requirement on any Annual Certification Date, then Lessee or its successor or assign shall pay to the County as the LDs, the amount equal to the following per Job Shortage Number:

Liquidated Damages (LD) Calculations				
Year after DBO	Required Jobs	Job Salary Amount	LD percentage per job	LD amount due per job which is not complied with
1	50	\$65,000.00	25%	\$16,250.00
2	50	\$65,000.00	25%	\$16,250.00
3	60	\$70,000.00	25%	\$17,500.00
4	60	\$70,000.00	25%	\$17,500.00
5	70	\$75,000.00	25%	\$18,750.00
6	70	\$75,000.00	30%	\$22,500.00
7	70	\$75,000.00	30%	\$22,500.00
8	70	\$75,000.00	30%	\$22,500.00
9	70	\$75,000.00	30%	\$22,500.00
10	70	\$75,000.00	30%	\$22,500.00
11	70	\$75,000.00	35%	\$26,250.00
12	70	\$75,000.00	35%	\$26,250.00
13	70	\$75,000.00	35%	\$26,250.00
14	70	\$75,000.00	35%	\$26,250.00
15	70	\$75,000.00	35%	\$26,250.00
16	70	\$75,000.00	40%	\$30,000.00
17	70	\$75,000.00	40%	\$30,000.00
18	70	\$75,000.00	40%	\$30,000.00
19	70	\$75,000.00	40%	\$30,000.00
20	70	\$75,000.00	40%	\$30,000.00

Any LDs due and owing shall be paid to the County within ninety (90) days after the applicable Job Certification Date. For example, if the Average Jobs Number for the Job Requirement on Year 1 following DBO is 50 and the then current Job Salary Amount is \$65,000, as under the example above, the Job Shortage Number will be (i) 50, minus (ii) 34, plus (iii) 0, [50-34+0=16]. In this

example, the LDs payable to the County for year 1 following DBO would be 16 jobs multiplied by \$16,250.00, which is \$260,000 for that year.

Lessee understands that liquidated damages provided for herein are not a penalty, and instead represent the impacts to the County of the Lessee's failure to meet the Job Requirements.

(G) Automotive Industry Training Contribution: Beginning on the DBO and throughout the Term, as extended, Lessee shall directly contribute \$50,000 annually to one or more non-affiliated automotive job training programs within Miami-Dade County ("Automotive Industry Training Contribution") or other training programs as mutually agreed to by the parties. This money will go towards preparing individuals for careers within the automotive industry. These jobs are necessary for the operation of the Project and the automotive industry within South Miami-Dade County and the surrounding area ("Automotive Industry Training Contribution") beginning on the DBO and throughout the term, as extended. Lessee shall use commercially reasonable efforts to select training facilities or programs within a five (5) mile radius of the Premises. In the event that Lessee and Lessor determine that additional training programs are needed within 5 miles of the Premises, Lessor in its absolute discretion may permit Lessee, or an affiliate of Lessee, to create or help run an automotive job training program which will satisfy the Automotive Industry Training Contribution. Lessee shall use reasonable, good faith efforts to hire participants for full and part-time jobs required for the Project. Lessee shall provide the County with a report no later than ninety (90) days after the end of the first calendar year following the DBO and annually thereafter for the duration of the Term. Such report shall indicate Lessee's annual and total expenditures for the Automotive Industry Training Contribution and the number of jobs at the Project filled by participants certified who have attended the select training facility or facilities. Lessee shall provide the County reasonable documentation of all such expenditures upon request by the County.

(H) Community Benefit Contribution: Lessee shall contribute \$50,000.00 annually, derived from the Project, to the Nicklaus Children's Hospital Foundation located at 3100 SW 62 Avenue, Miami, FL 33155 (the "Community Benefit Contribution") beginning on the Date of Beneficial Occupancy and throughout the Term, to include any exercised Renewal Terms. Up to fifty (50) percent of the Community Benefit Contribution may be paid by Subaru of America or a comparable entity, with the County's prior approval. Should the Lessee fail to obtain a matching contribution, the Lessee shall directly contribute \$50,000.00 annually from the Project to the Nicklaus Children's Hospital Foundation. Lessee shall provide the County with a report within ninety (90) days after the end of the first calendar year following Date of Beneficial Occupancy and annually thereafter for the duration of the Term, to include any exercised Renewal Terms. Such report shall indicate Lessee's annual and total expenditures for the Community Benefit Contribution. Lessee shall provide the County reasonable documentation of all such expenditures upon request by the County. Lessee may change the designated charity herein upon providing prior notice to and receiving written approval from Lessor.

Such requirements in this Article 7.06 shall collectively be referred to as "Economic Development Requirements."

#### **7.07. Other Programs:**

##### **(A) Small Business Programs**

The Lessee is bound by the current terms of the County's Small Business Enterprise – Architect & Engineering (SBE-A/E) Program applicable to architects and engineers under Section 2-10.4.01 of Miami-Dade County's Code, the Small Business Enterprise – Construction (SBE-CON) Program for construction activities under Section 10-33.02, is required to ensure that all contractors performing work on the Premises pay their employees a wage no lower than the wage required under the Living Wage Ordinance under Section 2-8.9, the Art in Public Places (APP) Program under Section 2-11.15, 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.

(1) Lessee agrees that it shall require all consultants, architects, and design professionals undertaking professional architectural and engineering services for the Premises and for the Improvements to adhere to the provisions of the County's SBE-A/E Program. Specifically, Lessee shall require by contract, for those contracts executed after the Effective Date, that all consultants, architects, and design professionals undertaking professional architectural and engineering services for the Premises consult with the County's Small Business Division in the Internal Services Department ("SBD") so as to allow SBD to review and recommend a hiring goal for all such firms undertaking work for the Premises, including Small Business Enterprise Goods and Services ("SBE-G&S") Program, and comply with the monitoring procedures set forth in the SBE-A/E Program and SBE -G&S Program.

(2) Lessee agrees that it shall require all contractors and construction managers undertaking construction work at the Premises to adhere to the provisions of the County's SBE-CON Program. Specifically, Lessee shall require by contract, for those contracts executed after the Effective Date, that all contractors and construction managers undertaking construction work at the Premises consult with SBD so as to allow SBD to review and recommend a hiring goal for all such firms undertaking work for the Premises, including SBE-G&S Program measures, and comply with the monitoring procedures set forth in the SBE-CON Program and SBE-G&S Program.

(3) Lessee shall require its contractor(s) and construction manager(s) to, at a minimum, utilize SBD's hiring clearinghouse, Employ Miami-Dade, and Career Source South Florida, to recruit workers to fill needed positions for skilled laborers on the Project.

(4) Lessee agrees that it shall be responsible to pay the SBD for any costs of monitoring SBD goals during the construction of the Improvements. Lessee shall pay, within thirty (30) days of any invoice sent by SBD to Lessee, such annual costs not to exceed \$5,000.00 subject to actual hours spent monitoring the SBD goals for this project and subject further to annual increases for merit, cost of living or operating increases.

(5) Compliance with Responsible Wages and Benefits for County Construction Contracts (Implementing Order #3-24): Lessee shall require all contractors and construction managers undertaking construction work on the Premises to pay responsible wages all in accordance with Section 2-11.16 of the Code of Miami-Dade County, Florida. The 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.

(B) Lessee shall require that all construction contracts valued in excess of \$1,000,000.00 include the requirements of the Miami-Dade County Residents First Training and Employment Program, which includes requirements that all persons employed by the such construction contractor to perform construction shall have completed the OSHA 10 Hour safety training course established by the Occupational Safety and Health Administration of the United States Department of Labor, and that the Project Contractors and Subcontractors make their best reasonable efforts to promote employment opportunities for local residents and seek to achieve

a project goal of having fifty-one percent (51%) of all construction Labor hours performed by Miami-Dade County residents, all in accordance with Section 2-11.17 of the Code of Miami-Dade County, Florida and Implementing Order 3-61.

**7.08. Art in Public Places:**

Lessee is also required to comply with the APP provisions of the Miami-Dade County Code and Administrative Order, as managed by the Miami-Dade County Department of Cultural Affairs (Department of Cultural Affairs) 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 APP program. The Lessee/Developer is required to work collaboratively with the Department of Cultural Affairs on the implementation of the APP 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](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>

**7.09. Inspector General Reviews/Audit & Compliance:**

- (a) 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 (“IPSIG”), whenever the County deems it appropriate to do so. Subject to all applicable laws, upon thirty (30) days’ prior written notice from the County, Lessee shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Lease for inspection and reproduction and the IPSIG may examine and audit such books and records of Lessee reasonably related to the performance of Lessee’s obligations under this Lease (“Inspection Records”). Any such audit shall take place at the Project and must not be disruptive to Lessee’s business and must take place at a mutually agreed time during Lessee’s normal business hours. In lieu of an audit of the Inspection Records at the Project, Lessee may provide the Inspection Records to IPSIG in a reasonably accessible electronic format. Notwithstanding the foregoing or any other provision of this Lease, Lessee shall not be required to disclose, permit the inspection of or examination of, or discuss, any document, information or other matter that (a) in respect of which disclosure is prohibited by law, or (b) is subject to attorney-client or similar privilege, employee privacy or constitutes attorney work product. The terms of this provision herein apply to Lessee, its successors, and assigns. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the obligations and performance of Lessee in connection with, and as and when provided under, this Lease.
- (b) Miami-Dade County Inspector General Review.
  - i. According to Section 2-1076 of the Code, as amended by Ordinance No. 99-63, the 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.

- ii. Nothing contained above shall in any way limit the powers of the Miami-Dade County Inspector General to perform audits on all County contracts. 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 Miami-Dade County Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and monitor existing projects and programs, all at no cost or expense to Lessee. 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 Miami-Dade County Inspector General is empowered to retain, at no expense or cost to Lessee, the services of an IPSIG to, subject to all applicable laws, audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement processes related to performance of the parties' obligations under this Lease, including but not limited to project design, specifications, proposal submittals, activities of Lessee, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with the Lease and to detect fraud and corruption.
  
- iii. Upon thirty (30) days' prior written notice to Lessee from the Inspector General or IPSIG retained by the Inspector General, Lessee shall make the Inspection Records available to the Inspector General or IPSIG for inspection and copying, at no cost or expense to Lessee. Any such audit shall take place at the Premises and must not be disruptive to Lessee's business and must take place at a mutually agreed time during Lessee's normal business hours. In lieu of an audit of the Inspection Records at the Project, Lessee may provide such materials to Inspector General or IPSIG in a reasonably accessible electronic format. The Inspector General and IPSIG shall have the right to inspect and, at no cost or expense to Lessee, copy all such documents and records in the Lessee's possession, custody or control which reasonably relate to Lessee's performance of this Lease, including, but not limited to, original estimate files, change order estimate files, worksheets, proposals and agreements from and which 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, volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records. Notwithstanding the foregoing or any other provision of this Lease, Lessee shall not be required to, disclose, permit the inspection of or examination of, or discuss, any document, information or other matter that (a) in respect of which disclosure is prohibited by law, or (b) is subject to attorney-client or similar privilege, employee privacy or constitutes attorney work product.

## ARTICLE 8

### ALTERATION OF PREMISES AND ERECTION OF SIGNS

#### 8.01. Alterations:

The Lessee shall not alter the Premises in any manner whatsoever without the prior written approval of the Lessor, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that Lessee, without Lessor's prior consent and so long as such work does not require the issuance of a permit, shall be permitted to perform (i) alterations to the interior portions of the Improvements located on the Premises and (ii) cosmetic alterations at the Premises. In the event the Lessee is given approval to make any alterations to the Premises or performs work without Lessor's prior consent in accordance with the preceding sentence, the Lessee shall fully comply with the terms and conditions of the approval document (if applicable), the applicable TAC-N requirements, as may be amended from time to time, of the Department's TAC Program in effect (inclusive of all applicable County programs), Article 7 (Regulations, Licenses and Permits), and EQCB Board Order 18-16 dated May 10<sup>th</sup>, 2018 (Exhibit B). 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 Article 2-10.4.01 of Miami-Dade County's Code; (ii) the Community Small Business Enterprise (CSBE) Program for construction activities under Article 10-33.02 of Miami-Dade County's Code; (iii) the Living Wage Ordinance under Article 2-8.9 of Miami-Dade County's Code; (iv) the Art in Public Places (APP) Program under Article 2-11.15 of Miami-Dade County's Code; (v) the Responsible Wages Ordinance under Article 2-11.16 of Miami-Dade County's Code; (vi) Residents First Training and Employment Program under Article 2-17 of Miami-Dade County's Code; (vii) Employ Miami-Dade under Administrative Order (AO) IO 3-63; (viii) the County's Sustainable Buildings Program; 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 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 13.03 (Other Defaults) hereof.

Subject to the County's approval, which approval shall not be unreasonably withheld, conditioned or delayed and notwithstanding anything in this Lease to the contrary, Lessee shall be able to make any and all improvements and modifications ("Brand Improvements") required and/or recommended by the brand manufacturer of the car dealership operated at the Premises so long as such Brand Improvements would not cause the Premises to violate any laws rules or regulations applicable to the Premises.

#### 8.02. Intentionally Omitted:

#### 8.03. Signage:

Other than any signage approved by Lessor prior to the DBO, the Lessee shall not erect, maintain or display any exterior-located identifying signs or any advertising matter, of any type or kind which is visible to the public, without prior written approval of the Lessor, provided that such approval shall not be unreasonably withheld, conditioned or delayed so long as the signage is FAA compliant.

## ARTICLE 9

### ENVIRONMENTAL COMPLIANCE

#### 9.01. DERM Requirements:

Lessee is subject to Division of Environmental Resources Management requirements, a current copy of which is attached as Exhibit D. Such requirements include the following:

(A) Tree Canopy. In an effort to meet the 30% tree canopy goal in Miami-Dade County, the Miami-Dade County Department of Regulatory and Economic Resources-Division of Environmental Resources Management ("DERM"), or successor agency, Lessee shall provide a proposed tree canopy plan for DERM review and approval in the Project Area or the Lessee provide tree planting in a mutually acceptable area to provide additional tree canopy.

(B) Prohibited species in the Lease area. In the event that there are prohibited species listed in section 24-49.9 of the Code within the Premises, the Lessee shall remove all prohibited species prior to the commencement of construction of the Improvements as evidenced by DERM's confirmation of the appropriate removal.

(C) Drainage and dewatering. All construction and site development plans (inclusive of drainage and dewatering plans for the Project for the Improvements and any other construction undertaken on for the Project during the Term, shall require the review and approval from the DERM or successor agency, as it relates to environmental contamination issues. Furthermore, if applicable, the Lessee shall prepare and submit to DERM for review and approval a Soil Management Plan, Dust Control/Air Monitoring Plan, and Health and Safety Plan prior to site development and construction in any area of the Premises where there is documented soil or groundwater contamination as determined by a Phase 2 Environmental Site Assessment and site investigation conducted in accordance with ASTM Standards and Chapter 24, Code of Miami-Dade County. Lessee shall not itself use and shall not permit any third parties to use on-site groundwater or surface water without prior DERM review and approval.

#### 9.02. Definitions:

For purposes of this Article, 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 the Effective Date, the presence or release of which was not caused by the Lessee or the Lessee's agents, employees, contractors, invitees or Trespassers. As of the Effective Date, it shall be presumed that the Baseline Environmental Conditions consist of the conditions identified in any existing Miami-Dade County maintained records, including contamination assessment reports and any other technical reports, data bases, remedial action plans, or the presence, discharge, disposal or release of any other Hazardous Materials originating prior to the Effective Date that comes to be located on the Premises and not caused by the County, the Lessee or the 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 the Airport or against or with respect to its operations at the 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 the 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.

(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 and is in violation of any environmental laws, ordinances, rules or restrictions of any governmental authority having jurisdiction over the Premises and 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 the Lessee under this Agreement and/or any previous Agreement, a period of time not to exceed six (6) months commencing with the Construction Commencement Date.

(G) "Occupancy Date" means the date the 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 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, Article 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" means third parties who have entered the Premises and whose actions while on the Premises have resulted in Release of Hazardous Materials emanating from the Premises or cause other damage while on 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.

### **9.03. Lessee's Acceptance of the Risks and Condition of Premises As-Is:**

(A) Lessee agrees that the Premises shall be leased and delivered to the Lessee in its current "as-is/with all faults" condition. The Lessee hereby, warrants, covenants, agrees, and acknowledges that Hazardous Materials may be present on the Premises and Other Airport Property.

(B) Under Article 9.06 (Lessee Audit) below, the 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. The Lessee's report on the investigation, if any such report shall be prepared, shall be provided to the County. Whether the Lessee conducts such an investigation or not, the Lessee is willing to proceed with this Agreement notwithstanding the environmental conditions of the Premises and Other Airport Property, subject to the 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, the 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 the Lessee's proposed or intended use, and the Lessee has relied solely on the Lessee's own inspection and examination of such matters.

(D) The Lessee expressly assumes the risk that Hazardous Materials that are or may be present on the Premises as of the Effective Date may affect the suitability or usability of the Premises for the Lessee's proposed or intended use. The Lessee agrees that, except for any other discharge, disposal or release of Hazardous Materials or violation of Environmental Requirements, caused by County, its agents, employees or contractors (a "County Discharge Event"), the County shall have no responsibility or liability with respect to any Hazardous Materials on the Premises emanating for the first time after the Effective Date, unless

caused by the gross negligence or willful misconduct of Lessor or any of its Representatives, whether occurring on or outside of the Premises. In no event shall the County be liable to the Lessee for damages relating to physical or personal injury, business interruptions, relocation costs or any other cost (other than a cost for which the County is liable under this Article 9) resulting from the presence of Hazardous Materials on the Premises at any time during this Agreement, unless for such County Discharge Event.

#### **9.04. Responsibilities for Hazardous Materials:**

The Lessee agrees that the Premises is being leased in its current “as-is/with all faults” condition in its entirety and, the Lessor has no financial obligation or responsibility to offset any environmental remediation required to allow construction on site. Further, the Lessee acknowledges that there may be drainage issues on site that Lessee will remediate at their own expense. Lessee hereby warrants, covenants, agrees and acknowledges that:

(A) Hazardous Materials may be present on the Premises and Other Airport Property.

(B) Under Article 9.06 below, the 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. Whether Lessee has conducted such an investigation or not, the Lessee is willing to proceed with this Agreement notwithstanding the environmental conditions of the Premises, subject to Lessee’s right to terminate this Agreement as otherwise provided herein and to the other provisions of this Agreement relevant to Hazardous Materials.

(C) Because of the possible presence of Hazardous Materials on the Premises or Other Airport Property, the 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) The Lessee expressly assumes the risk of Hazardous Materials that may affect the suitability or usability of the Premises for Lessee’s proposed or intended use which may become present for the first time at the Premises after the Effective Date and prior to the expiration of the Term. The Lessee agrees that, except for any County Discharge Event, the County shall have no responsibility or liability with respect to any Hazardous Materials on the Premises emanating for the first time after the Effective Date, unless caused by the gross negligence or willful misconduct of Lessor or any of its Representatives, whether occurring on or outside of the Premises. Notwithstanding the foregoing, in no event shall the County be liable to the Lessee for damages relating to physical or personal injury, business interruptions relocation costs or any other cost (other than a cost for which the County is liable under this Article 9) resulting from the presence of Hazardous Materials on the Premises at any time during this Agreement, except in the event of a County Discharge Event or in the event such damages or personal injury arise solely out of County’s gross negligence or willful misconduct. For the avoidance of doubt, in no event shall Lessee be liable for any damages relating to Hazardous Materials that emanate from outside of the Premises.

(E) Lessee accepts Premises “as is” and will be responsible for any and all costs associated with remediation efforts, subject to the terms of this Article 9. For the avoidance of any doubt and notwithstanding anything to the contrary in the foregoing, the Lessee shall not bear any liability for (1) a County Discharge Event, as defined in this Article 9 or (2) the presence of Hazardous Materials on the Premises emanating for the first time after the Effective Date caused by the gross negligence or willful misconduct of Lessor or any of its Representatives, whether occurring on or outside of the Premises. Moreover, in the event that Lessee

terminates this Agreement during the DDP in accordance with the terms herein, Lessee's remediation obligations under this Agreement shall be null, void and of no effect, and Lessee shall be released of any and all responsibility relating to the presence of Hazardous Materials at the Premises unless the presence of such Hazardous Materials is due to Lessee's (or its representatives) performance of Due Diligence Activities at the Premises from the Effective Date through the date of such termination.

**9.05. Intentionally Omitted**

**9.06. Lessee Audit:**

The Lessee, at its sole cost and expense, may conduct 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 the 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 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 the 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, or remedial action plans, then, except to the extent that the Lessee previously occupied the Premises, the County, at its option, shall: (i) allow the Lessee to terminate the Agreement, without penalty, within sixty (60) days of receipt of the Lessee Audit; or (ii) allow the Lessee the ability to remediate all environmental conditions identified in the Lessee Audit. If the Lessee elects not to terminate, the Lessee's failure to terminate shall constitute a waiver of the Lessee's rights to terminate its obligations under this Agreement as to any findings in such Lessee Audit.

**9.07. Environmental Maintenance of Premises:**

The 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.

**9.08. Lessee's Use of Hazardous Materials:**

No later than the DBO, the Lessee shall submit a complete list of all Hazardous Materials (the "Hazardous Materials List") which the Lessee currently intends to use on the Premises during the term of the Term, 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. The 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 the Lessee on a non-routine basis, such as for emergency repairs, the 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 the Lessee presents a material increased risk of site contamination, damage or injury to persons, Premises, resources on or near the Premises of Other Airport Property, or noncompliance due to a change in regulation of such Hazardous Material under applicable Environmental Law. Upon the County's objection, the Lessee shall immediately remove the Hazardous Material from the site. This Article 9.08 shall not apply to Hazardous Materials which are not used, generated, treated or disposed of by the Lessee but which are otherwise transported by the Lessee solely in the

course of the Lessee's business, such as cargo, 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 the 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. The Lessee shall promptly and completely answer periodic questionnaires from the County concerning the Lessee's practices regarding the generation, use, storage, and disposal of Hazardous Materials under this Agreement.

Notwithstanding anything herein to the contrary, (i) nothing herein shall prohibit the use of Hazardous Materials at the Premises that are commonly used at car dealerships or any other use of the Premises permitted by this Agreement (the "Permitted Hazardous Materials") so long as such use of such Permitted Hazardous Materials is in compliance with all applicable laws, rules and regulations and (ii) Lessee shall provide a list of Permitted Hazardous Materials to be used on the Premises to the Lessor no later than the DBO.

#### **9.09. Entry by County:**

(A) Notwithstanding any other right of entry granted to the County under this Agreement, and subject to the requirements set forth in Article 9.09(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 Laws; (2) conducting an environmental review or investigation of the Premises; (3) determining whether the Lessee has complied with the applicable environmental requirements of this Agreement; (4) determining the corrective measures, if any, required of the 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 the 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. The 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, however 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 the 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, the 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 the Lessee's use, storage, or disposal of Hazardous Materials, it being understood that the 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. The 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 Article 9.09.

#### **9.10. 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 the Lessee to conduct its obligations under this Agreement. Upon written request, the Lessee shall provide to County copies of all permits, licenses, certificates of occupancy, approvals, consent orders, or other authorizations issued to the Lessee under applicable Environmental Requirements, as they pertain to the Lessee's operations on or use of the Premises or Other Airport Property.

#### **9.11. 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 the Lessee's operation thereon; or (ii) any written Environmental Claim affecting the Lessee from any person or entity resulting from the Lessee's use of the Premises or Other Airport Property, then the Lessee shall immediately notify the County orally within twenty-four (24) hours and in writing within three (3) business days of said notice. If the County is reasonably satisfied that the Lessee is not promptly commencing the response to either of such events, the 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 the Lessee is unable to resolve such action in a manner which results in no liability on the part of the County, all reasonable costs and expenses incurred by the County shall be deemed additional rent due the County under this Agreement and shall be payable by the Lessee upon demand.

(B) With regard to any reporting obligation arising out of the Lessee's operations or during the Agreement, Lessee shall timely notify the State of Florida Department of Environmental Protection, Miami-Dade County Department of Regulatory and Economic Resources, 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 the DOP Commencement Date, the 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 at the Premises. The emergency action plan/contingency plan shall identify the Lessee's emergency response coordinator and the Lessee's emergency response contractor.

#### **9.12. Reports to County:**

For any year in which any Hazardous Materials, other than the use of Permitted 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 the Lessee's operations on the Premises), the 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, the Lessee shall provide the 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 the County copies of all manifests for hazardous wastes generated from operations on the Premises. Following the DOP Commencement Date, the Lessee shall provide the report required under this Article to the County by April 1 of each year for the preceding calendar year.

### **9.13. 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 a detailed review of such compliance (the "Environmental Audit") as reasonably requested by Lessor which in no event shall be more frequent than one (1) time per year, 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 hereto 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.

### **9.14. Remediation of Hazardous Material Releases:**

(A) If the Lessee or Lessee's agents, employees, contractors, invitees, or Trespassers, cause any Hazardous Materials, other than Permitted Hazardous Materials as outlined in this Article 9 of the Lease, to be released, discharged, or otherwise located on or about the Premises for the first time after the Effective Date ("Hazardous Material Release"), the 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.

(B) To assist the Aviation Department in responding to Hazardous Materials spills in or at the Airport Facilities located reasonably close to the Premises used by Lessee, Lessee shall make Lessee's remediation equipment and personnel, if any, 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 9.14(B) 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 9.14(A) above, and without waiving its rights hereunder, County may, at its option, perform such remedial work as described in Article 9.14(A) above, and thereafter seek reimbursement for the costs thereof. In accordance with this Article 9, 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 Article 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 1 ½ % per month 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, the 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 Premises. The 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. The Lessee shall assume, pursuant to the indemnity provision set forth in this Article 9, any liabilities or responsibilities which are assessed against County in any action described under this paragraph.

(F) In addition to the County's right to perform such remedial work and thereafter seek reimbursement from Lessee, County shall have the right to terminate this Agreement in accordance with Article 13.03 should Lessee fail to 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.

### **9.15. Indemnity:**

The Lessee shall indemnify, defend (with counsel reasonably satisfactory to County), and hold the County, its directors, officers, employees, agents, assigns, and any successors to the County's interest in the Premises (collectively, the "Representatives"), 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. 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 (x) Lessee terminates this Agreement during the DDP (and Lessee's Due Diligence Activities were not the cause of the presence of Hazardous Materials pursuant to Article 9.04(E)) or (y) such claims, payment, diminution, damages, sums, fees or costs are caused (i) solely by an act of God; (ii) by a County Discharge Event; or (iii) by the grossly negligent or willful misconduct of the County, or its Representatives. For any legal proceedings or actions initiated in connection with an alleged Hazardous Material 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 Material Release; provided, however, claims for which Lessee may be liable pursuant to this Article 9.15 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 the Lessee has indemnified the 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 the Lessee's successors and assignees and inure to the benefit of the County's successors and assignees.

(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 a 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 the Hazardous Materials at issue.

(B) Lessee agrees, in order to minimize its obligations in this regard, to use reasonable efforts to assist MDAD in responding to Hazardous Material Releases as more fully described in Article 9.13.

### **9.16. Dispute Resolution:**

County and Lessee agree that any dispute between them relating to this Article 9 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.

**9.17. Waiver and Release:**

The Lessee, on behalf of itself and its heirs, successors and assigns, hereby waives, releases, acquits and forever discharges the 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 the 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 9.17 shall not constitute a waiver or release of any obligation of the County under Article 7.01 or this Article 9 or otherwise with respect to any County Discharge Event, or gross negligence or willful conduct of the County or any County representative. The Lessee acknowledges that County would not enter into this Agreement without Lessee's agreement to the waiver and release provided herein.

**9.18. Surrender of Premises:**

The Lessee shall surrender the Premises to the County upon the expiration or earlier termination of this Agreement, free of debris, waste, and Hazardous Materials for which the Lessee is responsible during the Term and in accordance with the specific terms of this Agreement. The Premises shall be surrendered in a condition that complies with all applicable Environmental Requirements in the sole discretion of the County's Regulatory and Economic Resources Department or any successor.

**9.19. Breach:**

Any breach by the Lessee of any provision of this Article 9, after notice and a reasonable opportunity for the Lessee to cure, shall constitute a default of the Agreement and shall entitle the County to exercise any and all remedies provided in the Agreement, or as otherwise permitted by law.

**9.20. Survivability of Terms:**

The terms and conditions of this Article 9, including the indemnity, waiver, and release, shall survive the termination of this Agreement for the applicable statute of limitations period (the "Environmental SOL Period"); provided, however, that any claim of latent contamination at the Airport proximately caused by Lessee during the Term and not reasonably discoverable prior to the expiration of the Environmental SOL Period ("Latent Lessee Contamination") shall survive beyond the expiration of the Environmental SOL Period for such Latent Lessee Contamination.

**9.21. Right to Regulate:**

As provided for in Article 20 (Other Provisions) of this Agreement, nothing within this Article 9 (Environmental Compliance) shall be construed to waive or limit, restrain, impair or interfere with the County's regulatory authority.

**ARTICLE 10**

**INDEMNIFICATION AND HOLD HARMLESS**



Except to the extent caused by the gross negligence or willful misconduct of the Lessor or Lessor's Representatives, employees and/or the agents, or caused by a County Discharge Event, the Lessee shall indemnify and hold harmless the Lessor and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the Lessor 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 and under this Agreement by the Lessee or its employees, agents, servants, partners, principals, or subcontractors. 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 Lessor, 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 Lessor 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 Article shall survive the expiration or early termination of this Agreement for the applicable statute of limitations period.

## **ARTICLE 11**

### **ASSIGNMENT AND SUBLETTING AND CONDITIONS OF FINANCING**

#### **11.01. Assignment and Transfer:**

Except as provided in Article 11.02 (Assignment or Transfer Fee), Article 11.03 (Subletting) and Article 11.04 (Conditions of Financing), 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 and approval by the Board of County Commissioners, which approval shall not be unreasonably withheld, conditioned or delayed. The Lessee may make a collateral assignment to a lender or sell the stock of the business without prior approval of the Lessor. In the event that any lender seeks provisions in the assignment affecting the interests or requiring certain actions by the Lessor, such provisions must be approved by the Lessor; however, such provisions 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) remains the same and are assigned or transferred to an entity deemed by MDAD to be reputable and credit worthy meeting the Lessor requirements stated under Article 11.04 (D)(5).

#### **11.02. Transfer or Assignment Fee:**

For any assignment under this Lease taking place within the first ten (10) years of the Term, there shall be a fee (the "Transfer Fee") of 10% of the gross consideration (i.e. the difference between the sales price and the final certified audit of the Investment Commitment, as defined in Article 4.11, together with the cost of any capital improvements performed by Lessee at the Premises subsequent to Lessee's submission of the Report) received by Lessee in connection therewith; provided however, such Transfer or Assignment Fee shall not be assessed on transfers, subleases, or assignments to Affiliates of Lessee, or to Lessee's financing parties. For the purposes of this Lease, the term "Affiliate" means a business entity in which Lessee maintains a majority ownership (51%) or exercises 100% control. Upon the 10<sup>th</sup> anniversary of the Effective date, the Transfer or Assignment Fee shall no longer apply.

#### **11.03. Subletting:**

The Lessee shall submit any subleases of any portion of the Premises to the Lessor for approval, which shall not be unreasonably withheld. Lessee shall include in its submittal a certification from the proposed sub-lessee that

that the proposed sub-lessee shall comply with all required economic development requirements or guideline. Any objection by the Lessor must be forwarded to the Lessee within sixty (60) days of receipt of the sublease by the Department's Assistant Director for Business Management. Subleases shall be subject to the provisions of any applicable BCC Resolutions and Ordinances, or any of the County's economic development requirements or guidelines, as may be amended from time to time, which may describe conditions applicable to subleases. Notwithstanding anything herein to the contrary, Lessee shall have the right, without the consent of Lessor, to enter into license and/or concession agreements with third parties to operate concessions at the Premises so long as the requirements of Articles 2.02 and 3.15 have been satisfied.

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 permit 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.

#### **11.04. Conditions of Financing for Approved Improvement Costs:**

##### **(A) Financing of Improvements:**

Lessee may secure one or more private financings to provide funds required for the construction of any 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, any third-party mortgage shall be subordinate to the interest of the Lessor (Conditions of Financing for Approved Improvement Costs), and the proceeds received from such mortgage loan shall be reinvested into the Premises. Lessor agrees, at the request of Lessee, to promptly execute a non-disturbance agreement in a form reasonably acceptable to Lessor.

##### **(B) Lessor Approval of Financing Documents:**

The Lessor reserves the right to approve the documents memorializing any leasehold financing that the Lessee secures on the authority of Article 11.04 (Conditions of Financing for Approved Improvement Costs), which approval shall not be unreasonably withheld, within sixty (60) days of request therefor, and in the event no such approval or denial is timely provided, shall be deemed approved by Lessor. Any denial of approval shall be accompanied with a detailed rationale for such denial. The Lessee must submit for the Lessor's review and approval drafts of the financing documents in advance of the Lessee's execution of those documents or documentation verifying the 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 or the mortgagees or secured party (the "Leasehold Mortgagee") in whose favor Lessee executed the Leasehold Mortgage.

(D) Conditions Of Leasehold Mortgage: Following the delivery of the documents in 11.04 (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 the Lessee written notice of the occurrence of any default in respect of the performance of the 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 20.07 (Notices) at the address for the Leasehold Mortgagee provided to the Lessor. No notice of default to the Lessee will be effective until the Lessor delivers the notice required by this Article 11.04(D) (1). Lessee shall promptly provide to Lessor a copy of any written notice from any such Leasehold Mortgagee stating that Lessee is in default under the terms of the applicable Leasehold Mortgage.

(2) **LEASEHOLD MORTGAGEE'S RIGHT TO CURE DEFAULT.** The Leasehold Mortgagee may rectify a default on Lessee's part but has no obligation to do so, nor will the Leasehold Mortgagee suffer any personal liability with respect to the performance of the Lessee's obligations under this Agreement. 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 13 (Termination) 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 11.04(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. A default under a Leasehold Mortgage shall not be a default under this Agreement provided that Lessee is meeting its obligations to the Lessor pursuant to the terms hereof. Notwithstanding any other provision of this Agreement to the contrary, the Lessor shall not have the right to terminate this Agreement due to Lessee's default unless the Lessor shall have first given the required notices to the Leasehold Mortgagee and allowed the Leasehold Mortgagee the applicable cure periods. The lessor will accept performance by the Leasehold Mortgagee of any covenant, agreement or obligation of the Lessee contained in this Agreement with the same effect as though performed by the Lessee.

(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 11.04(D)(2) above, the Lessor will not terminate the Lease for a reasonable period of time, not to exceed eighteen (18) months from the date of termination and subject to reasonable extensions 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 eighteen (18) month period provided above in Article 11.04(D)(3) above, 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 11.04(D)(5) (a Transfer to a "Transferee" or "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 9 (Environmental Compliance); that plan must set forth in reasonable detail the manner in which the Successor Lessee plans to rectify each default. From the effective date of termination of this Agreement to the date of execution and delivery of such new lease or the expiration of the period during which the Leasehold Mortgagee may make a request, the Leasehold Mortgagee may, upon payment of the rental obligations here under, use and enjoy the leasehold estate created by this Agreement without hindrance by the Lessor, except as may be provided herein. The Leasehold Mortgagee's rights under this Article 11.03(D)(4) are in addition to, and not limited by, the Leasehold Mortgagee's right to cure under Article 11.03(D)(2).

(5) **TRANSFER TO A "TRANSFeree" OR "SUCCESSOR LESSEE"**: Notwithstanding the foregoing, 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 11.01 (Assignment and Transfer) above. The provisions of Article 2 (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 11.01 (Assignment and Transfer). 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 13 (Termination). 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 11.04(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 9 (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 1 (Terms and Premises), 3 (Rentals and Payments), 4 (Development and Improvements to Premises), 19 (Trust Agreement), and 20.13 (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 13.06 (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.

(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, Lessor, Leasehold Mortgagees and any party holding an interest with respect to the Premises; provided, however, that any distribution of insurance proceeds must comply with the requirements of Article 12 (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 shall (a) alter County's Lesseeship of the improvements in accordance with this Agreement, (b) alter Lessee's obligations to commence paying Lessor fair market rentals or other rentals on the Improvements as provided in Article 3 (Rentals and Payments) or (c) provide Lessee with any Lesseeship 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.

(12) **ADDITIONAL RIGHTS OF LEASEHOLD MORTGAGEE:** In the event of any sublease of the entire Premises, any lender to the sublessee shall be deemed to be a Leasehold Mortgagee hereunder and such lender shall have all of the rights of a Leasehold Mortgagee. Lessee shall subordinate its interests in this Lease to any such mortgage granted to any such Leasehold Mortgagee. In the event of any default under any such Leasehold Mortgage, the Leasehold Mortgagee thereunder shall have all the rights hereunder as if such Leasehold Mortgage were a direct lender to Lessee.

(13) **ASSISTANCE BY LESSOR:** Lessor shall provide reasonable cooperation to assist the Lessee in its efforts to obtain temporary, construction, mezzanine and/or permanent financing and/or refinancing for the Premises or any Improvements thereon by providing to Lessee, or to any prospective lender, such documentation or information as reasonably requested as well as an estoppel in form and substance reasonably acceptable to any such proposed lender.

(14) **MANAGEMENT RIGHTS:** The Leasehold Mortgagee may appoint an agent or nominee to operate and manage the Premises or Improvements secured by its mortgage on its behalf, provided that each Leasehold Mortgagee shall provide the Lessor with prior written notice of the identity of the agent or nominee for approval by the Lessor. Such approval shall require and be limited to a determination by the Lessor that the proposed agent or nominee has demonstrated experience or expertise in the management and/or operation of facilities similar to the Premises or Improvements to be operated and maintained by such agent or nominee.

(E) **Estoppel Certificate:**

Upon written request from time to time by the 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 defense 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 provisions of this Article 11 (Assignment and Subletting and Conditions of Financing) 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 11 (Assignment and Subletting and Conditions of Financing) were a separate and independent contract made by the Lessor, Lessee, and the Leasehold Mortgagee. The Lessor's agreement set forth in this Article 11 (Assignment and Subletting and Conditions of Financing) 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 12

### INSURANCE

#### 12.01. 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, which may be provided through primary and/or umbrella policies:

(A) Commercial General Liability Insurance:

Commencing on the Effective Date and ending on the DBO, the Lessee shall maintain Commercial General Liability with limits of liability not less than Two Million Dollars (\$2,000,000) each occurrence, including coverage for, but not limited to, Premises/Operations, Products/Completed Operations, Contractual Liability, Personal/Advertising Injury and Cross Liability. Commencing on the DBO, the Lessee shall maintain Commercial General Liability with limits of liability not less than Ten Million Dollars (\$10,000,000) each occurrence, including coverage for, but not limited to, Premises/Operations, Products/Completed Operations, Contractual Liability, Personal/Advertising Injury and Cross Liability. This provision shall be subject to Article 1.03(G).

(B) Automobile Liability Insurance:

Commencing on the DBO, the Lessee shall maintain Business Automobile Liability Insurance with limits of liability not less than Five Million Dollars (\$5,000,000) each occurrence for owned, non-owned and hired automobiles. If the Lessee transports fuel, the policy must include CA 99 48 Pollution Liability - Broadened Coverage for Covered Autos - Business Auto, Motor Carrier and Truckers Coverage Forms Endorsement or equivalent. In the event Tenant has no owned automobiles, Tenant shall maintain only Hired & Non-Owned Auto Liability Insurance. This coverage may be satisfied by way of endorsement to the Commercial General Liability policy, or a separate Business Auto Liability policy.

(C) Intentionally Omitted.

(D) Pollution and Remediation Legal Liability Insurance:

Throughout the Term, the Lessee shall maintain Pollution and Remediation Legal Liability Insurance, to the extent required under Article 9.17 (Waiver and Release), in an amount not less than \$2,000,000 covering third party claims, remediation expenses, and legal defense expenses arising from on-site and off-site loss, or expense or claim related to the release or threatened release of Hazardous Materials at the Lessee's Premises.

(E) Storage Tank Third-Party Liability and/or similar Environmental Impairment Liability.

If Lessee shall locate, upon the Premises, any storage tank subject to regulation or registration by the Florida Department of Environmental Protection, then Lessee shall maintain Third-Party Storage Tank Pollution Liability Insurance, or similar Environmental Impairment Liability Insurance at a minimum limit not less than One Million Dollars (\$1,000,000) per occurrence at each location and Two Million Dollars (\$2,000,000) annual aggregate at each location providing coverage for damages against, but not limited to, third-party liability, clean up, corrective action including assessment, remediation and defense costs. In the event the policy includes a self-insured retention or deductible in excess of One Hundred Thousand Dollars (\$100,000), Lessee shall provide a copy of its most recent annual report or audited financial statements to County at County's request and County may reject or accept a higher self-insured retention or deductible based on Lessee's financial condition.

(F) Workers Compensation:

As required by Chapter 440, Florida Statutes.

(G) Builders Risk and Property Insurance:

The Lessee and/or its sublessee(s), at its (and/or their) sole cost and expense, throughout the Term, 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 three (3) years thereafter, by the firm and professional property evaluators used by the County to establish 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.

(H) Business Interruption Insurance:

Commencing as of the DBO, the Lessee, at its sole cost and expense, throughout the Term, 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.

All insurance policies required pursuant to the terms of this Agreement shall be issued in companies approved to do business under the laws of the State of Florida. Such companies must be rated no less than "A-" as to financial strength, and no less than "VII" as to financial size in accordance with the latest edition of "Best's Key Rating Guide", published by A.M. Best Company, Inc., or its equivalent, subject to approval of the MDAD's Risk Management Office.

**12.02. 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 Lessor which certificates shall clearly indicate that:

- (A) The Lessee has obtained insurance in the types, amounts and classifications as required for strict compliance with this Article;

(B) The policy cancellation notification provisions specify at least 30 days advance written notice of cancellation to the County; and

(C) The County is named as an additional insured with respect to the Lessee's commercial general liability policies.

(D) The County is named as a loss payee with respect to the required builder's risk and property insurance provided by the Lessee.

(E) Business Auto Liability insurance prior to allowing vehicles on to the Premises and Workers' Compensation insurance on or before the Date of Beneficial Occupancy.

(F) Storage Tank Third-Party Liability/Environmental Impairment Liability insurance, if applicable to Lessee's operations, on or before the DBO. 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 obtain and maintain 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.

**12.03. Compliance:**

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

**12.04. Right to Examine:**

The Lessor 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 Lessor.

**12.05. 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 or willful misconduct of the County, as limited by Article 768.28, Florida Statutes.

**ARTICLE 13**

**TERMINATION**

**13.01. Payment Defaults:**

Failure of the Lessee to make all payments of rentals, fees, charges, or expenses required to be paid herein when due, including remediation expenses incurred by the County under Article 9.14, and such default continues for a period of fifteen (15) days after written notice of such default is provided by Landlord shall constitute a "Payment Default," and in the event of such Payment Default, the Lessor may, at its option, terminate this Agreement at any time prior to cure.

### **13.02. Insurance Defaults:**

The Lessor shall have the right, upon thirty (30) 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 12 (Insurance) hereof, 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 thirty (30) day notice or grace period.

### **13.03. Other Defaults:**

The Lessor shall have the right, upon forty-five (45) calendar days written notice of default to the Lessee, to terminate this Agreement due to the occurrence of any one or more of the following, unless the same shall have been corrected within such forty-five (45) day period, or, if correction cannot reasonably be completed within such forty-five (45) day period, the Lessor may extend the time period for such cure if Lessee is engaged in good faith, ongoing and continuous efforts to correct such defaults; provided, however, that the extension of the Development Milestones are subject to the terms of Article 4.01 herein:

(A) Failure of the Lessee to comply with any covenants of this Agreement, other than the covenants to pay rentals, fees, charges, or other expenses when due, and the covenants to provide evidence of required insurance coverage. This shall also include the development schedule as indicated in Article 4 (Development and Improvements to Premises).

(B) The conduct of any business, the performance of any service, or the merchandising of any product or service not authorized herein by the Lessee.

### **13.04. Habitual Default:**

Notwithstanding the foregoing, in the event that the Lessee has frequently, regularly or repetitively defaulted in the performance of or is in breach any of the terms, covenants and conditions required herein, to be kept and performed by the Lessee, regardless of whether the Lessee has cured each individual condition of breach or default as provided above, the Lessee shall be reasonably determined by MDAD to be a "habitual violator." At the time that such determination is made, the Lessor 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, 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 notice of termination, the Lessee shall discontinue its operations at the Airport and proceed to remove all its personal property in accordance with Article 13.06 (Actions at Termination) hereof.

Notwithstanding the foregoing, MDAD acknowledges that its intention is not to consider Lessee a habitual violator for those defaults that are not deemed to be "material" under the circumstances, or, for example purposes only, any such default that is due to a third-party's action or inaction, which third-party is not reasonably within the control of Lessee, or any such default with respect to the obligations under Article 7 and/or Article 15 herein. Thus, Lessor's enforcement of this Article 13.04 and its rights pursuant hereto shall be subject to Lessor's reasonableness and good faith, determined on a case by case basis.



### **13.05. Termination by Abandonment:**

Abandonment, as used herein, is defined as voluntary vacating the Premises with the intention of not returning. 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 thirty (30) consecutive calendar days without having provided notice of such discontinuation to the County and receiving approval from the County, which approval shall not be unreasonably withheld, conditioned or delayed unless such abandonment or discontinuance has been caused by casualty or governmental order that prevent the Lessee's use of the Premises for the purposes authorized in Article 2.02 (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 and loss of future rentals.

### **13.06. Actions at Termination:**

(A) The Lessee shall vacate, quit, surrender up and deliver the Premises to the Lessor on or before the Expiration Date. If title of the Improvements on the Premises are in the name of the Lessee at the time of termination, and only if directed by the Lessor no later than eighteen (18) months prior to the Expiration Date, the Lessee shall demolish all Improvements on the Premises and remove all debris at its costs. Lessee shall conduct any required demolition in accordance with the code and regulatory requirements in effect at the time. If not directed to demolish the Improvements, the Lessee shall surrender the Premises in the condition required under Article 5 (Maintenance and Repairs by Lessee) herein with all repairs for which the Lessee is responsible having been completed prior to surrender, and shall execute appropriate documents confirming that title to such Improvements in Lessee's name has been transferred to Lessor. 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 and prior to the demolition of the Improvements at the Premises if directed by Lessor to perform same, the Lessee shall be entitled to remove all of its personal property, automotive and trade-related equipment (i.e., fixtures and trade fixtures) and built-in furnishings from the Premises; provided, however, that if immediate termination occurs under Article 13.04 (Habitual Default), Lessee shall be allowed up to thirty (30) calendar days from the receipt of notice of termination to remove such property.

(B) If, at or after the time of termination, the Lessor advises the Lessee that it has reason to believe that any Hazardous Materials that emanate from the Premises for the first time after the Effective Date for which Lessee is responsible during the Term and in accordance with this Agreement and which is not the result of gross negligence or willful misconduct of the County or any County representative or a County Discharge Event, 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. 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, reasonable 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 lessee has been secured.

**13.07. Lien Waiver:**

The Lessor hereby waives and releases any of Landlord's or other statutory lien rights with respect to any of Lessee's personal property whereby a security interest can be perfected by the filing of a UCC or in which Borrower has granted a security interest.

**13.08. Right to Show Premises:**

At any time within six (6) 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 13 (Termination), the Lessor shall have the right to enter on the Premises during business hours for the purposes of showing the Premises to prospective lessees or users during regular business hours, so long as Lessor does not unreasonably disturb Lessee and the business operations taking place at the Premises.

**13.09. 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 material covenant or agreement herein required to be performed by the County and the failure of the County to remedy same within a reasonable period of time following receipt of written notice from the Lessee of such default. Upon any such termination, Lessee shall be entitled to pursue any remedies available to it at law or in equity.

**13.10. Other Terminations:**

This Agreement shall be subject to termination by the Lessee, in its sole discretion, and all rental obligations shall abate as of such date, in the event of any one or more of the following:

(A) 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 of parts thereof, in such a manner as to substantially restrict the Lessee from operating therefrom for a period in excess of ninety (90) consecutive days; provided, however, that notice of any such assumption shall be provided by Lessor to Lessee at least 60 days in advance thereof. Notwithstanding the foregoing, 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 and/or resulting termination.

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

Upon the occurrence of either of the events described in this Article 13.10, Lessee (i) shall have all of the rights of Lessor under the law and/or (ii) may send a notice of termination to the Lessor whereupon this Agreement shall terminate sixty (60) days from the date of receipt of such notice by the Lessor unless Lessor cures the cause of the proposed termination within the sixty (60) day period or has otherwise taken reasonable steps to cure such cause if the cause cannot be reasonably cured within the sixty (60) day period, and upon such termination the Lessee shall have no further obligations hereunder.

**ARTICLE 14  
SPECIAL CONDITIONS**

#### **14.01. Quality of Services:**

The Lessee shall furnish the services that are Aviation Activities, on a good, prompt and efficient basis and on a fair, equal and not unjustly discriminatory basis to all users thereof.

#### **14.02. Nondiscriminatory Service Prices:**

With respect to Aviation Activities, pursuant to FAA grant assurance obligations, the County is required to inform Lessee that, for services performed on the Premises that are considered Aviation Activities, Lessee shall charge fair, reasonable, customary and not unjustly discriminatory prices for each unit of 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.

With respect to Aviation Activities, Lessee agrees that it will include in all service contracts and subcontracts with its TMB contractors, subcontractors, service providers and suppliers an obligation by such parties to comply with all grant assurance obligations.

### **ARTICLE 15**

#### **EQUAL EMPLOYMENT OPPORTUNITY, NONDISCRIMINATION AND AFFIRMATIVE ACTION**

##### **15.01. Equal Employment Opportunity**

To the extent that the Lessee or the Lessee's general contractor is performing under a federally-assisted construction contract with respect to the Project, as determined pursuant to the FAA Airports Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects (issued on May 24, 2023) (the "Contract Guidelines"), the Lessee shall 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.

##### **15.02. 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.

### **15.03. Affirmative Action**

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

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

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

The Lessee agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Lessee agrees that a breach of this clause is a violation of the Equal Employment Opportunity clause in this contract.

“Segregated facilities,” as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

The Lessee shall include this clause in every subcontract and purchase order that is subject to the Equal Employment Opportunity clause of this contract.

### **15.04. 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 applicable requirements imposed by or pursuant to then enforceable regulations of the Department of Transportation, as amended from time to time.

**15.05. Breach of Nondiscrimination Covenants:**

In the event it has been determined that the Lessee has breached any enforceable nondiscrimination covenants contained in Sub-Articles 15.02 (Employment Discrimination) and Sub-Article 15.04 (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 13.03 (Other Defaults) hereof.

**15.06. Nondiscrimination in Employment and Sub-Contracts:**

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

The Lessee will include Sub-Article 15.02 (Employment Discrimination) and Sub-Article 15.04 (Nondiscriminatory Access to Premises and Services) of this Article in the Lessee sub-contracts in excess of \$10,000.00, unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 issued September 24, 1965, as amended by Executive Order 113155, so that such provisions will be binding upon each sub-consultant.

**15.07. 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 15.08.

(B) Non-discrimination: The Lessee, with regard 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 2.

(C) 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.

(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 of Title VI Clauses: The Lessee will include the provisions of paragraphs 15.07 (A) through (F) in every sublease and subcontract, including procurements of materials and leases of equipment, 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. The Lessee shall take action with respect to any sub-contract as the County may reasonably direct as a means of enforcing any of the Nondiscrimination provisions in this Lease, including sanctions for noncompliance; provided, however, that in the event the Lessee becomes involved in, or is threatened with, litigation with a sub-consultant as the result of such direction by the County or by the United States, the Lessee may request the United States to enter into such litigation to protect the interests of the United States.

**15.08. 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, (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.

**15.09. 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).

Notwithstanding anything to the contrary contained in this Article 15, to the extent that the Nondiscrimination provisions herein (Sections 15.02 – 15.09) require Lessee to include certain language in agreements with third parties, such requirement shall not apply to those subleases, subcontracts and/or purchase orders that BTZ enters into with customers, Subaru, suppliers, vendors and those agreements commonly entered into by automobile dealerships.

### **15.10. Occupational Safety and Health**

All contracts and subcontracts that result from this Agreement shall incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer 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 (29 CFR Part 1910). The employer 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.

## **ARTICLE 16**

### **SECURITY AND SPECIAL PROVISIONS**

#### **16.01. Security:**

The Lessee acknowledges and accepts full responsibility for (i) the security and protection of the Premises, any improvements, equipment and property thereon, and any Airport property to the extent such Airport property was accessed through the Premises, and (ii) all breaches of federal and Lessor security requirements by Lessee's employees or those persons for whom Lessee has responsibility under Sub-Article 16.02, and (iii) control of access to the Airport Operations Area (AOA) or any Security Identification Display Area (SIDA) through the Premises by persons and vehicles. The Lessee fully understands and acknowledges that any security measures that are reasonably necessary 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, to the AOA/SIDA. All such security measures by the Lessee shall be in accordance with 49 CFR Part 1542 and the Airport Security Plan.

All development must adhere to MDAD design guidelines, including required high-security fencing for separating the air operations area (the "AOA Fence") from public access area, which shall be installed as of the DOP Commencement Date. Lessee must maintain a minimum of 10-foot buffer/clear zone on the leasehold property side from the AOA Fence. This buffer zone must be kept free of all trees, shrubs, structures, and fixtures (light poles, electric cabinets, hydrants, etc.) and all objects (vehicles, pallets, trailers, crates, etc.) at all times. The Lessee shall immediately report all security events, incidents, issues or concerns and any suspicious activity in an around the airport to the police and the airport manager or designee.

#### **16.02. Drug-Free Workplace Default:**

The Lessee acknowledges that, as of the Effective Date, it will provide 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, 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 (15) calendar days written notice to the Lessee and without liability to the County, if the Lessor or the County Mayor 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.

#### **16.03. Special Programs:**

The Lessee shall ensure that all employees of Lessee employed at the Premises are required to participate in such safety, security and other training and instructional programs, as the Lessor or appropriate Federal agencies may from time to time require.

#### **16.04. Intentionally Omitted**

#### **16.05. Intentionally Omitted:**

#### **16.06. Intentionally Omitted**

#### **16.07. Additional Security Requirements**

Notwithstanding the specific provisions of this Article 16, County shall have the right to add to, amend or delete any portion hereof in order to meet reasonable security requirements of MDAD or of the Federal agencies having jurisdiction over the Airport.

#### **16.08. Compliance by Lessee's Contractors; Lessee's Responsibility for Security Failures**

Lessee agrees that it will require that all contractors, subcontractors, service providers and suppliers to comply with all security requirements in the course of their conducting of such operations at the Premises. Lessee agrees that in addition to all remedies, penalties and sanctions that may be imposed by MDAD or the Federal government upon Lessee's contractors, subcontractors, service providers, suppliers and their individual employees for a violation of applicable security provisions while conducting operations at the Premises, Lessee shall be responsible to the County for all such violations and shall indemnify and hold the County harmless for all costs, fines and penalties therefrom, such costs to include reasonable attorneys' fees.

**16.09. 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. This public right of flight shall include the right to cause in said air space any noise inherent in the operation of any aircraft now known or hereafter used for navigation or flight through the said air space or landing at, taking off from, for operating on Miami Executive Airport.

**16.10. 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. Notwithstanding any provision of this Article to the contrary, the parties acknowledge and agree that nothing in this Article shall be construed as requiring County to modify or otherwise restrict the height of existing structures or improvements in order to accommodate the Project or to modify Miami Executive Airport's current or future development plans as set forth in the FAA-approved Airport Layout Plan or MDAD Master Plan as of the date hereof.

**ARTICLE 17**

**EMPLOYEES**

**17.01. Control of Employees:**

The Lessee shall properly control the actions of its employees at all times that said employees are working on the Airport Facilities in their capacities as employees of the Lessee, 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. Lessee agrees to properly instruct its employees on all security requirements applicable to their actions at the Airport and the remedies, penalties and sanctions that may result from a failure to comply with such security requirements. Lessee acknowledges that any employee of Lessee failing to comply with applicable security requirements shall be individually subject to remedies, penalties and sanctions provided in security provisions then applicable to their actions and that such remedies may include, but not be limited to, arrest and incarceration following conviction at trial, administrative meetings and hearings, fines, compulsory remedial training, and temporary or permanent loss of access privileges at the Airport.

**17.02. Reserved**

**17.03. Lessee's Responsibility for Employee Violations:**

In the event the Lessee is in default of the covenants in Sub-Articles 17.01 (Control of Employees) and 17.03 (Lessee's Responsibility for Employee Violations) for failure to properly control its employees or by permitting its employees to improperly use facilities provided by the County for the use and convenience of the traveling public, the Lessor 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 appropriate discipline up to and including discharge of the offending employee. Lessee acknowledges that notwithstanding any such disciplinary action taken by Lessee, County shall have the right to revoke or suspend the ID badge of any such employee in the manner set forth in Sub-Article 16.02 (Security Identification Display Areas Access- Identification Badges).



## ARTICLE 18

### CIVIL ACTIONS

#### 18.01. 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 appropriate courts of the State of Florida.

#### 18.02. Notice of Commencement of Civil Action:

In the event that the Lessor or the Lessee commences a civil action where such action is based in whole or in part on an alleged breach of this Agreement, the Lessor 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.

In the event that the County or the Lessee commences a civil action where such action is based in whole or in part on an alleged breach of this Agreement, and if Lessee has complied with its obligation to appoint a Registered Office/Agent under Sub-Article 18.03, County shall effect any initial service of process upon Lessee through such Registered Office/Agent in compliance with applicable rules of civil procedure pertaining to the court in which the action is brought and Lessee shall effect any initial service of process upon County in the manner provided by state or federal law applicable to the court in which the action is brought. If Lessee has failed to comply with such obligation, then the County and the Lessee agree to waive the foregoing procedure for initial service of process and agree to submit themselves to the jurisdiction of the court in which the action has been filed whenever service has been made in the following manner:

(A) Upon the County: by Certified Mail, Return Receipt Requested, sent to (a) the party indicated in Sub-Article 20.07 (Notices) on behalf of the County and (b) with a copy to the County Attorney, Aviation Division, P.O. Box, P.O. Box 025504, Miami, FL 33102-5504.

(B) Upon the Lessee: by personal service or by Certified Mail, Return Receipt Requested, upon the party indicated in Sub-Article 20.07 (Notices) on behalf of the Lessee, with a copy to whatever attorney the Lessee has designated in writing, if any.

In the event that the County and/or the Lessee raise an objection to service of initial pleadings as provided for herein, and the trial court overrules such objection, the objecting party shall pay liquidated damages (attorney's fees) in the amount of \$250.00 to plaintiff in such action, prior to answering the complaint.

#### 18.03. Registered Office/Agent; Jurisdiction:

Notwithstanding the provisions of Article 18.02 (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 Article 48.091, Florida Statutes, such designations to be filed with the Florida Department of State in accordance with Article 607.0501, Florida Statutes. If the Lessee is a natural person, Lessee and Lessee's personal representatives 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 19

### OTHER PROVISIONS

### **19.01. Incorporation of Trust Agreement by Reference:**

Notwithstanding any of the terms, provisions and conditions of this Agreement, it is understood and agreed by the parties hereto that the provisions of the Amended and Restated Trust Agreement dated as of the 15th day of December, 2002, by and between the County and the JPMorgan Chase Bank as Trustee and Wachovia National Bank as Co-Trustee, (the "Trust Agreement"), which Trust Agreement is incorporated herein by reference thereto, shall prevail and govern in the event of any conflict or inconsistency with or ambiguity relating to the terms and conditions of this Agreement, including the rents, fees or charges required herein, and their modification or adjustment. A copy of the Trust Agreement is available for inspection in the offices of the Lessor during normal working hours or may be viewed by following the link below:

<http://www.miami-airport.com/library/pdfdoc/Propertise/Amended%20and%20Restated%20Trust%20Agreement%202002.pdf>

### **19.02. Adjustment of Terms and Conditions:**

If, at any time during the term of this Agreement, a court or Federal Agency 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 or rentals, fees and charges upon the issuance of written notice from the Lessor to the Lessee.

### **19.03. Modifications Caused by DOT Order:**

To the extent required by federal law, if an action before the U.S. Department of Transportation results in a final, unappealed order compelling modification of a term of this Agreement, the parties shall make appropriate modifications to this Agreement so as to be in compliance with such order.

## **ARTICLE 20**

### **OTHER PROVISIONS**

#### **20.01. 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.

## **20.02. Headings:**

Any headings preceding the text of any Articles, paragraphs or Articles 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.

## **20.03. 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 Facilities or otherwise constitute a hazard at the Airport. Lessee shall be solely responsible, at its sole cost, for designing, constructing, and operating the Premises such that interference with the Airport Facilities, including but not limited to easements, utilities, rights of way, etc., or the creation of any hazard is entirely avoided or entirely mitigated, unless such designing, constructing or operating concept has been previously approved by Lessor.

## **20.04. 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 other than a Permitted Use 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.

## **20.05. 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.

## **20.06. Subordination to Federal Requirements:**

(A) This Agreement shall be subordinate to the provisions of any existing or future aeronautical-related 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.

(B) All provisions of this Agreement shall be subordinate to the right of the United States of America to 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 assumption of control by the United States of America shall be suspended.

(C) This Agreement shall be amended by the parties from time to time in order to comply with Federal laws or regulations as they may be enacted, issued or amended from time to time. The parties agree that nothing in this Agreement shall compel a party to comply with a provision that is then in violation of or conflict with Federal laws or regulations as they may be enacted, issued or amended from time to time.

## **20.07. Notices:**

All notices, demands or requests or other communications which may be given pursuant to this Lease Agreement shall be deemed to have been properly served or given, if addressed by personal service or by certified mail addressed to Lessee and County at the addresses indicated herein or as the same may be changed from time to time. Such notice shall be given on the day on which personally served or if by certified mail, on the fifth day

after being posted or the date of actual receipt, whichever is earlier. As a courtesy, all communications shall also be sent by electronic mail if the party shall have provided a current electronic mail address, but said electronic mail transmittal shall not constitute Notice hereunder. All postage or other charges incurred for transmitting of Notices shall be paid by the party sending same. If Lessee, at any time during the Term hereof, changes its office address as herein stated, Lessee will promptly give notice of the same in writing to County. If County at any time during the Term hereof changes its office address as herein stated, County will promptly give notice of the same in writing to the Lessee.

**As to the Lessor:**

Director  
Miami-Dade County Aviation Department  
Post Office Box 025504  
Miami, Florida 33102-5504  
Director@miami-airport.com

Chief Financial Officer  
Miami-Dade County Aviation Department

and

4200 NW 36<sup>th</sup> Street  
Miami, Florida 33122

Office of Economic Development  
Chief of Innovation and Economic Development, Miami-Dade County  
Francesca de Quesada Covey  
111 NW 1<sup>st</sup> Street, 21<sup>st</sup> Floor  
Miami, Florida 33128  
Francesca.Covey@miamidade.gov

With a copy to:  
Attention: County Attorney,  
Miami International Airport – Terminal Bldg.  
Concourse D, 4th Floor  
Miami, Florida 33122

**As to the Lessee:**

BTZ Operations, LLC  
c/o Craig M. Zinn  
1841 North State Road 7  
Hollywood, FL 33021

Craig Zinn Automotive Group  
c/o Alan N. Jockers, Esq.  
1841 North State Road 7  
Hollywood, Florida 33021  
Email: ajockers@czag.net

Craig Zinn Automotive Group  
c/o Marc Adler, Esq.  
1841 North State Road 7  
Hollywood, Florida 33021  
Email: madler@czag.net

or to such other address or addresses 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 or courier or overnight service receipt. Hand delivered notices shall be deemed received by the Lessee when presented to the local management representative of the Lessee.

**20.08. Rights Reserved:**

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

**20.09. Rights of County at Airport:**

The County shall have the absolute right, without limitation, to make any repair 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.

**20.10. Rights to be Exercised by the Lessor:**

Wherever in this Agreement rights are reserved to the County; such rights may be exercised by the Lessor.

**20.11. 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.

**20.12. 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 reversal of the County's action.



**20.13. 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.

**20.14. 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.

Lessee is aware that all County contracts are subject to periodic review or audit by the Office of the Inspector General, Miami-Dade County Audit Management Services Department, Commission Auditor, or any other County Department or officer responsible for ensuring that County contracts comply with applicable laws, rules, regulations, etc., or any of their successor departments or officers.

**20.15. 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 I.O. 8-4, Lessee shall provide proof to the County annually demonstrating that the property taxes have been paid.

**20.16. Quiet Enjoyment of Others:**

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

**20.17. 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.

**20.18. Force Majeure:**

The terms and conditions of the Agreement (with the exception of the obligation of the Lessee to pay the amounts required by the terms of this Agreement) shall be subject to "Force Majeure". Neither the County nor the Lessee shall be considered in default in the performance of its obligations hereunder, if such performance is prevented or delayed because of unforeseen circumstances due to war, hostilities, revolution, civil commotion, strike, lock-

out, epidemic, fire, wind, flood, hurricane, tornado, lightning, wind damage, or because of any law, order, proclamation, regulation or ordinance of any government or of any subdivision thereof because of any Act of God or any other cause whether of similar or dissimilar nature beyond the reasonable control of the party affected (collectively, "Force Majeure Events"), provided that notice of such force majeure is given by the affected party to the other within thirty (30) days of reasonably determining that an event constitutes a Force Majeure Event. Should one or both of the parties be prevented from fulfilling their contractual obligation by a state of force majeure lasting continuously for a period of six (6) months, the parties shall consult with each other regarding the implementation of the Agreement; provided, however, that in the event that a Force Majeure Event lasts longer than one (1) year, either party shall have the right to terminate this Agreement. Notwithstanding the foregoing, the prevention or delay of performance caused by the coronavirus disease 2019 (COVID-19) shall in no way be deemed by Lessee as a condition subject to Force Majeure.

#### **20.19. Destruction of Premises:**

(A) Partial Destruction: In the event the Premises shall be destroyed or so damaged or injured by fire, windstorm, flood or other casualty during the Term so that the Premises, or any portion thereof are rendered untenantable, the County and/or the Lessee 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; provided, however, that in the event of such casualty and subsequent restoration by the Lessee, the Lessee shall, in accordance with the law, be permitted to erect and maintain temporary structures on the Premises, and operate therefrom, until the Premises is restored.

(B) Total Destruction: In the event that neither the County nor the Lessee elect to render the Premises tenantable, if destroyed or damaged in their entirety, 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, if any, which were tenantable and used by the Lessee following the casualty. In such event, the Lessor shall endeavor to find adequate replacement premises for the Lessee in existing facilities on the Airport.

(C) 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 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.

(D) If the Premises, or any portion thereof, are damaged by fire, the elements or other casualty, Lessee shall promptly remove all loose debris resulting from such damage from the Premises that may result in foreign object debris and shall promptly take such actions as will place the Premises in an orderly condition for the safety of Persons entering upon the Premises pending restoration of the Premises to the condition existing prior to such damage. If Lessee fails to promptly comply with the provisions of this Article, County may take such measures as it reasonably deems necessary to render the Premises in a safe condition. Lessee agrees that Lessee shall fully assume and be liable to County for payment of any costs incurred by County, plus a twenty-five percent (25%) administrative overhead fee, which costs and administrative overhead fee, shall be due and payable to County within thirty (30) days from the date of written notice provided by County.

#### **20.20. Quiet Enjoyment:**

Subject to the terms of this Agreement, specifically including, but not limited to, environmental remediation steps to be taken under Article 9 (Environmental Compliance), the County's right and obligation to make certain repairs, alterations, and additions under Articles 6 (Maintenance by Lessor) and 20.09 (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 16.12 (Right of Flight), or the reservation of any other easements, rights of way, licenses, or other real property rights in favor of the County currently burdening the Premises, 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.

**20.21. Interpretation of Agreement:**

This Agreement is the result of negotiation between the parties hereto and has been typed/printed by one party for the convenience of both parties, and the parties covenant that this Agreement shall not be construed in favor of or against any of the parties hereto.

**20.22. 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.

**20.23. Special Definitions:**

As used in this Agreement, the following terms shall have the meanings given to such terms below:

(A) "Approvals" means any and all approvals of Lessor required pursuant to the term of this Lease or otherwise of any other governmental authority in form and substance reasonably acceptable to Lessee that are required prior to Lessee commencing construction of all of the Improvements including without limitation, any and all Lessor or other governmental approvals of this Agreement, the plans and specifications for the Improvements or any other prerequisite to the commencement of construction of the Improvements as set forth herein.

(B) "Aviation Activities" means any aviation or aviation activities customarily undertaken at public airports such as TMB but specifically excluding the Non-Aeronautical Uses

(C) "Non-Aeronautical Uses" has the meaning given to such term in Article 2.02 above.

**20.24. Applicability of Terms:**

County and the Lessee acknowledge that the development and future use contemplated at the Premises pursuant to this Agreement are Non-Aeronautical uses that do not involve Aviation Activities. Accordingly, unless it relates to an issue of safety or security, Lessee is not required to comply with rules or regulations that relate solely to Aviation Activities.

**20.25. Construction of Turn Lane:**

Lessee shall, at its sole cost, cause the construction of a dedicated right turn lane along Southwest 137th Avenue southbound to Southwest 136th Street with pedestrian access (the "Turn Lane"). Lessee shall bear all associated costs, including, but not limited to the relocation of utilities, AOA fence, and trees, as applicable, relating to the

construction of the Turn Lane. Upon completion of construction of the Turn Lane the Lessee shall dedicate the completed Turn Lane to the County. The completion of construction of the Turn Lane shall occur within five (5) years of the Effective Date of the Lease and in accordance with all regulatory requirements (the "Turn Lane Deadline"); provided, however, that so long as the Lessee is diligently pursuing completion of the Turn Lane, Lessor may, in good faith and in its sole discretion, extend the Turn Lane completion deadline by up to twelve (12) months. If BTZ has diligently pursued regulatory approvals to construct the Turn Lane but, due to no fault of BTZ, has been denied approval to construct the Turn Lane, BTZ shall be relieved of any obligation to construct the Turn Lane. The determination of whether BTZ has diligently pursued the approvals required to construct the Turn Lane shall be solely in the discretion of the County. If any regulatory agency/department will not allow the Turn Lane for any reason, then BTZ will be relieved of the obligation to construct the Turn Lane.

**20.26 County Retains All Existing Easements:**

Nothing herein shall be construed as waiving or relinquishing any easements, rights of way, licenses, or other encumbrances currently burdening the Premises in favor of the County including but not limited to, easements, rights of way, or licenses issued by the Miami-Dade County Aviation Department for the benefit of any other County department or for the County generally. Lessee takes this lease subject to all such easements, rights of way, licenses, or other encumbrances, whether or not such easements, rights of way, licenses, or other rights have been disclosed by the County, and whether or not such easements, rights of way, licenses, or other encumbrances were known or knowable by Lessee in the exercise of its due diligence.

(Remainder of this page intentionally left blank)

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

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

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

ATTEST: JUAN FERNANDEZ-BARQUIN Clerk

By: \_\_\_\_\_  
Deputy Clerk

Date: \_\_\_\_\_  
(SEAL)

Approved as to form and legal sufficiency.

\_\_\_\_\_  
Assistant County Attorney



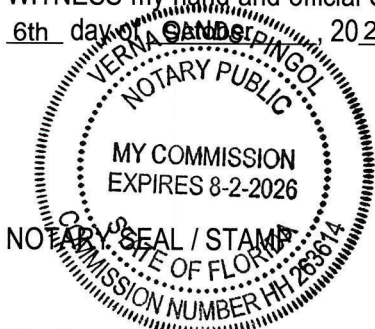
**BTZ OPERATIONS, LLC**

BY: [Signature]  
President  
Craig M. Zinn  
Print Name  
Date: October 6, 2023

ATTEST: [Signature]  
Corporate Secretary  
Patricia Parke  
Print Name

STATE OF Florida  
COUNTY OF Broward

I HEREBY CERTIFY, that on this 6th day of October, 2023 before me, an officer duly authorized to administer oaths and take acknowledgments, appeared Craig M. Zinn,  in person or  via online notarization, who is personally known to me, or proven, by producing the following identification: \_\_\_\_\_, to be the President of BTZ Operations, LLC, an existing Limited Liability Company under the laws of the State of Florida, and whose name the forgoing instrument is executed and said officer severally acknowledged before me that he executed said instrument acting under the authority duly vested by said corporation and its Corporate Seal is affixed thereto. WITNESS my hand and official Seal in the City of Hollywood in the County and State aforesaid, on this, the 6th day of October, 2023.



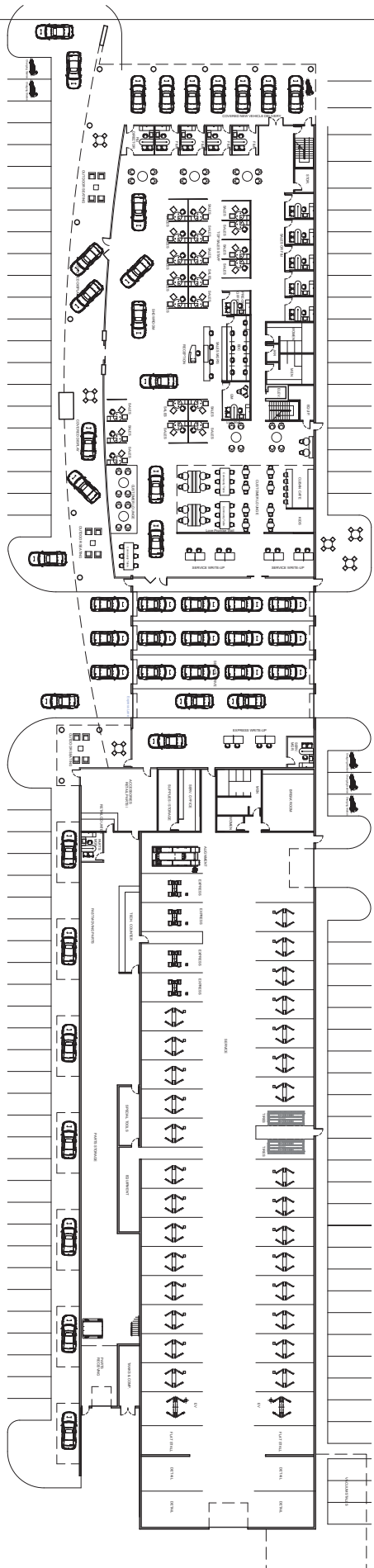
[Signature] (SEAL)  
Notary Public  
VERNA SANDS-PINGOL  
Print Name

Notary Public, State of FLORIDA  
My Commission expires: HH263614 8/2/26

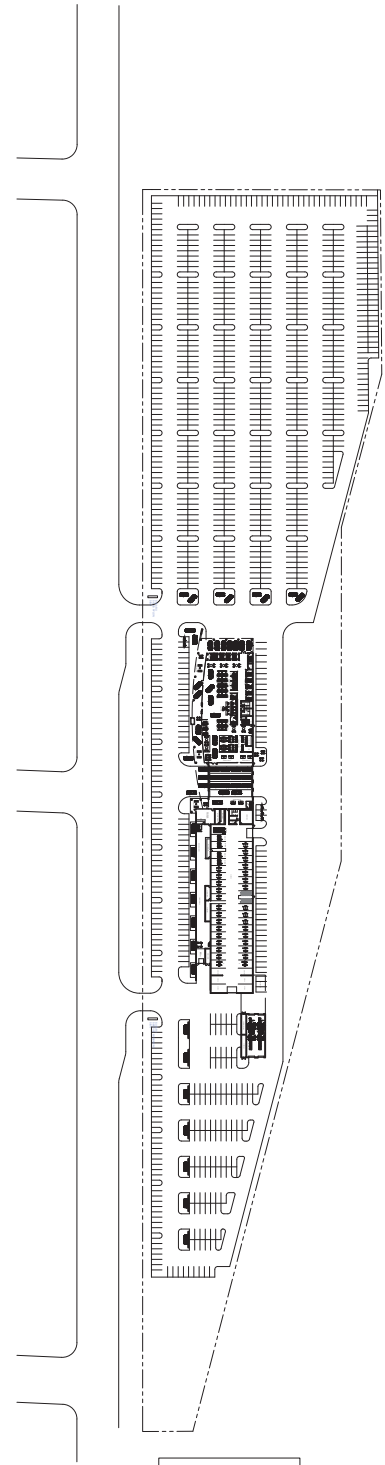
The foregoing was accepted and approved on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Resolution No. \_\_\_\_\_ of the Board of County Commissioners of Miami-Dade County, Florida.



 FLOOR PLAN  
1" = 20'-0"



 SITE PLAN  
1" = 100'-0"



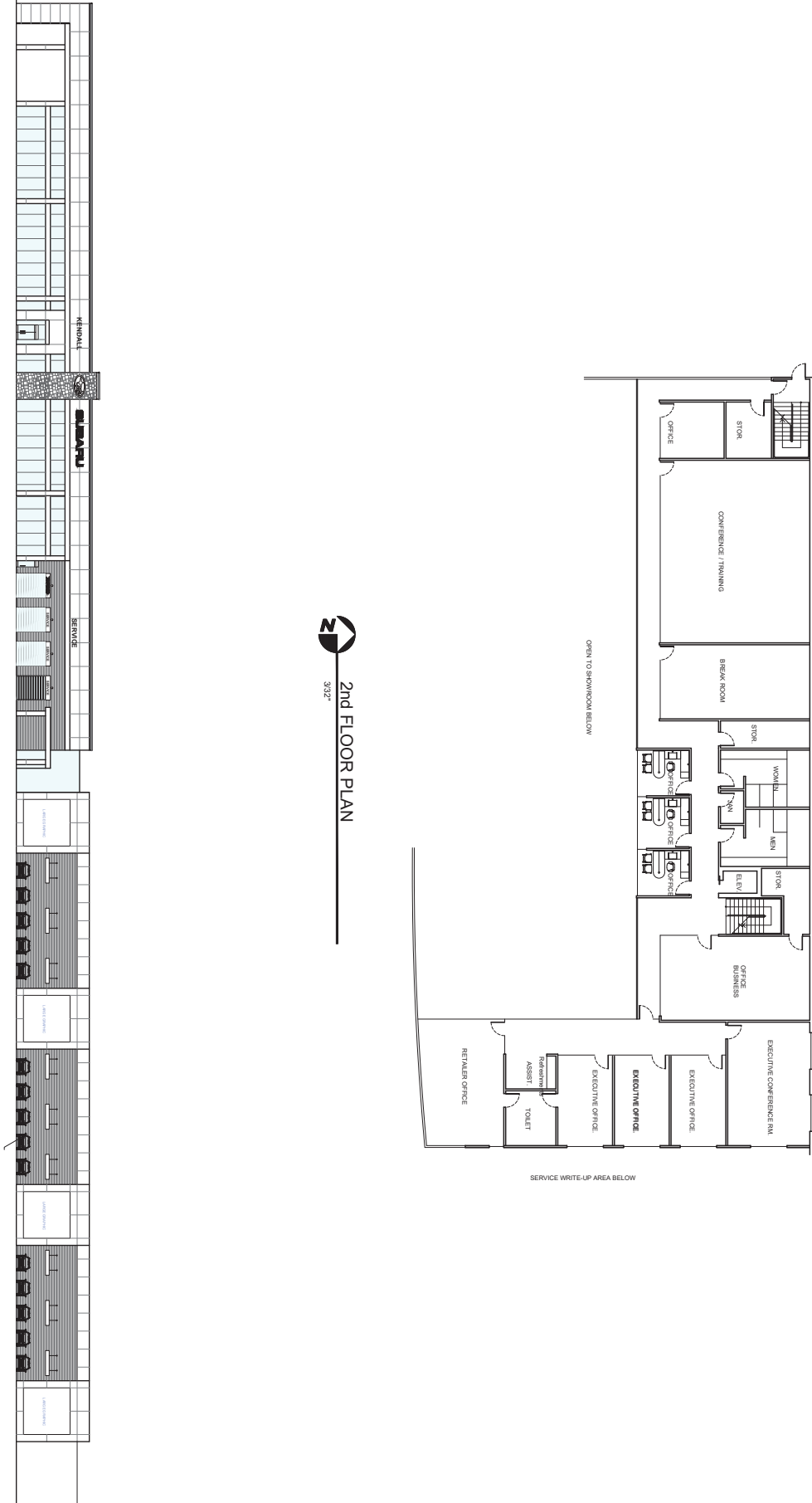
**FACILITY DATA**  
 SALES FIRST FLOOR = 15,981 S.F.  
 SALES 2nd FLOOR = 7,680 S.F.  
 SERVICE & PARTS = 29,566 S.F.  
**TOTAL = 53,227 S.F.**

FHD project # 18 Project Name  
 Drawn by [Name]  
 Checked by [Name]  
 Date: 09/26/23  
 PROJECT: [Name]  
 SHEET: [Number]  
 1

This document contains information that is confidential to the client. It is intended for the use of the client only. It is not to be distributed, copied, or used for any other purpose without the written consent of the client.

Proposed Site & Floor plans  
**KENDALL SUBARU**  
 TB Project Address  
 FL

 **FELTUS HAWKINS DESIGN**  
 1207A McGavock St. | 615.244.4328  
 Nashville, TN 37203 | www.fhdesign.com



2nd FLOOR PLAN  
3/27

FRONT ELEVATION  
1" = 20'-0"

SERVICE WRITE-UP AREA BELOW

OPEN TO SHOWROOM BELOW

Proposed 2nd Floor Plan & Front Elevation

**KENDALL SUBARU**

FL

**fh** FELTUS HAWKINS DESIGN  
1207A McGavock St. | 615.244.4328  
Nashville, TN 37203 | www.fhdesign.com

This document is the property of FHD and is to be used only for the project and location specified. It is not to be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of FHD. © 2018 FHD. All rights reserved.

FHD project # B-Project Name  
Drawn by: [signature]  
Checked by: Not Approved  
Date: 09/26/23

## **SUSTAINABLE BUILDING PROGRAM, SEA LEVEL RISE, AND OTHER REQUIRED RESILIENCE AND SUSTAINABILITY PRACTICES**

**April 2023**

**Project Location:** Unincorporated Miami-Dade County (UMSA), Miami Executive Airport (TMB)

**Project Summary:** Subaru dealership at Miami Executive Airport (TMB)

**The requirements listed below apply to the project as summarized above. If the project scope, conditions and terms change and new evaluation of requirements must be completed.**

*Note: In addition to the requirements identified below, if Targeted Jobs Incentive Fund Program (TJIF) funding is utilized for the project then the appropriate program requirements must be followed as identified in [County Ordinance 05-91](#).*

### **Sustainable Buildings Program**

**In compliance with [Ordinance 07-65](#) and [Implementing Order 8-8](#)**, any new building or any addition to a building which is County-owned, -financed or -operated is required to attain "Silver" or higher designation under the LEED for New Construction (LEED-NC) Rating System per the County's Sustainable Building Program. In addition, the owner shall pursue and fully achieve the LEED Silver designation at the completion of construction. Additionally, any new infrastructure project which is County-owned, -financed or -operated is required to attain "Silver" or higher designation under the ENVISION system for infrastructure.

### **Sea Level Rise**

**In compliance with [Resolution No. R-451-14](#) and [Ordinance No. 14-79](#)**, all County infrastructure projects that come before the Board of County Commissioners must consider sea level rise in their planning, design, and construction. The Resolution states that, "all County infrastructure projects, ... shall consider sea level rise projections and potential impacts as best estimated at the time of the project, using the regionally consistent unified sea level rise projections, during all project phases including but not limited to planning, design, and construction, **in order to ensure that infrastructure projects will function properly for fifty (50) years** or the design life of the project, whichever is greater." In addition:

Additional green building requirements the owner must comply with include:

- **Cool Roofs ([Resolution R-1103-10](#) and [Resolution R-54-18](#)):** All County-owned or -operated facilities, including those subject to the SBP, as well as public and affordable housing projects, must comply with the "cool roof" requirement. For these qualifying projects, all new construction, roofing maintenance, and re-roofing work where the surface material is being replaced must utilize highly reflective and emissive materials that remain significantly cooler than traditional materials. "Cool roof" materials must meet the standards for solar reflectance and thermal emittance as determined by the Cool Roof Rating Council (CRRC-1) Product Rating Program, and shall be labeled and certified by the manufacturer.
- **Electric Vehicle (EV) Charging Stations ([Ordinance 19-17](#)):** This project is located in Unincorporated Miami-Dade County Service Area (UMSA). Therefore, the owner must include parking or parking facilities with charging infrastructure for electric vehicles (EV's) and EV-ready parking spaces. The ordinance outlines the requirements the project must comply with related to the provisioning of EV infrastructure. In addition, Per [Resolution No. R-1101-15](#) and recommendations in the associated report titled "*Plan to Install Electric Vehicle Charging Stations to Serve the General Public*," new parking structures and surface lots shall have a 2% minimum number of parking spaces to be EV ready, meaning electrical capacity and other infrastructure (dedicated circuits, conduit, wire, electric panels) shall be in place to facilitate installation of charging stations when demand increases.
- **Life Cycle Cost Analysis ([Administrative Order 11-3](#)):** Life Cycle Cost Analysis of the Public Project's structure, enclosure and equipment is required. Life Cycle Cost Analysis is an analysis that determines the most cost-effective option among different competing alternatives by including all direct and externalized



costs associated with processes, materials, and goods (more than initial costs are considered) when estimating the actual total cost of an investment. An examples of a specific LEED credit that may be earned is the "Building Life-Cycle Impact Reduction" credit under LEED for New Construction and Major Renovations (v4.1).

- **Solar Feasibility Study and Solar Water Heating Systems (Resolution 303-17):** For a Public Project that includes either (i) New Construction that includes a roof or (ii) any work related to a roof (including but not limited to roof replacement, re-roofing, roof repairs, or roof O&M) where the cost is equal to or exceeds 50% of the roof's replacement cost, the following requirements apply:
  1. A solar feasibility checklist is required to be submitted to the Sustainability Manager prior to 30% design completion as an initial screening for possible solar photovoltaic or solar thermal installation, and
  2. If a Building or Infrastructure uses or will use more than 1,000 gallons of hot water per day, a solar water heating system that provides at least 65 percent of hot water needs shall be required.
  3. An example of a specific LEED credit that may be earned is the "Renewable Energy" credit under both LEED for New Construction and Major Renovations (v4.1) and LEED for Commercial Interiors (v.4.1)

**Additional Recommendations:**

- Address light pollution by selecting lighting fixtures that provide backlight-Uplight-Glare (BUG) protection which provides more effective control of unwanted light and reduces energy consumption. Use outdoor LED lighting that does not exceed the minimum levels specified by the Illuminating Engineering Society of North America (IES) recommended practices for night-time safety, utility, security, productivity, enjoyment and commerce not to exceed 16 lumens per square feet of hardscape for areas exclusively used for the display of vehicles and not to exceed 7.5 lumens per square feet of hardscape for other non-sale areas. In addition, controls shall be provided that automatically extinguish all outdoor lighting when sufficient daylight is available using a control device or system such as a photoelectric switch, programable lighting controller, building automation system or lighting energy management system, all with battery or similar backup power or device. Additional resources can be found at Dark Sky compliant outdoor lighting at <https://www.darksky.org/our-work/lighting/lighting-for-citizens/lighting-basics/>
- In addition to meeting Miami-Dade County landscape code for tree requirements include more shade trees along southern border and create a green stormwater catchment area along that line.

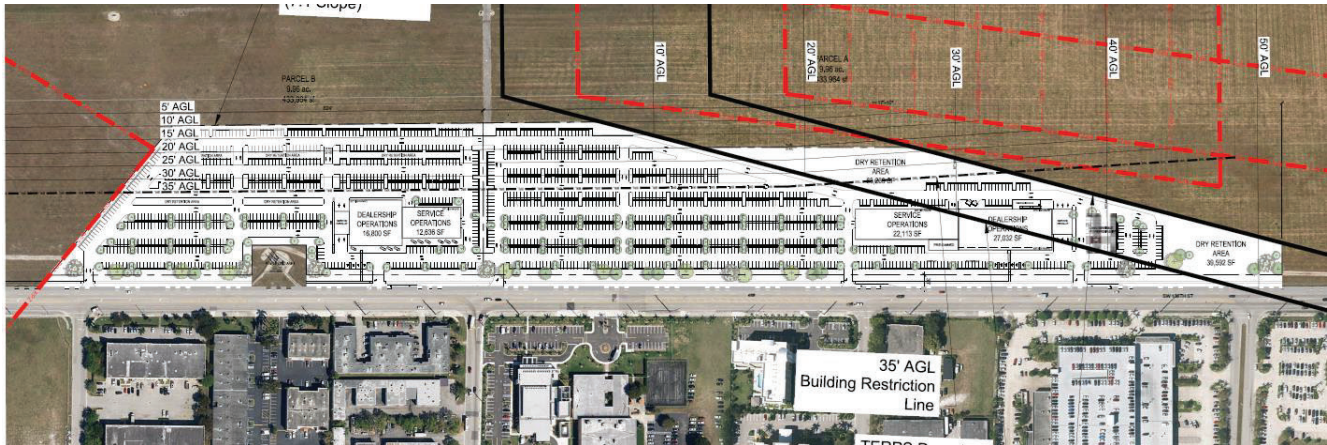
**Date:** March 23, 2023

**To:** Alex Muñoz, Director  
Miami-Dade County Internal Services Department

**From:** Rashid Istambouli, P.E. Senior Division Chief  
Division of Environmental Resources Management  
Regulatory and Economic Resources

**Subject:** Miami-Dade Aviation Department Property Considered for Lease Designation of up to a 21 Acre Portion of Folio No. 30-5915-000-0010

The Division of Environmental Resources Management (DERM) has reviewed the below conceptual site plan for potential commercial uses on up to a 21-acre portion of the Miami Executive Airport operated by the Miami-Dade Aviation Department (MDAD), and offers the following preliminary comments:



#### Public water and public sanitary sewer requirements

According to DERM records, the property is connected to public water and sewer. In accordance with Chapter 24 of the Miami-Dade County Code (the Code), any new development will require connection to the public water supply system and sanitary sewer system. Please note, only the Miami-Dade Water and Sewer Department can provide the actual points of connection.

#### Drainage and flood protection requirements

Pursuant to Section 24-48.1(1)(f) of the Miami-Dade County Code, a DERM Class VI permit is required prior to DERM approval of development orders that would allow the installation of a drainage (or surface water management).

At a minimum, the County Flood Criteria adopted in Miami-Dade County in October 2022, or subsequent standards in effect at the time of review and approval shall be complied with. Most current and groundwater level data available at the time of the review and approval, from the county or other agencies, shall be used.

For compliance with Miami-Dade County stormwater management requirements, stormwater shall be retained on-site for the 25-YR 72-HR design storm event utilizing a properly designed seepage or

infiltration drainage system. The developer or lessee shall provide signed and sealed calculations to prove that the minimum retention on site is being met.

The developer or lessee shall provide a certified letter that the minimum stormwater retention shall be maintained operational and undisturbed as long as the facility does not change use, density, increases the impervious area or the height of buildings. Such changes to the property will only be approved after submittal of new signed and sealed calculations and plans showing that minimum retention requirements and other standards in the Federal, State, and local regulations are met.

If the level of service required for any public conveyance system is negatively impacted because of the proposed commercial uses, the developer, lessee, and/or subsequent owner(s) shall be responsible to implement capital improvements of the stormwater infrastructure, as required by DERM.

The stormwater from the existing Miami Executive Airport ditch discharges into the Lindgren Road secondary canal and provides flood protection for the surrounding neighborhoods. Therefore, the Engineer of Record for the proposed project shall provide signed and sealed calculations demonstrating there are no adverse impacts in the pre- vs post-project canal stages in the Miami Executive Airport ditch or the Lindgren Road secondary canal including water quality impacts, and to ensure that the level of flood protection service provided is maintained.

If any runoff from the Miami Executive Airport property folio no. 30-5915-000-0010 is discharged into the area of the proposed development, proper mitigation must be constructed to avoid flooding impacts in the airport property or surrounding properties. Therefore, the Engineer of Record for the project shall provide signed and sealed calculations demonstrating there are no adverse impacts in the pre- vs post-project conditions including water quantity and water quality impacts, and to ensure that the level of flood protection service provided is maintained.

The developer or lessee (and/or subsequent owners), or the property owner (MDAD, in the event that there is no longer a lessee), shall be responsible to maintain and operate the stormwater retention system associated with the proposed development once it is approved and built. Any required improvements/development will be subject to review and approval by RER-DERM and will also include application for necessary permits and completing/certifying the improvements after completion.

The applicant is advised to contact the DERM Water Control Section at (305)372-6681 or [dermwatercontrol@miamidadegov](mailto:dermwatercontrol@miamidadegov) for further information regarding permitting procedures and requirements.

#### Environmental Assessment requirements

DERM has no records of known or documented contamination on this portion of the property. However, based on the current use of the site (part of an active airport property) DERM review and approval of a Phase 1 and Phase 2 Environmental Site Assessment prepared in accordance with ASTM standards shall be required prior to any development at the site, as applicable. Additionally, any construction plans (inclusive of drainage) and dewatering plans may require the review and approval from the Environmental Monitoring and Restoration Division of DERM as it relates to environmental contamination.

#### Endangered Species requirements

The proposed project area is within the consultation area for the federally endangered Florida bonneted bat and provides a combination of open land and water that is similar to other sites in Miami-Dade County where foraging or roosting by the Florida bonneted bat has been documented. Additionally, the proposed project area is a nesting habitat for the burrowing owl, which is a Federally listed Threatened species. Due to the presence of these listed species, the project as proposed may need to be re-designed. **DERM recommends, at a minimum, coordination regarding the preservation and maintenance of any unique and natural resources in the proposed project area prior to the leasing of County-owned land.**

MDAD and the future lessee are advised that habitat and utilization of resources by listed species is protected by the Code and is subject to specific policies in the Miami-Dade County Comprehensive Development Master Plan.

Any questions regarding endangered species can be directed to the United States Fish and Wildlife Service (USFWS) in the Vero Beach office at (772) 562-3909 or the Natural Resources Division of DERM at (305) 372-6575.

#### Natural Resources Requirements

Portions of the subject property (folio no. 30-5915-000-0010) may contain pine rockland habitat. Please be advised that tree resources, including those within pine rockland habitat, will require a Miami-Dade County Tree Removal Permit. The subject project area contains tree resources and may include specimen trees (trees with a trunk diameter at breast height of 18 inches or greater). Specimen trees are protected by Section 24-49.2(II) of the Code. The applicant is advised that a tree survey that includes a tree disposition table will be required during the tree removal permit application process.

DERM notes the following:

1. This preliminary review is not an authorization to remove and/or relocate tree resources that are subject to the Tree Preservation and Protection provisions of the Code without a Miami-Dade County Tree Permit. A Miami-Dade County Tree Permit is required prior to the removal and/or relocation of any tree that is subject to the Tree Preservation and Protection provisions of the Code. Projects and permits shall comply with the requirements of Sections 24-49.2 and 24-49.4 of the Code, including the specimen tree standards. This Division recommends that the Aviation Department contact the Tree and Forest Resources Section at (305) 372-6574 or [tfrs@miamidadade.gov](mailto:tfrs@miamidadade.gov) for further information regarding permitting procedures and requirements.
2. Future site plan development of the area associated with the proposed development must be consistent with the requirements to preserve specimen trees except in cases where DERM has determined that a specimen tree cannot be preserved pursuant to section 24-49.2(4)(II)(2) of the Code. This memo shall not be construed as an approval to remove specimen trees due to a determination of unreasonable loss of usable space pursuant to section 24-49.2(4)(II)(2)(b) of the Code.
3. All prohibited species listed in section 24-49.9 that exist within the proposed project area shall be removed prior to development or redevelopment and any developed parcels shall be maintained to prevent the growth or accumulation of prohibited species in accordance with section 24-49.9 of the Code.

Lease Agreement Recommendations:

1. **Tree Canopy**. In an effort to meet the 30% tree canopy goal in Miami-Dade County, the Miami-Dade County Department of Regulatory and Economic Resources-Division of Environmental Resources Management (“DERM”), or successor agency recommends that the Lessee provide a proposed tree canopy plan for DERM review and approval in the Project Area or the Lessee provide tree planting in a mutually acceptable area to provide additional tree canopy.
2. **Rare, Threatened and Endangered Species Survey**. No later than ninety (90) days prior to the expiration of the due diligence period within the Initial Lease, the Lessee shall provide at the Lessee’s expense a Biological Survey of the lease area that identifies any County, state and federally listed rare, threatened and endangered species including any listed species of special concern to the Miami-Dade County Department of Regulatory and Economic Resources-Division of Environmental Resources Management (“DERM”), or successor agency, for review and approval.



3. **Prohibited species in the Lease area.** In the event that there are prohibited species listed in section 24-49.9 of the Code within the project area, the Lessee shall remove all prohibited species within one year of the lease agreement Effective Date.
4. **Environmental Site Assessment.** Within ninety (90) days of the Effective Date of the initial Lease Agreement, Lessee shall, at Lessee's sole cost and expense, furnish to the Miami-Dade County Department of Regulatory and Economic Resources-Division of Environmental Resources Management ("**DERM**"), or successor agency, an environmental site assessment of the Project area that meets the standards for a Phase I Environmental Site Assessment report acceptable to the DERM in order to determine the existence and extent, if any, of Hazardous Materials (as defined herein) or toxic substances and hazardous waste within the Project area in violation of any laws, ordinances, rules or restrictions of any governmental authority having jurisdiction. "Hazardous Materials" shall mean any hazardous or toxic substance, material or waste, it shall also include solid waste or debris of any kind or any other substance which is regulated by any environmental law. If the Phase I Environmental Site Assessment requires further investigation and/or testing then Lessee shall undertake, at Lessee's sole cost and expense, a Phase II Environmental Site Assessment report to confirm that the environmental condition is the same, or better, as that set forth in the Phase 1 Environmental Site Assessment report or test for, specifically, contamination (as defined in Section 24-5 of the Code of Miami-Dade County (the Code) and/or Chapter 62-780 Florida Administrative Code (FAC) or the presence of Hazardous Materials on the Property in violation of any environmental laws, ordinances, rules or restrictions of any governmental authority having jurisdiction over the Property. Lessee shall, within five business days' of its receipt of any such Phase II Environmental Site Assessment report but no later than sixty (60) days' prior to Closing, provide a copy thereof to DERM. All environmental site assessment reports shall be certified to the Lessee and the date of certification shall be as of the date in which work was performed or reviewed by the environmental professional but in no case more than six (6) months prior to Closing.
5. **Drainage and dewatering.** All construction and site development plans (inclusive of drainage) and dewatering plans for the Project for the Improvements and any other construction undertaken on for the Project during the Term, shall require the review and approval from the Miami-Dade County Department of Regulatory and Economic Resources-Division of Environmental Resources Management ("**DERM**"), or successor agency, as it relates to environmental contamination issues. Furthermore, the Lessee shall prepare and submit to DERM for review and approval a Soil Management Plan, Dust Control/Air Monitoring Plan, and Health and Safety Plan prior to site development and construction in any area of the Property where there is documented soil or groundwater contamination as determined by a Phase 2 Environmental Site Assessment and site investigation conducted in accordance with ASTM Standards and Chapter 24, Code of Miami-Dade County. Lessee shall not itself use and shall not permit any third parties to use on-site groundwater or surface water without prior DERM review and approval.

This memorandum *does not* constitute DERM approval of the proposed project. DERM review and approval is required for development permits, environmental permits, other additional approvals, and additional development permits to complete the project in compliance with the Code or environmental regulations in effect at the time of application.

If you have any questions concerning the comments or wish to discuss this matter further, please contact Christine Velazquez at (305) 372-6764.




# Memorandum



**Date:** April 27, 2023

**To:** Ms. Kristina Guillen  
Miami-Dade Aviation Department

**From:** Maria A. Valdes, CSM, LEED® Green Associate  
Chief, Planning & Water Certification Section  
Water & Sewer Department (WASD) 

**Subject:** Request for water and sewer infrastructure information for potential Subaru Dealership within Miami Executive Airport

---

The Water and Sewer Department has received your request for water and sewer infrastructure information for a potential Subaru Dealership within 14 acres of the Miami Executive Airport owned by Miami-Dade Aviation Department.

Below please find information on the water and sewer infrastructure for the potential Subaru Dealership. A WASD Developer Agreement will be required for the connection to water and sewer. Any future development will have to be done by the developer at their own expense and according to WASD's Rules and Regulations and Specifications and Standards. The information provided below is preliminary, and final points of connection and capacity approval to connect to the water and sewer infrastructure will be provided at the time the WASD Developer Agreement is offered.

Project Name: Subaru Dealership

Location: The proposed project is located north of SW 136<sup>th</sup> Street, approximately between SW 138<sup>th</sup> Avenue and SW 142<sup>nd</sup> Avenue, within 14 acres of the Miami Executive Airport with Folio No. 30-5915-000-0010, in Unincorporated Miami-Dade County.

Proposed Development: Subaru Dealership

Water: The subject project is located within WASD's water service area. There is a 20-inch water main abutting the site along SW 136<sup>th</sup> Terrace; however, per WASD's Rules and Regulations, a 20-inch water main is not considered frontage, and a 16-inch water main extension along SW 136<sup>th</sup> Terrace (Section Line) will be required to provide frontage to the proposed site.

Also, please note that there is an existing 16-inch water main, within a WASD Utility Easement, within the proposed site, that per site plan provided, it appears to be in direct conflict with the Dealership Operation's building and must be relocated or the proposed building must be shifted to avoid conflict with the water main. The existing 16-inch water main is located within the Miami Executive Airport property, approximately 380 feet east of SW 139<sup>th</sup> Court.

Sewer: The subject project is located within WASD's sewer service area. There is an abutting 8-inch gravity sewer along SW 136<sup>th</sup> Terrace to where connection can be made to provide sewer service to the future development. The future flows will be transmitted to Pump Station No. 0573 which is in OK Moratorium Status.

Should you have any questions, please contact me at 786-552-8198 or via email at [mavald@miamidadegov](mailto:mavald@miamidadegov).

[To Be Placed on Company Letterhead]

Company Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Primary Contact Name: \_\_\_\_\_

Primary Contact Title: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Date of Beneficial Occupancy: \_\_\_\_\_

Date Job Period Began: \_\_\_\_\_

Date Job Period Ends: \_\_\_\_\_

Job Year of this Certificate from date of DBO: \_\_\_\_\_

This Certificate, to include Exhibit F-1 and F-2 (and if applicable F-2a) to the Job Certificate, must be completed to document the number of Jobs located at the Project during the Job Year as required in Article 7.06(F). Exhibit "F-1" to this Job Certificate must be based upon a report run from the Company's Human Resources system and be based upon RT-6 filings with the State of Florida and the respective W-2 forms for each Job. The County's rights to audit the Company's records and supporting information provided in this Job Certificate are set forth in Article 20.14 of the Lease.

I hereby certify that the information in this Job Certificate and any accompanying documents are true and correct to the best of my knowledge, information and belief based upon Company records and based upon the RT-6 filings with the State of Florida, and the respective W-2 forms for each Job. A notarized signature from an authorized signatory of the Company is required.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

Notary:

**Jobs**

The Lease contains Economic Development Requirements in Article 7.06 which state that no less than: a) a total of 50 Jobs will be created and maintained for years 1 and 2 after the Date of Beneficial Occupancy ("DBO") at a Job Salary Amount of \$65,000.00 per year (resulting in a Job Requirement of \$3,250,000.00 per year), b) a total of 60 jobs will be created and maintained for years 3 and 4 after DBO at a Job Salary Amount of \$70,000.00 per year (resulting in a Job Requirement of \$4,200,000.00 per year), and c) a total of 70 jobs must be created and maintained from years 5-20 after DBO at a Job Salary Amount of \$75,000.00 (resulting in a Job Requirement of \$5,250,000.00 per year). Job Requirement(s) must be Certified annually pursuant to Article 7.06(F)(4) following the date of Date of Beneficial Occupancy and through year 20 after the DBO. The first year may be Certified on a pro-rata basis.

Date of Beneficial Occupancy: \_\_\_\_\_  
 Certification Period: Job Year number \_\_\_ after the DBO; Period \_\_/\_\_/\_\_ through \_\_/\_\_/\_\_

A) **Requirements**

Total required Job Amount required during certification period: \_\_\_\_\_  
 Job Salary Amount required during certification period: \$ \_\_\_\_\_  
 Total Job Requirement required during certification period: \$ \_\_\_\_\_

B) **Actual**

Actual Jobs worked during the "Job Requirement" certification period: \_\_\_\_\_  
 To be determined from the Average Jobs Number for the year indicated on applicable RT-6 Reports:  
 Quarter Ending 3/31, 1<sup>st</sup> Month \_\_\_\_\_, 2<sup>nd</sup> Month \_\_\_\_\_, 3<sup>rd</sup> Month \_\_\_\_\_,  
 Quarter Ending 6/30, 1<sup>st</sup> Month \_\_\_\_\_, 2<sup>nd</sup> Month \_\_\_\_\_, 3<sup>rd</sup> Month \_\_\_\_\_,  
 Quarter Ending 9/30, 1<sup>st</sup> Month \_\_\_\_\_, 2<sup>nd</sup> Month \_\_\_\_\_, 3<sup>rd</sup> Month \_\_\_\_\_,  
 Quarter Ending 12/31, 1<sup>st</sup> Month \_\_\_\_\_, 2<sup>nd</sup> Month \_\_\_\_\_, 3<sup>rd</sup> Month \_\_\_\_\_,

Actual Job Salary Amount (Gross Wages paid for Year): \$ \_\_\_\_\_  
 To be determined from the applicable RT-6 Reports:  
 Quarter Ending 3/31, Gross Wages Paid this Quarter \$ \_\_\_\_\_  
 Quarter Ending 6/30, Gross Wages Paid this Quarter \$ \_\_\_\_\_  
 Quarter Ending 9/30, Gross Wages Paid this Quarter \$ \_\_\_\_\_  
 Quarter Ending 12/31, Gross Wages Paid this Quarter \$ \_\_\_\_\_

C) **Job Calculations**

Average Jobs Number: \_\_\_\_\_  
 Actual Jobs worked x actual Job Salary Amount / required Job Salary Amount  
 Number of Jobs which exceed the LWCT: \_\_\_\_\_  
 Number of Jobs which do NOT exceed the LWCT: \_\_\_\_\_  
 Job Shortage Number as defined in section 7.06(F)(3), if any \_\_\_\_\_  
 Liquidated Damages Amount due per Job not complied with \$ \_\_\_\_\_  
 Total Liquidated Damages Amount due for the year \$ \_\_\_\_\_

[Attach applicable RT-6 Reports for the Year] [W-2's to be made available for inspection upon request]

\*This document is for reporting purposes only. If there are any inconsistencies between any portion of Exhibit F and the Lease, the Lease shall govern.

\*\* Upon mutual agreement, the parties may substitute Exhibits F-1, F-2, F-2a or use such other format which complies with the Lease.



Exhibit "F-2a" Living Wage Calculation Worksheet  
(Fill out for each employee whose W-2  
Earnings are Not in Excess of LWCT)

Job Year number \_\_\_ after the DBO  
Period \_\_\_/\_\_\_/\_\_\_ through \_\_\_/\_\_\_/\_\_\_

LWCT - Living Wage Compensation Threshold from Exhibit F-2: 30,906.72

Employee I.D. 12345 Employee Initials: J.D. Employee Job Title: Sales Manager

Employee W-2 Earnings for Year: \$4,200

Days Employed During Job Year: 57  
Net Days Employed During Job Year\*: 56 / 365) = .153 ( Portion of Year worked)  
Reduction for leave\*: 1  
In the case of FMLA, ADA or other unpaid leave reduce Days Employed as applicable

Adjusted Earnings = W-2 Earnings / Portion of Year Worked: \$4,200 / .153 = \$27,450.98

Do the Adjusted Earnings Equal or Exceed the LWCT Requirement for this Employee?  
 Yes Employee compensation Exceeds LWCT  No Employee compensation does NOT meet LWCT threshold

Or

Alternative Calculation for Part Time Employees

Employee W-2 Earnings for Year: \$14,000 / Hours Worked During Year: 900 = \$ 15.55 /hr average

Living Wage Rate ("LWR") In Effect on January 1st: \$16.51 \$20.34  
With Qualifying Benefits Without Qualifying Benefits

Does Employer Offer a Qualifying Health Benefit Plan:  Yes  No

Does the Employee hourly average exceed the applicable LWR: :  Yes  No

Notes:

\*The LWR is updated October 1st of each year. Therefore, actual LWR must be used for each part of the year. Multiple forms can be used for each calendar year.

\*\* This document is for reporting purposes only. If there are any inconsistencies between any portion of Exhibit F and the Lease, the Lease shall govern.

\*\*\* Upon mutual agreement, the parties may substitute Exhibits F-1, F-2, F-2a or use such other format which complies with the Lease.





**MEMORANDUM**  
(Revised)

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

**DATE:** December 12, 2023

**FROM:**   
Gen Bonzon-Keenan  
County Attorney

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

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- 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(A)(1)  
12-12-23

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

RESOLUTION DECLARING PROPERTY SURPLUS AND APPROVING, PURSUANT TO SECTION 125.045, FLORIDA STATUTES, A DEVELOPMENT LEASE AGREEMENT BETWEEN THE COUNTY AND BTZ OPERATIONS, LLC FOR AN APPROXIMATELY 14-ACRE PARCEL AT MIAMI EXECUTIVE AIRPORT, FOR DEVELOPMENT OF AN AUTOMOBILE DEALERSHIP WITH A MINIMUM INVESTMENT OF \$15,000,000.00, FOR AN INITIAL TERM OF 30 YEARS WITH TWO 5-YEAR RENEWAL OPTION TERMS, AT AN ESTIMATED \$77,871,000.00 IN TOTAL RENT AND OTHER REVENUE FOR THE INITIAL TERM; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE LEASE, TO TAKE ALL ACTIONS NECESSARY TO EFFECTUATE SAME, AND TO EXERCISE ALL RIGHTS CONFERRED THEREIN, INCLUDING THE TERMINATION RIGHTS; AND DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO PROVIDE AN EXECUTED COPY OF THE LEASE TO THE PROPERTY APPRAISER'S OFFICE WITHIN 30 DAYS OF LEASE EXECUTION

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

**WHEREAS**, the County seeks to promote economic development in the County and invigorate the area and community surrounding Miami Executive Airport; and

**WHEREAS**, in exchange for the right to lease, develop, and operate an Automotive Dealership on surplus property located at Miami Executive Airport, BTZ Operations, LLC shall:

(1) make a minimum investment of \$15,000,000.00 for the creation of new Automotive Dealership and related infrastructure; (2) create 82 plus temporary jobs during the construction period and 70 permanent jobs for the operation of the Automotive Dealership with average salaries between \$65,000.00 and \$75,000.00; (3) pay approximately \$77,871,000.00 in revenues to the County

through fees and rent over the initial term of the lease; (4) donate at least \$50,000.00 annually for automotive job training programs within the County; and (5) donate at least \$50,000.00 annually to the Nicklaus Children's Hospital Foundation; and

**WHEREAS**, the lease and the development and operation of the Automotive Dealership will enhance and benefit the County, enhance the public and the community interests, and create jobs and promote the economic growth of the County as a whole; and

**WHEREAS**, in order to fulfill the aforementioned goals and to expedite economic growth in the County and in the area and community surrounding Miami Executive Airport, including creating jobs and job training designed to further grow the County's economy, the County desires to lease surplus land at Miami Executive Airport to BTZ Operations, LLC, pursuant to the authority provided to Miami-Dade County under Section 124.045, Florida Statutes, for the development and operation of an Automotive Dealership and related infrastructure,

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

**Section 1.** This Board incorporates and approves the foregoing recitals and the accompanying Mayor's memorandum as if fully set forth herein.

**Section 2.** This Board declares the subject property surplus and approves, pursuant to section 125.045, Florida Statutes, the development lease agreement between the County and BTZ Operations, LLC, in substantially the form attached hereto (the "Lease"), for the County to lease an approximately 14-acre parcel at Miami Executive Airport to BTZ Operations, LLC, for the development and operation of an Automotive Dealership, in exchange for rents and other revenue

to the County estimated to be \$77,871,000.00 over the initial 30-year term of Lease. This Board hereby finds that the Lease will promote economic growth, attract new business enterprise, and create permanent jobs, and approves the Lease as an economic development conveyance.

**Section 3.** This Board authorizes the County Mayor or County Mayor’s Designee to execute the Lease for and on behalf of Miami-Dade County, to take all actions necessary to effectuate the Lease, and to exercise all rights conferred in the Lease, including the termination rights.

**Section 4.** This Board directs the County Mayor or County Mayor’s Designee to provide an executed copy of the Lease to the Property Appraiser’s Office within 30 days of Lease execution.

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

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

The Chairperson thereupon declared this resolution duly passed and adopted this 12<sup>th</sup> day of December, 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

JUAN FERNANDEZ-BARQUIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.



Ryan C. Zagare