

Agreement No.:
Customer No.:

**LEASE AGREEMENT BETWEEN MIAMI-DADE COUNTY, FLORIDA,
AS LESSOR , AND _____, AS LESSEE AT MIAMI-OPA LOCKA
EXECUTIVE AIRPORT**

This Lease Agreement (the "Agreement") is made and entered into as of the _____ day of _____, _____, ("Commencement Date"), by and between MIAMI-DADE COUNTY (the "County" or "Lessor"), a political subdivision of the State of Florida, and _____, (the "Lessee").

WITNESSETH

WHEREAS, the County owns Miami-Opa locka Executive Airport ("OPF" or the "Airport") and operates it through the Miami-Dade Aviation Department (the "Department" or "MDAD"); and

WHEREAS, as required by federal statutes and regulations, County owns a parcel of property located immediately to the west of Runway 9 Left, such parcel known as a "Runway Protection Zone" ("RPZ"), to be used for the safety of pilots and their aircraft; and

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

ARTICLE 1
Term and Premises

1.01. **Term**: The County hereby leases the premises to the Lessee for a term of five (5) years, effective on the Commencement Date and, cancelable by either party at any time upon not less than thirty (30) days advance written notice, the premises set forth in Article 1.02 (Premises), for the purposes and uses set forth in Article 2 (Use of Premises).

1.02. **Extension**: The Lessee may request to extend the Agreement for up to five (5) additional one year terms by so advising the County no later than 180 days prior to the expiration date of the original five year term, and subsequently, 180 days prior to the expiration date of any succeeding one year term. Should the Lessee fail to notify the County within the time prescribed, or if the County does not approve the extension, the Agreement shall terminate at the end of its term

1.03 **Premises**: The premises leased herein are located at Miami-Opa locka Executive Airport ("Airport"), and are more particularly described below and as shown on Exhibit __, attached hereto and made a part hereof ("Premises"):

Land 182,275 Square Feet

1.03 **Relocation of Premises**: The Premises are subject to relocation, modification, or deletion within the Airport, at the sole discretion of the Department, and this Agreement may be administratively revised to reflect such relocation, modification, or deletion, upon at least one hundred-twenty (60) days advance written notice to the Lessee by the Department. Relocated space may not be similar in size, configuration, or location on the Airport to the Premises

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described in Article 1.02 (Premises) and may be subject to different rental rates. The Lessee may accept the relocated or modified premises, or may vacate the Premises within the notice period.

1.04 Suitability of Premises: The Lessee acknowledges the Premises are suitable for the Lessee's proposed use and the County has no obligation to perform or cause to be performed any acts such as maintenance, repairs, cleanup, painting, or the like of the leased Premises. Said Premises are leased in an as-is condition. The Lessee's obligation under this Agreement, such as in Article 6.01(B) (Permits and Licenses), to obtain all operating permits required of the Lessee at the Lessee's sole cost and expense, shall remain the Lessee's exclusive obligation to perform in order to obtain such permits, and shall not require the County to take any action or perform any tasks within the Premises to enable the Lessee to obtain such permits, including, but not limited to, certificates of occupancy. The Lessee further acknowledges by executing this Agreement that the Lessee shall make the necessary investments and all improvements to the Premises to make the Premises suitable for the Lessee's use and to satisfy the County's environmental, life, safety, fire and occupancy requirements which the Lessee shall make at its own expense and risk. The County shall have no obligation to Lessee to compensate or reimburse Lessee for such investments and improvements.

1.05 Review by FAA: This Agreement is subject to the review of the Federal Aviation Administration (FAA), and shall not be effective until completion of such FAA review and the parties' acceptance of any changes hereto required or necessary as a result of the FAA review. If the FAA indicates that any portion of this Agreement is not consistent with the requirements of federal law or grant assurances, or else raises an objection to any portion of this Agreement, the Department shall have the right in its sole discretion to either declare this Agreement to be null and void or else to change the terms of this Agreement so as to overcome the reasons for the FAA's statements or objections and submit to the Lessee this Agreement as so changed. In the latter event, Lessee shall respond to such proposed changes promptly and in any case not later than sixty (60) days from the date of submission by the Department. If the Lessee accepts such changes, the parties will execute a new Agreement as changed, subject again to FAA review. At any time following the FAA's initial review of this Agreement in which the FAA made statements or else raised concerns about the terms of the Agreement, the Department may determine that it is in the best interests of the County to lease the Premises to another party on terms that would be acceptable to the FAA, and upon such determination, whatever rights Lessee may have hereunder shall cease upon Lessee's receipt of such statement of determination. No compensation of any sort shall be payable to Lessee in the event that (a) the Department declares this Agreement to be null and void, (b) the Department makes a determination to lease the Premises to another party, or (c) the parties are unable to agree to the terms of a revised Agreement that will overcome the concerns raised by the FAA.

ARTICLE 2 Use of Premises

2.01 Use of Premises: The Lessee shall use the Premises for the following purposes only, and shall not use the Premises for any other purpose without the advance written approval of the Department.

Storage parking lot for boats and commercial vehicles

2.02 Non-Flyable Aircraft: In no instance shall any non-flyable aircraft be parked or stored on the Premises for a period in excess of 60 consecutive days, without the prior written approval of the Department. After such 60-day period, the Lessee shall remove any non-flyable aircraft from the Premises within 15 days, when notified in writing by the Department to do so, unless such aircraft is then and there undergoing maintenance as authorized herein. Failure of the Lessee to remove non-flyable aircraft shall result in the Department declaring said aircraft derelict and subject to removal pursuant to Chapter 25-10.24 of the Miami-Dade County Code, as well as the Department's termination of this Agreement.

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

ARTICLE 3 Rentals and Payments

3.01 MAG AND RENT PAYMENTS:

- (A) The Minimum Annual Guarantee due from Lessee to Lessor shall be One Hundred Nine Thousand Three Hundred Sixty Five Dollars (\$109,365.00) payable in equal month installments of Nine Thousand One Hundred Thirteen Dollars (\$9,113.75) ("Monthly MAG") subject to this Article 3. The first monthly payment due MDAD of the Monthly MAG must be made on or before April 1, 2015, or such other day as determined by MDAD, and shall be prorated if necessary so that such payment encompasses the period of time extending to the tenth (10th) day of the following month. Such first payment must necessarily be a Monthly MAG payment inasmuch as Lessee will not have had any revenue activity from which to calculate the Opportunity Fee for a prior month so as to determine if the Monthly MAG payment exceeds the Revenue Item for that month or not.
- (B) On or before the tenth (10th) day of each month thereafter, the Lessee shall pay the Department the greater of (i) the Monthly MAG, or (ii) 40% of the gross revenues arising under this Agreement (referred to as the "Revenue Item"), plus applicable taxes including sales taxes. If the Lessee's Revenue Item in any month, is less than the Monthly MAG, then the Lessee's payment of the Monthly MAG shall be in lieu of, and in full satisfaction of, Lessee's obligation to pay said Revenue Item. In any month in which the Revenue item plus applicable taxes exceed the Monthly MAG, then the Lessee shall pay the Department the total of such Revenue Item which will constitute full satisfaction of Lessee's obligation to pay the Monthly MAG. All monthly payments, whether the Monthly MAG or the Revenue Item, are due on or before the 10th day of each month with or without billing, in advance, and in U.S. funds in the manner prescribed by MDAD from time to time.
- (C) Because the Lessee's payment of the Monthly MAG on the 10th day of the last month of this Agreement consists of the Land Rent, Lessee shall make one final payment to MDAD on or before the 10th day of the month following termination of this Agreement that reflects any Opportunity Fee and Fuel Flowage Fee due to MDAD for Lessee's activities in the last month of this Agreement.

3.02 Opportunity Fee: The Opportunity Fee that is part of the Revenue Item payable by Lessee monthly shall include forty percent (40%) of Lessee's Gross Revenues for the storage parking lot for boats and commercial vehicles for that month. On or before the tenth (10th) day of each month, the Lessee shall determine the Gross Revenues for the previous month for its storage parking lot for boats and commercial vehicles, as "Gross Revenues" are defined in Article 3.11, The percentage fees payable on any unreported Gross Revenues, determined by the annual audit required pursuant to Article 3.14 (Annual Audit Required) shall be considered, for the purposes of Article 3.08 (Late Payment Charge), as having been due on the tenth day of the month following the month during which such unreported Gross Revenues were received or accrued. The County acknowledges that the Opportunity Fee is not a payment for the lease or license to use the Premises, but rather is a payment for the Lessee's privilege of doing business on the Airport land. The first Opportunity Fee shall be paid on or before the 10th day of the second month of this Agreement to reflect Lessee's activities during the first month hereof, and the last Opportunity Fee payment shall be made on or before the 10th day of the month following the month in which this Agreement expires or is terminated.

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3.03 AnnualRent: As rental for the lease of the Premises, the Lessee shall pay to the County commencing on the commencement date of this Lease Agreement, the annual sum of \$109,365.00 to be paid in equal monthly installments of \$9,113.75, in U.S. funds, on April 1, 2015, for the first payment (such rents to be pro rated) and on the first day of each and every month in advance thereafter and without billing, at the offices of the Department as set forth in Article 3.07 (Address for Payments). Said rental is computed as follows, with such rental rates being adjusted as of the commencement of the Agreement to reflect then-current fair market value rents and adjusted annually thereafter in the manner set forth in Article 3.14.

| <u>DESCRIPTION</u> | <u>SQ. FT.</u> | <u>RATE</u> | <u>ANNUAL*</u> | <u>MONTHLY*</u> |
|--------------------|----------------|-------------|----------------|-----------------|
| Land | 182,275 | \$.60 | \$109,365.00 | \$9,113.75 |

*Plus applicable state sales taxes, as required by law.

3.04 Security Deposit: Prior to access to the Premises or any portion thereof for the purpose of alterations specific to the Lessee's needs and/or occupancy of the Premises, the Lessee shall pay to the County an amount equal to two times (2) the required total monthly rental as determined pursuant to Article 3.01 above, plus applicable state sales tax, as security for the payment of the Lessee's obligations hereunder. Said deposit shall be in addition to any required rental payments, and the Department shall be entitled to apply such payment to any debt of the Lessee owed to the Department that may then exist, as permitted by law, including but not limited to the rentals required hereunder. In lieu of a cash security deposit, the Department in its sole discretion, may authorize the Lessee to provide an irrevocable Letter of Credit, in a form provided by the Department. The amount of the security deposit is subject to adjustment by the Department at any time there is a change in the annual or monthly rentals pursuant to the terms of this Agreement; provided further, that the Department shall have the right to demand an increase in the security deposit requirement of up to an additional four (4) months rental to provide the Department with adequate assurance of the Lessee's payment of its obligations, which assurance is required because of the Lessee's default in the timely payment of rentals, fees, and charges due hereunder, or because the Department, based on published reports, has concerns that the Lessee's future ability to pay such rentals, fees and charges, on a timely basis, is in jeopardy.

3.05 Rental Rate Review: Annually as of October 1 of each year of the term of this Agreement, or such other date as may be established by the Board of County Commissioners (the "Board"), the rental rates applicable to the Premises as stated in Article 3.01 (Rentals) shall be subject to review and adjustment in accordance with the adjustment of rental rates for the Airport. When such rental rate adjustments are established by the Board or as directed by the MDAD Director pursuant to Resolution No. R-186-01, and new or revised rental rates applicable in whole or in part for the Premises are established, this Agreement shall be considered and deemed to have been administratively amended to incorporate the revised rental rates effective as of such established date. Such revised rental rates shall be reflected by a letter between the Department and the Lessee to be attached hereto. Payments for any retroactive rental adjustments shall be due upon billing to the Lessee by the Department and payable by the Lessee within thirty (30) calendar days of same. Notwithstanding anything to the contrary provided herein, the adjustment of rental rates for the Premises shall be based on a non-discriminatory application of the rental rates for the Airport as adjusted by the Board.

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

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

Miami-Dade Aviation Department
Finance Division
P. O. Box 526624
Miami, Florida 33152

or payments may be made by hand-delivery to the Finance Division offices located at 4200 NW 36 Street, 3rd Floor, Miami, Florida during normal working hours.

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 Board (currently set at one and one-half percent (1½%) per month), shall accrue against the delinquent payment(s) from the original due date until the Department actually receives payment. The right of the County to require payment of such interest and the obligation of the Lessee to pay same shall be in addition to and not in lieu of the rights of the County to enforce other provisions herein, including termination of this Agreement, and to pursue any 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 County in payment of any obligation arising under this Agreement, the Lessee shall incur and pay a service fee of TWENTY-FIVE DOLLARS, if the face value of the dishonored check or draft is \$50.00 or less, THIRTY DOLLARS, if the face value of the dishonored check or draft is more than \$50.00 and less than \$300.00, FORTY DOLLARS, if the face value of the dishonored check or draft is \$300.00 or more, or Five Percent of the face value of such dishonored check or draft, whichever is greater, plus penalties imposed by law (F.S. 832.08 and 125.0105). Further, in such event, the Department may require that future payments required pursuant to this Agreement be made by cashier's check or other means acceptable to the Department.

3.10 Utilities: The Lessee shall pay for all utilities it uses. The County shall have no obligation to provide utilities to the Premises other than those existing as of the effective date of this Agreement.

3.11 Gross Revenues: The term "Gross Revenues", as used in this Agreement means all moneys paid or payable to, or considerations of determinable value received by the Lessee for sales made, transactions had, fees charged (including sums collected for the Opportunity Fees) or services rendered in the operation of its business under this Agreement and from the subleasing of office space or other portions of the Premises, regardless of when or where the order therefor is received, whether paid or unpaid, whether on a cash or credit basis or in consideration of any other thing of value; provided, however, that any sales refunds and taxes imposed by law which are separately stated to and actually paid by a customer and directly payable by the Lessee to a taxing authority shall be excluded therefrom. The term shall include fuel and lubricant sales, and amounts collected by the Lessee on behalf of the Department, e.g. landing fees. The term shall include all charges by Lessee that are stated on invoices or other documents of Lessee as being charges "passed through" to the customer, except as may be specifically exempted from the term "Gross Revenues" in this Article 3.16.

3.12 Records and Reports: The Lessee shall keep in Miami-Dade County, during the term of this Agreement, all books of account, records and reports used in its operation necessary to report Gross Revenues and to calculate the percentage Opportunity and Fuel Flowage Fees payable hereunder and as may, from time to time, be required by the Department to document its activities pursuant to this agreement. All Gross Revenues hereunder shall be accounted for in accordance with generally accepted accounting principles. The form of all such books of account, records and reports shall be subject to the approval of the Department and/or the auditors of the County (one or more of the following: the designated external auditing firm or other certified public accounting firm selected by the Department,

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the County's Department of Audit and Management Services or the auditors of the State of Florida). Recommendations for change, additions or deletions to such books of account, records and reports by the auditors of the County shall be complied with by the Lessee when requested by the department. The auditors of the County shall be permitted, during normal working hours, to audit and examine all books of account, records and reports relating to the operations of the Lessee hereunder, including, but not limited to, balance sheets, profit and loss statements, deposit receipts, Florida State Sales tax reports and such other documents as many be determined by the Department to be necessary and appropriate; provided, however, that the Lessee shall not be required to retain such records in Dade County, Florida, for more than three years following termination of this Agreement.

3.13 Monthly Report of Gross Revenues: On or before the tenth day following the end of each calendar month throughout the term of this Agreement, the Lessee shall furnish to the Department, in addition to the Lessee's payment of the Monthly MAG or Revenue Items then due, a statement of monthly Gross Revenues for the preceding calendar month and certify as to the accuracy of such Gross Revenues in the form prescribed by the Department. In the event there are no Gross Revenues a monthly report will be submitted stating such.

3.14 Annual Audit Required: Within sixty days of each anniversary of the Commencement Date and within sixty days following termination of this Agreement, the Lessee shall, at its sole cost and expense, provide to the Department on an annual (or portion thereof) basis an audit report of monthly Gross Revenues, containing an unqualified opinion, prepared and attested to by an independent certified public accounting firm, licensed in the State of Florida. The report shall include a schedule of Gross Revenues and percentage Opportunity Fees paid to the County under this Agreement, prepared in accordance with the comprehensive basis of accounting defined under terms of this Agreement and reported in the format as subsequently prescribed by the Department. The audit shall be conducted in accordance with generally accepted auditing standards and include issuance of a management letter, which will contain the findings discovered during the course of the examination, such as recommendations to improve internal controls and other significant matters related to this Agreement. In addition, the audit shall include comprehensive compliance procedures to determine whether the books of account, records and reports were kept in accordance with the terms of this Agreement for the period of examination. The last such report shall include the last day(s) of operations.

3.15 Right to Inspect: The Department and the auditors of the County shall have the right, without limitation, to enter upon the Premises at anytime during normal operating hours of the Lessee to: (1) inspect, review, verify and check all or any portion(s) of the Lessee's procedures for recording or compiling Gross Revenue information by day or month, and (2) audit, check, inspect and review all books of account, records, financial reports, financial statements, operating statements, inventory records, copies of State sales tax returns, and work papers relating to the operation of the Lessee, and other pertinent information as may be determined to be needed or desirable by the Department.

3.16 Other Fees and Charges : The Lessee acknowledges that the Board of County Commissioners has or will establish or direct the establishment, from time to time, of various fees and charges for the use of various facilities, equipment and services provided by the County and not leased to or specifically provided to the Lessee hereunder, and procedures relating to the payment of same. The Lessee shall pay, upon billing, for its use of such facilities, equipment and services those fees and charges which are billed monthly. For other fees and charges which are based on usage, the Lessee shall, unless otherwise directed by the Department in writing, report its uses of applicable facilities, equipment and services and pay the applicable fees and charges at such frequency and in such manner as may be prescribed by the Department.

ARTICLE 4 Maintenance and Repair by Lessee

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

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4.02 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 manner approved by the Department.

4.03 Maintenance and Repairs: The Lessee shall repair and maintain in good condition the Premises and all improvements or alterations thereto, except for those items for which the County is responsible pursuant to Article 5 (Maintenance by County). All repairs and maintenance shall at all times be based on a standard of care reflecting prudent property management. Maintenance and repairs shall be in quality and class equal to or better than the original work to preserve the Premises in good order and condition. The Lessee shall repair all damage caused by the Lessee and its employees, agents, independent contractors, vendors, suppliers, patrons, servants, subsidiaries, or invitees. Prior to or at termination of this Agreement, (i) damage done by the installation or removal of personal property of the Lessee shall be repaired to restore the Premises to its original state, except as the Premises may have been altered by the Lessee with the approval of the Department pursuant to Article 7.01 (Alterations), and (ii) Lessee shall quit and surrender up the Premises in the same good order and condition as it was at the commencement of this Agreement, except for reasonable wear and tear and damage caused by an Act of God; provided however, that such return of the Premises under this Article 4.03 shall not relieve the Lessee of its obligations for damages to the Premises specifically provided for elsewhere in this Agreement. Any equipment installed in the Premises or elsewhere in the Airport by the Lessee shall be removed and, unless the space as altered, either by the Lessee or by a predecessor of the Lessee and accepted by the Lessee, is usable by a successor tenant, in the opinion of the Department, the space shall be returned to its original condition, normal wear and tear excepted, upon relocation or termination of this Agreement.

4.04 Tenant Airport Construction Contracts: From time to time, the Lessee and the County through its County Manager or designee shall be entitled to enter into Tenant Airport Construction ("TAC") contracts for the purpose of enabling the Lessee to construct facilities or improvements deemed necessary or appropriate for Lessee's construction and use of its improvements hereunder. Such contracts shall comply with MDAD's TAC contract requirements, which TAC contract requirements may be amended or updated by MDAD.

4.05 Excavation of Land: No excavation of any of the land shall be made, no soil or earth shall be removed from the Premises, and no well of any nature shall be dug, constructed or drilled on the Premises, except as may be required for environmental monitoring purposes, without the prior written approval by the Department.

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

4.07 Industrial Waste Facilities: The Lessee shall be fully responsible for all industrial wastes exiting 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.

4.08 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 other tenants' leaseholds. All landscaping maintenance required hereunder shall be performed in accordance with landscape maintenance standards, as published by the Department.

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4.10 Inspections: The Department and/or its designated representative(s) 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 or the County, pursuant to Article 5 (Maintenance by County), 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 thirty (30) days of receipt of written notice from the Department; provided, however that if such corrective work cannot be reasonably accomplished within a thirty (30) day period then the Lessee shall (i) provide a time estimate to complete the corrective work to the Department for approval, such approval shall not be unreasonably withheld, and (ii) commence and complete the corrective work within the approved time period. The Department, at the Lessee's expense, may take any action necessary to expedite and complete the corrective work where the Lessee has not completed the corrective work within the thirty (30) day or other applicable approval period. Trash and debris problems shall be corrected within twenty-four (24) hours following receipt of either oral or written notice from the Department. Failure of the Department to inspect as aforementioned shall not impose any liability on the Department or the County.

4.11 Failure to Maintain: If the Department determines that the Lessee has failed to properly clean, remove trash and debris, maintain, repair, replace and refurbish the Premises as required by this Article 4 (Maintenance and Repair by Lessee), the Department shall provide the Lessee a list of deficiencies, reflecting the amount of time to be reasonably allowed for the Lessee to correct same. If the Lessee fails to correct such deficiencies within the time allowed, the Department may enter the Premises and perform all necessary work, in the Department's judgment, and the County shall add the cost of such work, plus twenty-five percent (25%) for administrative costs, to the rental 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 rental. Subsequent to receipt of the further notice of intent to perform repairs or cleanup from the Department, the Lessee shall not undertake performance of such repairs or cleanup without specific prior written authorization from the Department.

ARTICLE 5 Maintenance by County

5.01 County Maintenance: The County shall maintain the existing water, sanitary sewerage and storm water drainage facilities that lie outside the boundaries of the Premises. The County shall have no other maintenance responsibility whatsoever for these premises.

5.02 Maintenance of Public Airport Facilities: The County shall maintain all public Airport facilities and improvements which Lessee has non-exclusive use rights under Article 2.01 (General Privileges, Uses and Rights).

5.03 County Maintenance Subject to Certain Conditions: Such maintenance as defined in Article 5.02 above, by the County may be subject to interruption caused by such occurrences as repairs of equipment, strikes, lockouts, labor controversies, inability to obtain fuel, power or parts for equipment, accidents, breakdowns, catastrophes, national or local emergencies, terrorism, or acts of God. Upon any such happening, the Lessee shall have no claim for damages for the County's failure to furnish or to furnish in a timely manner any such maintenance; provided, however, that the Department, in its sole discretion, may provide a rental 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 5.01 (County Maintenance). The County shall exercise reasonable diligence to remedy and/or cure any such interruptions, to the extent such interruptions are within the County's control.

ARTICLE 6 Regulations, Licenses and Permits

6.01 Rules and Regulations - General:

(A) Rules and Regulations

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The Lessee shall comply with all: (i) County ordinances; (ii) Department rules and regulations; (iii) administrative orders; (iv) Chapter 25, Code of Miami-Dade County, Florida (the "Code"); (v) operational directives; and (vi) laws, statutes, ordinances, regulations and rules of the federal, state and county governments, which specifically includes federal air and safety laws and regulations and federal, state and county environmental laws, and any and all plans and programs developed in compliance therewith, which may be applicable to its operations or activities under this Agreement.

(B) Permits and Licenses

- (1) The Lessee, at its sole cost and expense, shall be liable and responsible for obtaining, paying for, maintaining on a current basis, and fully complying with, any and all permits, licenses and other governmental authorizations, required, at any time throughout the entire term of this Agreement, by any federal, state, or county governmental entity or any judicial body having jurisdiction over the Lessee or the Lessee's operations and activities, for any activity of the Lessee conducted on the Premises and for any and all operations conducted by the Lessee, including insuring that all legal requirements, permits and licenses necessary for or resulting, directly or indirectly, from the Lessee's operations and activities on the Premises are obtained and complied with.
- (2) Such permits and licenses shall include, but not be limited to, a Certificate of Use and Occupancy and any required industrial waste or operating permits from the Miami-Dade County Department of Environmental Resources Management. Prior to occupancy of the Premises and commencement of operations under this Agreement, the Lessee shall provide to the Department a copy of its CO and, as applicable, the appropriate operating waste permit(s). Upon written request of the Department, the Lessee shall provide to the Department copies of any permits and licenses, and applications therefore, which the Department may request.
- (3) The Department shall, to the extent practicable and applicable, assist Lessee to obtain any required permit or license.

(C) Penalties, Assessments and Fines

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, contractors, vendors, suppliers, subsidiaries, invitees, or trespassers have violated any law, ordinance, regulation, rule or directive described in Article 6.01 above or any plan or program developed in compliance therewith. The Lessee further agrees that the substance of this Sub-Article 6.01 shall be included in every sublease, contract and other agreement, which the Lessee may enter into related to its operations and activities under this Agreement and that any such sublease, contract and other agreement shall specifically provide that "Miami-Dade County, Florida is a third party beneficiary of this and related provisions." This provision shall not constitute a waiver of any other conditions of this Agreement prohibiting or limiting assignments, subletting or subcontracting.

ARTICLE 7

Alteration of Premises and Erection of Signs

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7.01 Alterations: The Lessee shall not alter the Premises in any manner without the prior written approval of the Department. Such alterations include but are not limited to: (i) modifications to the electrical system; (ii) addition, deletion and relocation of electrical switches and outlets; (iii) installation, relocation and removal of satellite dishes, cables systems, security cameras, antennae; (iv) installation of wall systems; and (v) relocation of air-condition vents. In the event the Lessee is given approval to make any alterations to the Premises, the Lessee shall comply with the terms and conditions of the approval document from the Department, and in accordance to Article 4.05 (Tenant Airport Construction Contracts) and Article 6 (Regulations, Licenses and Permits). The Lessee's failure to comply with said terms and conditions, Article 4.05 (Tenant Airport Construction Contracts), or Article 6 (Regulations, Licenses and Permits) shall constitute a default pursuant to Article 12.03 (Other Defaults) hereof.

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

ARTICLE 8

Environmental Compliance

8.01 Definitions: For purposes of this Agreement, the following additional definitions apply:

(A) "Baseline Environmental Conditions" means the presence or release of Hazardous Materials, at, on, under, or from the Premises prior to Lessee's Occupancy Date, the presence or release of which was not caused by Lessee or Lessee's agents, employees, contractors, invitees or trespassers. Solely for purposes of this Agreement, it shall be presumed that the Baseline Environmental Conditions consist of the conditions identified in any existing (as of the date of this Agreement) Miami-Dade County maintained records, including contamination assessment reports and any other technical reports, data bases, remedial action plans, the Baseline Audit or the presence, discharge, disposal or release of any other Hazardous Materials originating prior to the Occupancy Date that comes to be located on the Premises and not caused by Lessee or Lessee's agents, employees, contractors, invitees or trespassers.

(B) "Environmental Claim" means any investigative, enforcement, cleanup, removal, containment, remedial or other private, governmental or regulatory action at any time threatened, instituted or completed pursuant to any applicable Environmental Requirement, against Lessee with respect to its operations at Miami-Opa locka Executive Airport or against or with respect to its operations at Miami-Opa locka Executive Airport or against or with respect to the Premises or any condition, use or activity on the Premises (including any such action against County), and any claim at any time threatened or made by any person against Lessee with respect to its operations at Miami-Opa locka Executive 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

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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.

(F) "Initial Construction Period" means for any lease which contemplates construction or renovation for Premises not previously occupied in whole or in part by Lessee under this Agreement and/or any previous Agreement, a period of time not to exceed six (6) months commencing with the date on which Lessee breaks ground on the Premises for construction of foundations or commences such renovation.

(G) "Occupancy Date" means the date Lessee first entered, occupied or took possession of the Premises under any written or verbal agreement.

(H) "On" or "in" when used with respect to the Premises or any premises adjacent to the Premises, means "on, in, under, above or about."

(I) "Other Airport Property" means property on the Airport occupied or used by Lessee, or upon which Lessee performs operations, but which is not subject to a lease, sublease or other legal agreement governing the terms of Lessee's occupation, use or operations at such property.

(J) "Recognized Environmental Condition" shall have the meaning set forth in ASTM E 1527-05, Section 1.1.1, as such provision may be amended or superseded from time to time.

(K) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment.

(L) "Remediation" means any investigation, clean-up, removal action, remedial action, restoration, repair, response action, corrective action, monitoring, sampling and analysis, installation, reclamation, closure, or post-closure in connection with the suspected, threatened or actual release of Hazardous Materials.

(M) "Trespassers" means third parties who have entered the Premises and whose actions while on the Premises have resulted in Release of Hazardous Materials directly onto the Premises. 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.

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

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hereby, warrants, covenants, agrees, and acknowledges that:

(A) Hazardous Materials may be present on the Premises and Other Airport Property. The County is currently engaged in a significant environmental remediation program at its airports.

(B) Under Article 8.05 below, Lessee is provided the opportunity to conduct an independent investigation of the Premises and the physical condition thereof, including the potential presence of any Hazardous Materials on or about the Premises. Lessee's report on the investigation, if any such report has been prepared, has been provided to the County and is listed in Tab B (Contamination Assessment Reports (CARS), Remedial Action Plans (RAPS) and other documents) attached to this Agreement. Whether Lessee has conducted such an investigation or not, Lessee is willing to proceed with this Agreement notwithstanding the environmental conditions of the premises of the properties surrounding the premises, subject to Lessee's right to terminate this Agreement as otherwise provided herein.

(C) Because of the possible presence of environmental contaminants on the Premises or other Airport property, County has made no express, implied, or other representations of any kind with respect to the suitability or usability of the Premises or other Airport Property, or any improvements appurtenant thereto, including, without limitation, the suitability or usability of any building materials, building systems, soils or groundwater conditions (due to the presence of Hazardous Materials in, on, under, or about the Premises or other Airport property), for Lessee's proposed or intended use, and Lessee has relied solely on Lessee's own inspection and examination of such matters.

(D) Except as to County's obligations set forth in this Article or elsewhere in this Agreement, Lessee expressly assumes the risk that Hazardous Materials that are or may be present on the Premises at the commencement of this Agreement may affect the suitability or usability of the Premises for Lessee's proposed or intended use. Lessee agrees that, except to the extent of County's Remediation obligations provided in this Article 9, or any other discharge, disposal or release of Hazardous Materials or violation of Environmental Requirements, caused by County, its agents, employees or contractors and except with respect to Baseline Environmental Conditions, County shall have no responsibility or liability with respect to any Hazardous Materials on the Premises. Notwithstanding the foregoing, in no event shall County be liable to Lessee for damages relating to physical or personal injury, business interruptions relocation costs or any other cost (other than a cost for which County is liable under this Article 9) resulting from the presence of Hazardous Materials on the Premises at any time during this Agreement.

8.03 Responsibilities for Hazardous Materials:

(A) Unless the parties agree otherwise in writing, the County shall conduct response actions mandated by existing Environmental Requirements applicable to the County for (i) Hazardous Materials disclosed in the Lessee Audit to the extent required by Article 8.05 and (ii) Baseline Environmental Conditions, provided however that:

1) To the extent this Agreement covers Premises not previously occupied by Lessee and if this Agreement contemplates construction or renovation by the Lessee, any Hazardous Material discovered during the Initial Construction Period as defined in Article 8.01(F), shall be presumed to be a Baseline Environmental Condition under this Agreement except to the extent the Aviation Department demonstrates to the satisfaction of Lessee by written notice setting forth the Aviation Department's explanation as to why the Hazardous Material originated from a discharge, disposal or release that was caused by Lessee, Lessee's agents, employees, contractors, invitees or Trespassers. Should Lessee determine that such a demonstration has not been made to Lessee's satisfaction, County may invoke the dispute resolution provision of 8.16 Until such time as the parties reach an agreement or such time as the dispute is otherwise resolved, responsibility for such Hazardous Material shall remain with the Aviation Department.

(A) The extent this Agreement covers premises previously occupied by Lessee, and except for Baseline Environmental Conditions, Remediation of any Hazardous Material discovered on the Premises shall be the responsibility of the Lessee, except to the extent that Lessee demonstrates to the satisfaction of Aviation Department Management by

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written notice setting forth Lessee's explanation as to why the Hazardous Material originated from (1) a discharge, disposal or release outside of the Premises, unless such discharge, disposal or release was caused by Lessee, Lessee's agents, employees, contractors or invitees; (2) a discharge, disposal or release of Hazardous Material on the Premises prior to the date upon which Lessee first occupied the premises and not caused by Lessee or Lessee's agents, employees, contractors, invitees or Trespassers; or (3) a discharge, disposal or release caused by the County, its agents, employees, contractors or any third party. Should the Aviation Department determine that such a demonstration has not been made to Aviation Department's satisfaction, Lessee may invoke the dispute resolution provision of 8.15. Until such time as the parties reach an agreement or such time as the dispute is otherwise resolved, responsibility for such Hazardous Material shall remain with Lessee.

(B) County's responsibility for Remediation under this Article 8.03 shall be limited to the Recognized Environmental Conditions required to be remediated under applicable Environmental Requirements. If County is permitted to leave any Hazardous Material in place under applicable Environmental Requirements, County shall have the option of so doing, unless a governmental authority requires at any time the removal of Hazardous Materials for Lessee to be able to continue with construction or occupancy of the Premises. The County shall notify Lessee of any such decision to leave Hazardous Material in place.

(C)(1) To the extent they exist, the County has made available to Lessee a listing of contamination assessment reports, remedial action plans and other documents regarding any soil and groundwater contamination at the Premises. The County may have already installed or may have plans to install remediation systems to clean up the contamination described in such reports to the extent they exist. Lessee agrees that during the term of the Agreement, County's authorized representatives shall have the right to enter the Premises in order to operate, inspect, maintain, relocate and replace any such installed systems. Without limiting the generality of the foregoing, the County shall have the right to: (a) install, use, monitor, remove (or, in connection with monitoring wells, abandon in place in accordance with applicable governmental regulations) soil borings, treatment systems, pumps, monitoring wells, and associated equipment; (b) construct, maintain, and ultimately remove various mechanical devices designed to aid in the monitoring and remediating effort; and (c) undertake such related activities as the Aviation Department or other governmental authorities may require or recommend, utilizing such methods as the Aviation Department or the applicable governmental authorities may elect in order to remediate the contamination described in any such reports.

(2) County shall utilize reasonable efforts to minimize any disturbance of the Lessee's use of the Premises caused by any Remediation it undertakes and shall provide Lessee prior written notice of such Remediation. Lessee agrees that it shall not unreasonably interfere with or obstruct such Remediation. County and Lessee each agree to take such action as may be reasonable to coordinate their operations so as to minimize any interference with the other party. If vehicles, equipment, or materials belonging to the Lessee have to be temporarily relocated to permit the Remediation to be performed, the Lessee will effect such relocation at no expense to the County.

(3) If Remediation equipment or materials need to be temporarily stored in a secure location on the Premises, the Lessee will provide reasonable storage inside the building on the Premises for such equipment and materials at no expense to the County, provided, however, that Lessee shall bear no liability and otherwise shall have no responsibility for any theft of and/or damage to such equipment or materials so stored, to the extent Lessee took reasonable measures to prevent, such theft and/or damage and such theft and/or damage was not caused by Lessee or Lessee's employees. To the extent that water and electrical service within the Premises are not metered and the Lessee does not pay for such services directly, the Lessee will provide the County with water and electrical service from the Premises in connection with the Remediation, without charge. The Lessee acknowledges the Remediation may be conducted at the locations depicted on the site at any time during the term of the Agreement and may continue until such time as a no further action letter is obtained from the appropriate regulatory authorities.

8.04 Baseline Audit: The County has provided Lessee with a copy of an environmental audit of the Premises, conducted to identify any Recognized Environmental Conditions associated with the Premises, which audit

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may include analyses of soil and groundwater samples (the initial "Baseline Audit"). Except to the extent Lessee previously occupied the Premises, the County shall be responsible for any Recognized Environmental Conditions within the meaning of ASTM E 1527-05, or most recent version, disclosed by the Baseline Audit. Except to the extent Lessee previously occupied the Premises, Lessee may terminate this Agreement within sixty (60) days of receipt of the Baseline Audit if Lessee, in its sole discretion, determines that the Recognized Environmental Conditions disclosed in such Baseline Audit are unacceptable. To the extent Lessee previously occupied the Premises, Lessee, subject to its right to invoke the dispute resolution provision of 8.15, shall be responsible for all Recognized Environmental Conditions disclosed in the Baseline Audit, which are not otherwise Baseline Environmental Conditions, unless Lessee demonstrates to the County's satisfaction that the Recognized Environmental Conditions originated from (1) a discharge, disposal or release outside of the Premises, unless such discharge, disposal or release was caused by Lessee, Lessee's agents, employees, contractors or invitees; or (2) a discharge, disposal or release of Hazardous Material on the Premises prior to Lessee's first occupancy of the Premises and not caused by Lessee, Lessee's agents, employees, contractors, invitees, or Trespassers.

8.05 Lessee Audit: Lessee, at its sole cost and expense, shall have the right to conduct, within sixty (60) days from the receipt of the Baseline Audit, an environmental inspection of the Premises (the "Lessee Audit"), through an independent environmental consultant approved in writing by County, such approval not to be unreasonably withheld or delayed. If Lessee elects to conduct a Lessee Audit, it shall furnish County a copy of the Lessee Audit within thirty (30) days of Lessee's receipt of the Lessee Audit. The purpose of the Lessee Audit is to determine whether there are present on the Premises any Recognized Environmental Conditions not identified in the Baseline Audit, any previous audits, or any contamination assessment reports or remedial action plans, to the extent any such documents exist. Within thirty (30) days of receipt of such Lessee Audit, the County shall notify Lessee if it disputes the Recognized Environmental Conditions or the delineation of any subsurface conditions described in the Lessee Audit. If the Lessee Audit reveals any Recognized Environmental Conditions or delineates any subsurface contamination not disclosed in any contamination assessment reports, remedial action plans, or the Baseline Audit, and which are not otherwise considered Baseline Environmental Conditions under the term of this Agreement, then, except to the extent that Lessee previously occupied the Premises, the County, at its option, shall: (i) allow Lessee to terminate the Agreement, without penalty, within sixty (60) days of receipt of such notice or dispute from the County; or (ii) notify Lessee that it has agreed to be responsible for such Recognized Environmental Conditions and delineated subsurface contamination to the same extent as the County is responsible for the Recognized Environmental Conditions and subsurface contamination disclosed in any contamination assessment reports, remedial action plans and the Baseline Audit. If the County allows Lessee to terminate the Agreement and Lessee elects not to terminate, Lessee's failure to terminate shall constitute a waiver of 1) Lessee's rights to terminate its obligations under this Agreement as to any findings in such Lessee Audit, except as to its right to cancel the lease on thirty (30) days notice under Article 1.01 (B) and, 2) as provided in Article 8.03, any claim it may have against the County with respect either to Recognized Environmental Conditions and subsurface contamination disclosed in such Lessee Audit. To the extent the Lessee previously occupied the Premises, Lessee shall be responsible for all Recognized Environmental Conditions disclosed in the Lessee Audit that are not Baseline Environmental Conditions unless Lessee demonstrates to the satisfaction of Aviation Department Management by written notice setting forth Lessee's explanation why the Recognized Environmental Conditions originated from (1) a discharge, disposal or release outside of the Premises, unless such discharge, disposal or release was caused by Lessee, Lessee's agents, employees, contractors, or invitees; (2) a discharge, disposal or release of Hazardous Material on the Premises prior to the Occupancy Date and not caused by Lessee or Lessee's agents, employees, contractors, invitees or Trespassers; or (3) a discharge, disposal or release caused by County or third party. Should the Aviation Department determine that such a demonstration has not been made to Aviation Department's satisfaction, Lessee may invoke the dispute resolution provision of 8.16 Until such time as the parties reach an agreement or until such time as the dispute is otherwise resolved, responsibility for such Recognized Environmental Condition shall remain with Lessee.

8.06 Environmental Maintenance of Premises: Except for the obligations of the County under this Article 8, 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,

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condition, and repair.

8.07 Lessee's Use of Hazardous Materials: is a complete list of all Hazardous Materials which Lessee currently intends to use on the Premises or Other Airport Property during the term of the Agreement which have been approved by the County, and the use, storage and transportation of which on or about the Premises shall not be subject to County's approval or objections. Lessee shall not use, store, generate, treat, transport, or dispose of any Hazardous Material on the Premises or Other Airport Property without first providing the County thirty (30) days written notice prior to bringing such Hazardous Material upon the premises. To the extent certain Hazardous Materials are needed to be used by Lessee on a non-routine basis, such as for emergency repairs, Lessee may provide such notice within twenty-four (24) hours of bringing such Hazardous Material upon the premises. Notwithstanding the foregoing, County may object to the use of any previously-approved Hazardous Material should County reasonably determine that the continued use of the Hazardous Material by Lessee presents a material increased risk of site contamination, damage or injury to persons, Premises, resources on or near the Premises of Other Airport Property, or noncompliance due to a change in regulation of such Hazardous Material under applicable Environmental Law. Upon County's objection, Lessee shall immediately remove the Hazardous Material from the site. This section 8.08 shall not apply to Hazardous Materials which are not used, generated, treated or disposed of by Lessee but which are otherwise transported by Lessee solely in the course of Lessee's business, such as cargo operations, and for which Lessee has no knowledge as to the identity of such hazardous materials prior to such transport. County's objection or failure to object to the use, storage, generation, treatment, transportation, or disposal of Hazardous Material under this paragraph, or the exclusion of certain Hazardous Materials under this paragraph, shall not limit or affect Lessee's obligations under this Agreement, including Lessee's duty to remedy or remove releases or threatened releases; to comply with applicable Environmental Law and/or Environmental Requirements relating to the use, storage, generation, treatment, transportation, and/or disposal of any such Hazardous Materials; or to indemnify County against any harm or damage caused thereby. Lessee shall promptly and completely answer periodic questionnaires from the County concerning Lessee's practices regarding the generation, use, storage, and disposal of Hazardous Materials under this Agreement.

8.08 Entry by County:

(A) Notwithstanding any other right of entry granted to County under this Agreement, and subject to the requirements set forth in Article 8.08(B), MDAD shall have the right, at its own expense and upon reasonable notice, to enter the Premises or to have consultants enter the Premises throughout the Term of this Agreement for the purposes of: (1) determining whether the Premises are in conformity with applicable Environmental Law; (2) conducting an environmental review or investigation of the Premises; (3) determining whether Lessee has complied with the applicable environmental requirements of this Agreement; (4) determining the corrective measures, if any, required of Lessee to ensure the safe use, storage, and disposal of Hazardous Materials; or (5) removing Hazardous Materials (except to the extent used, stored, generated, treated, transported, or disposed of by Lessee in compliance with applicable Environmental Requirements and the terms of this Agreement). Lessee agrees to provide access and reasonable assistance for such inspections. MDAD shall use its best efforts to reasonably minimize interruptions of business operations on the Premises.

(B) Such inspections may include, but are not limited to, entering the Premises or adjacent property with drill rigs or other machinery for the purpose of obtaining laboratory samples of environmental conditions or soil or groundwater conditions. Lessee shall have the right to collect split samples of any samples collected by MDAD, MDAD shall not be limited in the number of such inspections during the Term of this Agreement MDAD will conduct such inspections during Lessee's normal business hours, but MDAD may conduct such inspections in other than normal business hours if the circumstances so require. For inspections conducted by MDAD, MDAD agrees to provide Lessee with reasonable notice (not less than twenty four (24) hours) prior to inspecting the Premises; provided however, that such notice period shall not apply under circumstances in which MDAD reasonably determines that there exists an immediate threat to the health, safety, or welfare of any persons. Based on the results of such inspections, should MDAD reasonably determine that Hazardous Materials have been released, discharged, stored, or used on the Premises in violation of the terms of this Agreement, Lessee shall, in a timely manner, at its expense, remove such Hazardous Materials in a manner not

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inconsistent with applicable Environmental Law and otherwise comply with the reasonable recommendations of MDAD and any regulatory authorities related to the results of such inspections. The right granted to MDAD herein to inspect the Premises shall not create a duty on MDAD's part to inspect the Premises, nor liability of MDAD for Lessee's use, storage, or disposal of Hazardous Materials, it being understood that Lessee shall be solely responsible for all liability in connection therewith. MDAD shall provide the results of such inspections to the Lessee in a timely manner if requested to do so in writing. Nothing herein shall be construed to limit, restrain, impair or interfere with County's regulatory authority to conduct inspections and/or the manner in which it conducts such inspections. Lessee shall not be liable or otherwise responsible for any property damage to the Premises or injury to any person caused by County, its agents or consultants during County's inspection under this Section 8.08.

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

8.10 Notice of Discharge to County:

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

(B) With regard to any reporting obligation arising out of Lessee's operations or during the Agreement, Lessee shall timely notify the State of Florida Department of Environmental Protection, 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 execution of this Agreement, Lessee shall submit to County an emergency action plan/contingency plan setting forth in detail Lessee's procedures for responding to spills, releases, or discharges of Hazardous Materials. The emergency action plan/contingency plan shall identify Lessee's emergency response coordinator and Lessee's emergency response contractor.

8.11 Reports to County: For any year in which any Hazardous Materials have been used, generated, treated, stored, transported or otherwise been present on or in the Premises, (or on or in other Airport property for purposes related to Lessee's operations on the Premises), Lessee shall provide County with a written report listing: the Hazardous Materials which were present on the Premises or other Airport property; all releases of Hazardous Material that occurred or were discovered on the Premises or other Airport property and which were required to be reported to regulatory authorities under applicable Environmental Laws; all enforcement actions related to such Hazardous Materials, including

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all, consent agreements or other non-privileged documents relating to such enforcement actions during that time period. In addition, Lessee shall provide County with copies of any reports filed in accordance with the Emergency Planning and Community Right to Know Act (EPCRA) and shall make available for review upon request by County copies of all manifests for hazardous wastes generated from operations on the Premises. Lessee shall provide the report required under this section to the County by April 1 of each year for the preceding calendar year.

8.12 Periodic Environmental Audits: Lessee shall establish and maintain, at its sole expense, a system to assure and monitor its continued compliance on the Premises with all applicable Environmental Laws, which system shall include, no less than once each year a detailed review of such compliance (the "Environmental Audit Exhibit E") 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 Exhibit E 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.

8.13 Remediation of Hazardous Material Releases: If Lessee or Lessee's agents, employees, contractors, invitees or trespassers cause any Hazardous Materials to be released, discharged, or otherwise located on or about the Premises or Other Airport Property during the term of this Agreement ("Hazardous Material Release"), Lessee shall promptly take all actions, at its sole expense and without abatement of rent, as are reasonable and necessary to return the affected portion of the Premises or Other Airport Property and any other affected soil or groundwater to their condition existing prior to the Hazardous Material Release in a manner not inconsistent with applicable Environmental Law. County shall have the right to approve all such remedial work, including, without limitation: (i) the selection of any contractor or consultant Lessee proposes to retain to investigate the nature or extent of such Hazardous Material Release or to perform any such remedial work; (ii) any reports or disclosure statements to be submitted to any governmental authorities prior to the submission of such materials; and (iii) any proposed remediation plan or any material revision thereto prior to submission to any governmental authorities. The County's approvals shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, County's prior consent shall not be necessary if a Hazardous Material Release poses an immediate threat to the health, safety, or welfare of any persons and, despite Lessee's best efforts, it is not practicable to obtain County's consent before taking remedial action to abate such immediate threat, provided that: (a) Lessee shall notify County as soon as possible and shall thereafter obtain County's consent as otherwise provided in this paragraph; and (b) Lessee shall take only such action as may be necessary or appropriate to abate such immediate threat and shall otherwise comply with the provisions of this paragraph. In addition to any rights reserved by County in this Agreement, County shall have the right, but not the obligation, to participate with Lessee, Lessee's consultants and Lessee's contractors in any meetings with representatives of the governmental authorities and Lessee shall provide County reasonable notice of any such meetings. All remedial work shall be performed in compliance with all applicable Environmental Laws. The County's consent to any remedial activities undertaken by Lessee shall not be withheld so long as County reasonably determines that such activities will not cause any material adverse long-term or short-term effect on the Premises, or other adjoining property owned by County. Lessee's obligations in this section do not apply to Baseline Environmental Conditions.

8.14 Indemnity: Lessee shall indemnify, defend (with counsel reasonably satisfactory to County), and hold County, its directors, officers, employees, agents, assigns, and any successors to County's interest in the Premises, harmless from and against any and all loss, cost, damage, expense (including reasonable attorneys' fees), claim, cause of action, judgment, penalty, fine, or liability, directly or indirectly, relating to or arising from the use, storage, release, discharge, handling, or presence of Hazardous Materials on, under, or about the Premises or Other Airport Property and caused by Lessee, Lessee's agents, employees, contractors, invitees or trespassers. This indemnification shall include without limitation: (a) personal injury claims; (b) the payment of liens; (c) diminution in the value of the Premises or Other

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Airport Property; (d) damages for the loss or restriction on use of the Premises or Other Airport Property; (e) sums paid in settlement of claims; (f) reasonable attorneys' fees, consulting fees, and expert fees, (g) the cost of any investigation of site conditions, and (h) the cost of any repair, cleanup, remedial, removal, or restoration work or detoxification if required by any governmental authorities or deemed necessary in County's reasonable judgment, but shall not extend to such claims, payment, diminution, damages, sums, fees or costs to the extent caused (i) solely by an act of God or (ii) by the negligent or willful misconduct of the County, its officers, employees, contractors or agents. For any legal proceedings or actions initiated in connection with the Hazardous Materials Release, County shall have the right at its expense but not the obligation to join and participate in such proceedings or actions in which the County is a named party, and control that portion of the proceedings in which it is a named party. County may also negotiate, defend, approve, and appeal any action in which County is named as a party taken or issued by any applicable governmental authorities with regard to a Hazardous Materials Release; provided, however, claims for which Lessee may be liable pursuant to this Article 8.14 shall not be settled without Lessee's consent. Any costs or expenses incurred by County for which Lessee is responsible under this paragraph or for which Lessee has indemnified County: (i) shall be paid to County on demand, during the term of this Agreement as additional rent; and (ii) from and after the expiration or earlier termination of the Agreement shall be reimbursed by Lessee on demand. Lessee's obligations pursuant to the foregoing indemnity shall survive the expiration or termination of this Agreement and shall bind Lessee's successors and assignees and inure to the benefit of County's successors and assignees. Notwithstanding any other provision of this Agreement, this section 8.15 does not apply to Baseline Environmental Conditions or a discharge, disposal or release caused by the County, its officers, employees, contractors or agents.

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

(B) Lessee agrees in order to minimize its obligations in this regard to use best efforts to assist the Aviation Department in responding to Hazardous Materials spills in or Airport property reasonably close to the Premises used by Lessee by making Lessee's remediation equipment and personnel available for such emergency remediation activity. However, Lessee may provide such assistance only at the direct request of the Aviation Department and only if Lessee's remediation equipment is intended to be utilized for the Hazardous Material spill at issue and only if Lessee's personnel have been trained to respond to the Hazardous Material spill at issue. If Lessee is directed to perform any remedial work under this Article 8.14(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 8.14(A) above, and without waiving its rights hereunder, County may, at its option, perform such remedial work as described in Article 8.13(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 section as a result of the failure of Lessee to perform its obligations hereunder, Lessee shall, within thirty (30) days of receipt of notice thereof, reimburse County for all such expenses together with interest at the rate of 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.

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(E) To the extent of Lessee's responsibility under this Article and without limiting its obligations under any other paragraph of this Agreement, and except to the extent of County's responsibility for environmental conditions set forth in this Article 8, Lessee shall be solely and completely responsible for responding to and complying with any administrative notice, order, request or demand, or any third party claim or demand relating to potential or actual Hazardous Materials contamination on the Premise. Lessee's responsibility under this paragraph includes but is not limited to responding to such orders on behalf of County and defending against any assertion of County's financial responsibility or individual duty to perform under such orders. Lessee shall assume, pursuant to the indemnity provision set forth in this Article 8, any liabilities or responsibilities which are assessed against County in any action described under this paragraph.

8.15 Dispute Resolution: County and Lessee agree that any dispute between them relating to this Article 8 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.

8.16 Waiver and Release: Lessee, on behalf of itself and its heirs, successors and assigns, hereby waives, releases, acquits and forever discharges County, its principals, officers, directors, employees, agents, representatives and any other person acting on behalf of the County, and the successors and assigns of any of the preceding, of and from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Lessee or any 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 8.16 shall not constitute a waiver or release of any obligation of County under this Article 8. Lessee acknowledges that County would not enter into this Agreement without Lessee's agreement to the waiver and release provided herein.

8.17 No Waiver of Rights, Causes of Actions or Defenses. Notwithstanding any language in this Agreement, including without limitation Articles 8.02, 8.03, 8.04, 8.05, 8.13, 8.14 and 8.15, Lessee does not agree to waive or release any rights, causes of action or defenses it may have against Miami-Dade County or any other party related to allegations made by the County in (i) Case No. 01-8758 CA 25 which has been filed by the County in the Florida Circuit Court of the Eleventh Judicial Circuit, and (ii) a letter dated April 9, 2001, to Lessee and others (who are referred to as "responsible parties" or "RPs"). Nothing herein shall be construed to limit or expand upon any releases previously granted to or exchanged between the parties as a result of judgments or settlements obtained in proceedings between the parties, including, without limitation, settlements in bankruptcy or settlements entered under Case No. 01-8758 CA 25 which has been filed by the County in the Florida Circuit Court of the Eleventh Judicial Circuit.

8.18 Surrender of Premises: Lessee shall surrender the Premises used by Lessee to County upon the expiration or earlier termination of this Agreement free of debris, waste, and Hazardous Materials used, stored, or disposed of by Lessee or its agents, employees, contractors, invitees or Trespassers, or otherwise discharged on the Premises or Other Airport Property for which Lessee is responsible during the term of this Agreement. The Premises shall be surrendered in a condition that complies with all applicable Environmental Requirements, and such other reasonable environmental requirements as may be imposed by County. Lessee shall not be responsible under this section 9.18 to the extent of County's obligations under this Article 8.

8.19 Breach: Any breach by Lessee of any provision of this Article 8 shall, after notice and a reasonable opportunity for Lessee to cure, constitute a default of the Agreement and shall entitle County to exercise any and all remedies provided in the Agreement, or as otherwise permitted by law.

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8.20 Survivability of Terms: the terms and conditions of this Article 9, including the indemnity, waiver, and release, shall survive the termination of this Agreement.

8.21 Right to Regulate: As provided for in Article 20 of this Agreement, nothing within this Article 8 shall be construed to waive or limit, restrain, impair or interfere with the County's regulatory authority.

ARTICLE 9 Indemnification

The Lessee shall indemnify and hold harmless the County and its officers, employees, agents, consultants, representatives, and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents, consultants, representatives, or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of this Agreement by the Lessee or its employees, agents, servants, partners, principals, subcontractors, vendors, suppliers, or subsidiaries. Lessee shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay costs, judgments and attorney's fees which may issue thereon. Lessee expressly understands and agrees that any insurance protection required by this Agreement or provided by Lessee shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents, consultants, representatives, and instrumentalities as herein provided. The County shall give Lessee notice of any such claims or actions, as soon as practicable. The provisions of this Article shall survive the expiration or early termination of this Agreement.

ARTICLE 10 Assignment and Subletting

10.01 Assignment and Transfer: 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.

10.02 Subletting: The Lessee shall not sublet the Premises or any part thereof.

ARTICLE 11 Insurance

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

- (A) Commercial General Liability Insurance on a comprehensive basis, including Contractual Liability, to cover the Lessee's Premises and operations, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. The County must be shown as an additional insured with respect to this coverage.
- (B) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used by the Lessee in connection with its operations under this Agreement in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- (C) To the extent required under Section 8.16, Pollution and Remediation Legal Liability insurance in an

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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.

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

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

- (A) 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 public liability policies.

On said insurance certificates, unless specifically shown to be excluded thereon, comprehensive public liability coverage shall include contractual liability.

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.

11.03 Compliance: Compliance with the requirements of this Article 11 (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.

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

11.05 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.

ARTICLE 12 Termination

12.01 Payment Defaults: Failure of the Lessee to make all payments of rentals, fees and charges required to be paid herein when due shall constitute a default, and the County may, at its option, terminate this Agreement after seven (7) calendar days notice in writing to the Lessee, unless the default is cured within the notice period.

12.02 Insurance Defaults: The County shall have the right, upon 15 calendar days written notice to the

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Lessee, to terminate this Agreement if the Lessee fails to provide evidence of insurance coverage in strict compliance with Article 11 (Insurance) hereof prior to commencement of operations, or fails to provide a renewal of said evidence upon its expiration; provided, however, that such termination shall not be effective if the Lessee provides the required evidence of insurance coverage within the notice or grace period.

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

- (A) Failure of the Lessee to comply with any covenants of this Agreement, other than the covenants to pay rentals, fees and charges when due, and the covenants to provide required evidence of insurance coverage.
- (B) The conduct of any business, the performance of any service, or the merchandising of any product or service not specifically authorized herein by the Lessee.
- (C) Failure of the Lessee to comply with any Environmental Law or Environmental Requirement as those terms are defined in Article 8.01 (Definitions) of this Agreement.

12.04 Automatic Termination: The happening of the following events shall constitute a default by the Lessee and this Agreement shall automatically terminate ipso facto: abandonment of the Premises or discontinuance of operations; filing of insolvency, reorganization, plan of arrangement or bankruptcy petitions; adjudication as bankrupt; making of a general assignment for the benefit of creditor; failure of the Lessee for fifteen (15) days or more to occupy the premises for one or more of the purposes permitted under this Agreement; and if a lien is filed against the leasehold interest of the Lessee and not removed within a reasonable time.

12.05 Habitual Default: Notwithstanding the foregoing, in the event that the Lessee has frequently, regularly or repetitively defaulted in the performance of or breached any of the terms, covenants and conditions required herein to be kept and performed by the Lessee, in the sole opinion of the County and regardless of whether the Lessee has cured each individual condition of breach or default as provided in Articles 12.01 (Payment Defaults), 12.02 (Insurance Defaults) and 12.03 (Other Defaults) hereinabove, the Lessee shall be determined by the Director to be an "habitual violator." At the time that such determination is made, the Department shall issue to the Lessee a written notice advising of such determination and citing the circumstances therefore. Such notice shall also advise the Lessee that there shall be no further notice or grace periods to correct any subsequent breach(es) or default(s) and that any subsequent breach(es) or default(s), of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and, collectively, shall constitute a condition of noncurable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, the County may cancel this Agreement upon the giving of written notice of termination to the Lessee, such termination to be effective upon the tenth 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.

12.06 Termination by Abandonment: This Agreement shall be automatically terminated upon the abandonment by the Lessee of Premises or voluntary discontinuance of operations at the Airport for any period of time exceeding fifteen (15) consecutive calendar days, unless such abandonment or discontinuance has been caused by 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.

12.07 Actions at Termination:

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- (A) The Lessee shall vacate, quit, surrender up and deliver the Premises to the County on or before the termination date of this Agreement, whether by lapse of time or otherwise. The Lessee shall surrender the Premises in the condition required under Article 4.03 (Maintenance and Repairs) herein. All repairs for which the Lessee is responsible shall be completed prior to surrender. The Lessee shall deliver to the Department all keys to the Premises upon surrender. On or before the termination date of this Agreement, except in the instance of termination pursuant to Article 11.04 (Automatic Termination), in which event the Lessee shall be allowed up to five calendar days, the Lessee shall remove all of its personal property from the Premises. Any personal property of the Lessee not removed in accordance with this Article may be removed by the Department for storage at the cost of the Lessee. Failure on the part of the Lessee to reclaim its personal property within 30 days from the date of termination shall constitute a gratuitous transfer of title thereof to the County for whatever disposition is deemed to be in the best interest of the County.
- (B) The Lessee shall, at its expense, take all actions required by Federal, State, and County laws, regulations or codes to remove from the Premises any hazardous substance or environmental contaminant, whether stored in drums, or found in vats, containers, distribution pipelines, or the like. All such substances and contaminants shall be removed by the Lessee in a manner approved and authorized by such Federal, State, or County laws, regulations or codes.
- (C) If County advises the Lessee that it has reason to believe that any hazardous substance or environmental contaminant has been released within the premises or into the ground under the Premises, then the Lessee at its expense shall retain an approved environmental consultant to perform whatever environmental assessment may be required to determine the extent of such release. 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.
- (D) In the event of termination for default, the County 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 or property and fixtures of Lessee, or any other expense occasioned by failure of Lessee to quit the Premises upon termination and to leave them in the required condition, any remodeling costs, attorneys fees and court costs, including all appellate proceedings; and (2) the loss of reasonable rental value from the date of default until a new tenant has been, or with the exercise of reasonable efforts could have been secured.

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

12.09 Right to Show Premises: At any time within six months of the scheduled expiration date of this Agreement or anytime after the Lessee has been given notice of termination or default, pursuant to Article 12 (Termination) hereof, or intent not to extend, the County shall have the right to enter on the Premises for the purposes of showing the Premises to prospective tenants or users during regular business hours.

12.10 County Defaults: This Agreement shall be subject to termination by the Lessee, in the event of a default by the County in the performance of any covenant or agreement herein required to be performed by the County and the failure of the County to remedy same within a reasonable period of time after receipt of written notice from the Lessee to remedy the same. This right of termination is not an exclusive remedy and Lessee may, upon the County's

default, exercise any other rights available to it by law.

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

- (A) The permanent abandonment of the Airport.
- (B) The lawful assumption by the United States Government or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part 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 that nothing contained herein shall be deemed to constitute a waiver by the Lessee of any right it may have against the United States to just compensation in the event of any such assumption.
- (C) The issuance by any court of competent jurisdiction of any injunction in any way substantially preventing or restraining the use of the Airport, and the remaining in force of such injunction for a period in excess of ninety (90) days. In such event of termination, this lease may be reinstated by the County and extended for period of time equal to the number of days that the injunction was in effect in excess of said ninety (90) days.

12.12 Cancellation of Lease: The remedies contained in this Article 12 shall not be deemed to restrict or limit the ability of the Lessor or the Lessee to cancel this lease upon thirty days written notice to the other party, pursuant to Article 1.01 herein. In the event of such cancellation, the Lessee shall take all actions specified in Article 12.07, and the Lessor shall be entitled to exercise all rights contained herein.

ARTICLE 13 **Special Conditions**

13.01 Quality of Services: The Lessee shall furnish the services required and authorized, pursuant to Article 2 (Use of Premises) hereof, on (i) a good, prompt and efficient basis, and (ii) a fair, equal and not unjustly discriminatory basis to all users.

13.02 Nondiscriminatory Prices: The Lessee shall charge fair, reasonable, customary and not unjustly discriminatory prices for each unit of sale or service; provided, however, that the Lessee may make reasonable, customary and nondiscriminatory discounts, rebates or similar types of price reductions to volume purchasers of the Lessee's services.

13.03 County's Obligations: The Lessee, in recognition of the County's obligation, pursuant to Section 22 of Part V of the FAA's standard grant assurances, to enforce the provisions of Articles 13.01 (Quality of Services) and 13.02 (Nondiscriminatory Prices) above, agrees that the Department may, promulgate standards, methods and procedures, and monitor and test the provision of services hereunder, and may require the Lessee to provide copies of schedules of service charges and the bases for discounts, rebates and similar types of price reductions. Should the Department determine that the Lessee is not in compliance with the provisions of Articles 13.01 (Quality of Services) and 13.02 (Nondiscriminatory Prices) above, the first such occurrence shall be considered a curable default, pursuant to Article 12.04 (Other Defaults) hereof, and subsequent occurrence(s) shall be considered a material breach of this Agreement, entitling the County to the remedies provided in this Agreement or by law.

13.04 Air Shows and Special Events: Upon at least sixty (60) days written notice from the Department, the County may require the Lessee to surrender portions of the Premises for certain periods of time during the term of this Agreement for the purpose of allowing the use of designated portions of the Premises by others in connection with air shows and other special events. Said use will not exceed ten (10) days per occurrence, or more than three (3) events per year. For any day or part of a day that the Premises are so used, rental payments under Article 3.01 (Rentals) will be abated. The Department shall actively keep the Lessee advised of all of the planning for such events, air shows, or County sponsored special events, if portions of the Premises are required.

ARTICLE 14

Equal Employment Opportunity, Nondiscrimination and Affirmative Action

14.01 Equal Employment Opportunity: In accordance with Title 14 Code of Federal Regulation (CFR) Part 152 (Affirmative Action Employment Program), the Lessee shall not discriminate against any employee or applicant for employment because of age, sex, race, color, religion, marital status, place of birth or national origin, ancestry, in accordance with the Americans with Disabilities Act, discriminate against any otherwise qualified employees or applicants for employment with disabilities who can perform the essential functions of the job with or without reasonable accommodation. The Lessee shall take affirmative actions' to ensure that applicants are employed and that employees are treated during their employment without regard to age, sex, race, color, religion, marital status, place of birth or national origin, ancestry, or disability. Such actions include, but not limited to, the following: Employment, upgrading, transfer or demotion, recruitment, recruitment advertising, layoff or termination, rates of pay or other forms of compensation, selection for training including apprenticeship. The Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the County setting forth the provisions of this Equal Employment Opportunity clause. The Lessee shall comply with all applicable provisions of the Civil Rights Act of 1964, 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 Section 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.

14.02 Nondiscriminatory Access to Premises: The Lessee, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant that: (1) no person on the grounds of race, color, sex, national origin or ancestry shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises; (2) that the Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to the enforceable regulations of the Department of Transportation, as amended from time to time.

14.03 Breach of Nondiscrimination Covenants: In the event it has been determined that the Lessee has breached any enforceable nondiscrimination covenants contained in Section 14.01 Equal Employment Opportunity and Section 14.02 Nondiscriminatory Access to Premises above, pursuant to the complaint procedures contained in the applicable Federal Regulations, and the Lessee fails to comply with the sanctions and/or remedies which have been prescribed, the County shall have the right to terminate this Agreement pursuant to the Termination of the Agreement section hereof.

14.04 Nondiscrimination: During the performance of this Agreement, the Lessee agrees as follows: The Lessee shall, in all solicitations or advertisements for employees placed by or on behalf of the Lessee, state that all qualified applicants will receive consideration for employment without regard to age, sex, race, color, religion, marital status, place of birth or national origin, ancestry, physical handicap or disability. The Lessee shall furnish all information and reports required by Executive Order 11246 issued September 24, 1965, as amended by Executive Order 113155, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to The Lessee books, records, accounts by the County and Compliance Review Agencies for purposes of investigation to ascertain by the compliance with such rules, regulations, and orders. In the event of the Lessee's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, and orders, 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 Section 14.01 Equal Employment Opportunity and Section 14.02 Nondiscriminatory Access to Premises of this Article in the Lessee sub-contracts in excess of \$10,000.00, unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 issued September 24, 1965, as amended by Executive Order 113155, so that such provisions will be binding upon each sub-consultant. The Lessee shall take such action with respect to any sub-contract as the County may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Lessee becomes involved in, or is threatened with, litigation with a sub-consultant as the result of such direction by the County or by the United States, the Lessee may request the United States to enter into such litigation to protect the interests of the United States.

14.05 Disability Nondiscrimination Affidavit: By entering into this Agreement with the County and signing the Disability Nondiscrimination Affidavit, the Lessee attests that this is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Lessee or any owner, subsidiary or other firm affiliated with or related to the Lessee is found by the responsible enforcement officer of the Courts or the County to be in violation of the Act or the Resolution, such violation shall render this Contract terminable in accordance with the Termination of Agreement section hereof. This Contract shall be void if the Lessee submits a false affidavit pursuant to this Resolution or the Lessee violated the Act or the Resolution during the term of this Contract, even if the Lessee was not in violation at the time it submitted its affidavit.

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

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

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

ARTICLE 15

Security and Special Provisions

15.01 **Security**: The Lessee acknowledges and accepts full responsibility for the security and protection of the Premises, any improvements thereon, and its equipment and property on the Airport. The Lessee fully understands and acknowledges that any security measures deemed necessary by the Lessee for the protection of said Premises, improvements, equipment and property shall be the sole responsibility of the Lessee and shall involve no cost to the County.

15.02 **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, together with the right to cause in said air space such noise as may be inherent in the operation of aircraft, and which shall include using said air space for landing at, taking off from or operating on the Airport.

15.03 **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 the Code of Miami-Dade County, whichever is more restrictive.

15.04 **Alcohol and Drug Testing**: The Lessee acknowledges that the County, as a public agency sponsor under the provisions of the Airport and Airway Improvement Act of 1982, has the obligation to establish a drug free workplace and to establish policies and programs to ensure airport safety and security. The Lessee acknowledges that the Department, on behalf of the County, has the right to require users of the Airport (i.e., lessees, permittees, licensees, etc.) to establish reasonable programs to further the achievement of the obligations described herein. Accordingly, the Lessee shall establish programs for pre-employment alcohol and drug screening for all candidates for employment at the Airport and for the same or similar screening based on a reasonable suspicion that an employee, while on duty at the Airport, may be under the influence of alcohol or drugs. The Lessee shall make reasonable good faith efforts to try to negotiate amendments to any existing contract(s) which may serve as a bar to the Lessee's implementation of its obligations hereunder.

15.05 **Drug-Free Workplace Default**: The Lessee acknowledges it has provided to the County a Drug-Free Workplace Affidavit certifying that it is providing a drug-free workplace for its employees, as required by Miami-Dade County Ordinance No. 92-15. The County shall have the right, upon thirty (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 Commencement Date of this Agreement, the annual re-certification affidavit as required by the ordinance; provided, however, that such termination shall not be effective if the Lessee submits the required affidavit within the notice period.

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

(A) 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) 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.

ARTICLE 16 **Employees**

16.01 **Control of Employees:** The Lessee shall properly control the actions of its employees at all times that said employees are working on the Airport, 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.

16.02 **Employee Covenants Violations:** In the event the Lessee is in default of the covenants in Sub-Article 16.01 (Control of Employees) for failure to properly control its employees, the County shall have the right to require the Lessee take immediate action to correct the discrepancy.

ARTICLE 17 **Civil Actions**

17.01 **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 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.

17.02 **Notice of Commencement of Civil Action:** 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, the County and the Lessee agree that service of process shall be made pursuant to the rules of civil procedure in the court in which the action has been filed.

17.03 **Registered Office/Agent; Jurisdiction:** Notwithstanding the provisions of Sub-Article 17.02 (Notice of Commencement of Civil Action), the Lessee, if a corporation, shall designate a registered office and a registered agent, as required by Section 48.091, Florida Statutes, such designations to be filed with the Florida Department of State in accordance with Section 607.0501, Florida Statutes. If the Lessee is a natural person, he and his personal representative hereby submit themselves to the jurisdiction of the courts of this State for any cause of action based in whole or in part on an alleged breach of this Agreement.

ARTICLE 18 **Trust Agreement**

18.01 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 JP Morgan as Trustee and Wachovia National Bank as Co-Trustee (the "Trust Agreement"), which Trust Agreement is incorporated herein by reference, 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 rentals, 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 Department during normal business hours.

18.02 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 for rentals, fees and charges upon the issuance of written notice from the Department to the Lessee.

18.03 Lessee Right to Terminate: In the event the terms and conditions of this Agreement, including the rentals, fees and charges payable hereunder, have been substantially modified pursuant to Article 18.02 (Adjustment of Terms and Conditions) above, the Lessee at any time within one (1) year following the effective date of such modification, may terminate this Agreement by giving ninety (90) days written notice to the County, without liability by either party to the other.

ARTICLE 19

Rights Reserved to the County

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

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

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

19.04 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 applicable Community Zoning Appeals Board, the Building Department, the Planning and Zoning Department, or any department,

board or agency of the County, to agree to any specific request of Lessee that related in any way to the regulatory or quasi-judicial power of the County; and the County shall be released and held harmless by Lessee from any liability, responsibility, claims, consequential damages or other damages, or losses resulting from the denial or withholding of such requests; provided, however, that this provision shall not preclude any appeal from County action wherein the sole remedy sought is reversal of the County's action or injunctive relief; nor shall it preclude any action based on the County's bad faith, capricious behavior or arbitrary action.

ARTICLE 20
Agreement Subject to Rights of United States Government

20.01 Quit-Claim Deed: It is specifically understood and agreed between the parties hereto that Miami-Dade County holds title to the property of which the Premises are a part by virtue of a Quit-Claim Deed, dated the 16th day of November 1961 (the "Quit-Claim Deed"), from the United States of America (the "Government"), acting by and through the Administrator of General Services, which Quit-Claim Deed is recorded in the Official Records of Miami-Dade County, Book No. 2909, page 351, filed for the record on the 30th day of November 1961.

20.02 Easements or Encumbrances: This Agreement is made by the County and accepted by the Lessee subject to all of the existing easements and encumbrances and to subsequent easements or encumbrances and to all of the terms, conditions, reservations, exceptions, limitations and restrictions set forth in the Quit-Claim Deed, and subject to all of the rights of the Government therein enumerated.

20.03 Government Use of Airport: In the event the Government, acting under the provisions of subparagraph (3) of said Quit-Claim Deed, shall take over the use of the Premises or the Airport, and such use shall so restrict the Lessee in its operations as to make continued use of the Premises by the Lessee impractical, then:

- (A) This Agreement and rights and obligations hereunder shall, at the option of the Lessee, exercised in writing, either: (1) automatically terminate, except as herein under provided; or (2) be suspended during the time the Premises or the Airport are being so used by the Government, and the term of this Agreement shall be automatically extended for the total period of the Agreement suspension.
- (B) Any monies paid by the Government for the upkeep of, repairs to and the maintenance and replacement of facilities at the Airport shall be used by the County for such purposes.
- (C) Any monies paid by the Government to the County as rental for the use of the Premises shall be retained by the County; provided, however, that if the Lessee shall elect to suspend this Agreement for the period of the Government's use of the Premises, pursuant to subparagraph (A)(2) above, and rentals are paid by the Government for the use of any personal property or unamortized capital improvements installed thereon by Lessee, the rentals received by the County for use of the Lessee's personal property or unamortized capital improvements shall be for the benefit of the Lessee and paid thereto.

In the event the Government shall take over the use of the Airport, and such use by the Government shall not materially restrict or hamper the Lessee in its operations, the Lessee shall remain in possession of said Premises and shall continue to pay the rentals, fees, and charges specified herein to be paid.

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

ARTICLE 21
Other Provisions

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

21.02 Headings: Any headings preceding the text of any articles, sub-articles, paragraphs or sections of this Agreement shall be solely for convenience of reference and shall neither constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

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

As to the County or Miami-Dade Aviation Department:

Director
Miami-Dade Aviation Department
P.O. Box 025504
Miami, Florida 33102-5504

With a copy to:

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

As to the Lessee:

NAME
ADDRESS
Miami Lakes, Florida

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

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

21.05 Authorized Uses Only: The Lessee shall not use or permit the use of the Premises or the Airport for any illegal or unauthorized purpose or for any purpose which would increase the premium rates paid by the County on, or invalidate any insurance policies of the County or any policies of insurance written on behalf of the Lessee under this Agreement.

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

21.07 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 said invalid provision(s) of this Agreement are severable.

21.08 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 to determine compliance with the provisions of this Agreement. This right of inspection shall impose no duty on the County to inspect and shall impart no liability upon the County should it not make any such inspections.

21.09 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.

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

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.

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

Radon Gas: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in

buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

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

(A) Total Destruction

In the event the County elects not to render the Premises tenantable, if destroyed or damaged in their entirety, the Lessee shall be so notified in writing by the Department, and this Agreement shall be deemed terminated as of the date of the casualty, with the Lessee being liable only for payment of rentals, fees, and charges on a pro rata basis as to whatever portion(s) of the Premises which were tenantable and used by the Lessee following the casualty. In such event, the Department shall endeavor to find adequate replacement premises for the Lessee in existing facilities on the Airport.

(B) If the damaged portion of the Premises is not rendered tenantable by the County within a reasonable period of time, and the Lessee shall determine that 1) the loss of the damaged portion of the Premises shall have a material adverse impact on the ability of the Lessee to utilize the Premises for the purposes described in Article 2 (Use of Premises), or 2) would require the Lessee to obtain other space off the Premises in order to substantially conduct the operations of the Lessee originally conducted within the Premises, then in either such event, upon written notice to the County, the Lessee may cancel this Agreement as of a date which shall be no earlier than three (3) months from the written notice date, (i) if the repairs are not completed within ninety (90) days following such written notice of intent to cancel, or (ii) if the repairs cannot be reasonably completed within such ninety (90) day period and the County has not commenced the repairs within such time. In the event of cancellation, the rent for the untenable portion of the Premises shall be paid only to the date of such fire, windstorm, flood, or other casualty. If the Agreement is not canceled following any such casualty, the rental shall be abated as to the portion of the Premises rendered untenable.

If the casualty was caused in whole or in part by the Lessee, its officers, employees, agents, contractors, vendors, suppliers, subsidiaries, invitees, 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.

21.14 Quiet Enjoyment: Subject to the terms of this Agreement, specifically including but not limited to (i) the environmental remediation steps to be taken under Article 8.02 (Environmental Compliance), (ii) County's right and obligation to make certain repairs, alterations, and additions under Article 5 (Maintenance by County) and Article 19.02 (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 (iii) the reservation of easement rights to the airspace under Article 15.02 (Right of Flight), all of which provisions and others in the Agreement the Lessee acknowledges may cause disruption and disturbance to the Lessee, and upon the observance by the Lessee of all the terms, provisions, covenants and conditions imposed upon the Lessee hereunder, the Lessee shall peaceably and quietly hold and enjoy the Premises 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, Acts of God, or when any department or agency of the County is acting in its governmental capacity.

21.15 Definition of Day: For the purposes of this Agreement, except where otherwise expressly set forth in this Agreement and the Schedules, "days" shall mean all days except Saturday, Sunday, and official County holidays.

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

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

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

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

By: _____
County Mayor

ATTEST: Harvey Ruvin, Clerk

By: _____
Deputy Clerk

(SEAL)

AWARDED RESPONDENT

By: _____
President

Print Name

ATTEST:

Corporate Secretary

Print Name

(CORP. SEAL)