Memorandum

MIAMI-DADE COUNTY

Date: October 16, 2026

To: Honorable Chairman Anthony Rodriguez and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor

Subject: Update on the New Hotel at Miami International Airport Contract No. RFP-01677 and Agreement No. 012987 with FDR Miami Hotel LLC

This report is provided pursuant to a motion by Commissioner Natalie Milian-Orbis and adopted by the Board of County Commissioners (Board) at its October 6, 2026, meeting, directing the County Mayor or County Mayor's designee to provide a report detailing the current status of the contract for the construction of a new hotel at Miami International Airport (MIA).

This report outlines the challenges encountered in the project's development, the involvement and determinations of the Federal Aviation Administration (FAA), and the recommended plan moving forward. This report reflects the project status as of October 15, 2026, and provides an update to the oral report presented by the Miami-Dade Aviation Department (MDAD) at the November 14, 2025, Government Efficiency & Transparency Ad Hoc Committee meeting.

Executive Summary

On May 12, 2020, the Board adopted Resolution No. R-521-20, directing the County Mayor or Mayor's designee to develop and advertise a competitive solicitation for the development of a new airport hotel. Following the evaluation of proposals received under Request for Proposals (RFP) No. 01677, FDR Miami Hotel, LLC (FDR), a joint venture between Fontainebleau Development LLC and The Related Companies, was selected as the highest-ranked proposer. On July 18, 2023, the Board awarded FDR a 50-year agreement for the design, construction, financing, operation, and maintenance of the hotel, which was executed on August 1, 2023.

The project subsequently encountered significant development constraints following a January 7, 2025, determination by the Federal Aviation Administration (FAA), which identified interference with MIA's Airport Surveillance Radar and restricted the proposed building height from 150 feet

to 121 feet. Despite efforts to identify mitigation measures and revise the design, FDR indicated that the height restriction would substantially affect the hotel's layout, amenities, and financial viability, preventing development of the originally envisioned Westin Hotel at the approved location.

In April 2025, FDR formally notified MDAD that the FAA's height restriction had caused delays beyond its control, and MDAD subsequently granted extensions to the construction commencement deadline to allow additional time for redesign and evaluation of alternative sites. Although the FAA issued a favorable determination for a revised design in January 2026, FDR continued to express concerns regarding the project's feasibility. Following discussions regarding potential relocation and contract termination, FDR submitted documentation of its incurred project costs on October 5, 2026, which remains under MDAD review. The existing agreement remains in effect, with no final determination regarding termination or amendment as of the date of this report.

To advance the development of a new airport hotel, MDAD has initiated coordination with the Strategic Procurement Department (SPD) to issue a new competitive solicitation at the original site while evaluating additional locations. MDAD is also considering an amendment to the existing FDR agreement to incorporate a portion of the Taxi Lot to accommodate a four-star hotel, subject to FAA review and applicable County approvals. Additionally, MDAD received an unsolicited proposal from PARMCO Airport Holdings LLC on October 7, 2026, which cannot advance at this time due to outstanding technical and contractual matters and the absence of the required application fee. Throughout this long process, airport staff has worked diligently to evaluate every available option to deliver a high-quality airport hotel that enhances passenger amenities and supports MIA's long-term modernization objectives.

Background

The awarded project envisioned an upscale, four-star hotel with 451 guest rooms, an all-day restaurant and bar, a rooftop restaurant, a pool and terrace, business and meeting facilities, a fitness center, a spa, valet parking, and a climate-controlled pedestrian bridge connecting the hotel and the main terminal at Concourse D. The leased site consists of approximately 79,133 square feet (1.82 acres) of County-owned property adjacent to and east of the Dolphin Parking Garage. Under the agreement, FDR is responsible for financing, developing, operating, and maintaining the hotel, including all

associated operating expenses, utilities, insurance, taxes, and facility maintenance.

The construction commencement deadline was 24 months after the effective date, or August 1, 2025. To meet this requirement, FDR was required to obtain the necessary permits and authorization to proceed, file a notice of commencement, and visibly begin construction activities. FDR began paying Premises Rent on August 1, 2023, while MDAD continued using the existing high-vehicle parking area until construction work commenced.

To support project development, MDAD established monthly multidisciplinary meetings, and the technical review process began in September 2023. During 2024, the project advanced through preliminary design reviews, utility scanning, topographic surveying, sustainable building coordination, pedestrian bridge planning, traffic coordination, wayfinding evaluations, and preparation of foundation permitting materials.

Radar Impact and FAA Determination

On August 14, 2024, MDAD submitted FAA Form 7460, Notice of Construction, requesting approval for the proposed hotel design at a height of 150 feet above ground level. On January 7, 2025, the FAA issued its determination, identifying that the proposed building would interfere with MIA's Airport Surveillance Radar by creating a 3-degree blind spot that could affect aircraft detection. To address this concern, the FAA imposed a maximum allowable height of 121 feet above ground level, or 130 feet above mean sea level, at the proposed location, a reduction of 29 feet from the original design.

MDAD met with the FAA on January 30, 2025, to discuss potential mitigations for the radar impacts. Among the alternatives evaluated, MDAD explored achieving radar redundancy to cover the anticipated 3-degree blind spot through facilities at Fort Lauderdale–Hollywood International Airport and Homestead Air Force Base. However, the FAA did not support the options presented by MDAD. **Appendix A** provides a detailed timeline of MDAD's discussions with the FAA and efforts to resolve the radar concerns.

On March 25, 2025, MDAD and FDR met to further assess the FAA's determination and potential remediation measures, but the parties were unable to reach a favorable resolution that would allow the original 150-foot hotel design to proceed.

As a result of the FAA's height restriction and the need for substantial design modifications, FDR submitted a formal notice on April 15, 2025, citing circumstances beyond its control that affected the project's schedule. The notice was submitted under Article 21.18, "Force Majeure," of the agreement, which allows extensions for qualifying delays beyond a party's reasonable control, including certain FAA decisions, provided the contractual requirements are met.

On May 5, 2025, MDAD acknowledged FDR's force majeure claim and granted a six-month extension to the construction commencement deadline, with any further extension subject to the County's discretion. On March 20, 2026, MDAD granted an additional 12-month extension from the previously approved expiration date to allow redesign, planning, and implementation. The March 2026 letter specified that no further extensions would be granted unless additional qualifying circumstances arose. All other provisions and requirements of the agreement remained in effect.

Redesign and Evaluation of Alternative Sites

On April 24, 2025, FDR submitted a three-dimensional (3D) re-massing study, followed by a meeting with MDAD on April 29, 2025. FDR explained that the FAA's height restriction would affect room counts, meeting space, mechanical systems, construction sequencing, costs, and revenue. FDR also indicated that changes to the construction boundaries would require a lease amendment and stated that MDAD's concurrence was needed before further engaging its design team.

In May 2025, FDR raised concerns about an additional wing (north bump-out) suggested by MDAD to address the reduction in room count. FDR stated that the proposed layout would result in rooms with restricted views or no windows, conflict with Westin brand requirements, place structural columns in public and event spaces, and reduce ballroom functionality. FDR linked these impacts to room rates, group bookings, financing, and the project's overall financial viability.

On May 22, 2025, MDAD approved moving forward with the redesign. However, the proposed north bump-out affected two (2) airport projects: the Airport Operations Center tank installation and the upper drive widening project. Accordingly, MDAD requested that FDR incorporate the design, permitting, and installation of the tank, along with a portion of the upper drive widening work, into its planning efforts. MDAD also requested a study of steel

supports to reduce disruptions to the lower vehicle drive, which could otherwise require a closure of approximately 14 to 16 weeks.

In June 2025, FDR reported that it was still studying the two (2) additional projects. In August 2025, revised design information and proposed lease language were submitted for review. On August 13, 2025, FDR provided new coordinates for a revised “north bump-out” redesign, which MDAD submitted to the FAA on August 15, 2025, reflecting the revised maximum building height of 121 feet above ground level.

During a December 10, 2025, meeting, FDR advised MDAD that the proposed Westin Hotel could not be built under the height restriction and requested alternative sites. MDAD granted extensions to the construction commencement milestone and approved additional work on the revised design. MDAD continued to support the redesign process by extending the construction commencement deadline and authorizing additional design work. On January 29, 2026, the FAA issued a favorable determination for the revised building configuration.

At FDR’s request, MDAD subsequently identified and evaluated three (3) alternative locations for the proposed hotel. On March 2, 2026, MDAD provided the evaluation to FDR and reiterated that the sites had other potential uses. The principal considerations included:

Potential location	Planning considerations
Short Term Parking Garage	Direct terminal access, with conflicts involving Central Terminal redevelopment, reroofing project, the proposed Ground Transportation Center, curb circulation, MIA Mover access, and maintenance projects.
Concourse D East Expansion	Direct terminal access and potential support for North Terminal expansion, with restricted service access and relocation of the North Terminal bus station and existing taxi lot.
East MIC Campus	Greater development capacity and fewer site constraints, but approximately 1.4 miles from the terminal, reliance on the MIA Mover, and potential conflict with a planned Advanced Air Mobility vertiport.

FDR Proposal and Most Recent Discussions

On June 11, 2026, FDR submitted a preliminary presentation on an alternative hotel site and requested a meeting with MDAD. The presentation proposed a site location exchange near the Central Terminal, connections to multiple concourses, a pool, event and wellness facilities, rideshare zones, and three (3) rooftop helipads. The project data show 532 guest rooms. The presentation expressly stated that design and program density are preliminary and subject to further study and revision.

On August 19, 2026, FDR met with MDAD and presented the project in greater detail. Following the presentation, MDAD indicated that the site could not be considered because of conflicts with ongoing airport projects. MDAD also explained that relocating the hotel would constitute a material change to the existing agreement and require Board approval. During August and September 2026, discussions between MDAD and FDR also addressed project costs incurred by FDR and the possibility of terminating the agreement.

At a subsequent meeting on September 18, 2026, FDR was expected to provide documentation detailing its expenses within one (1) week for MDAD's review. MDAD received FDR's report of costs incurred on October 5, 2026, which is currently under review by MDAD's Program Controls team.

Potential Amendment to FDR Contract

Following the September meeting with FDR, MDAD conducted a comprehensive reevaluation of the design iterations submitted by the developer, as well as the conditions of adjacent areas surrounding the project site, prior to proceeding with termination of the existing agreement. As part of this assessment, MDAD identified a parcel of land commonly referred to as the "Taxi Lot" that could be considered for partial incorporation into the current FDR Agreement through a formal amendment.

The additional acreage offers the capacity to accommodate the amenities, facilities, and operational requirements necessary to support development of a four-star hotel consistent with Westin brand standards, through a bridge connection. Incorporating this parcel would provide the space needed to achieve an enhanced project scope aligned with both MDAD's objectives and the developer's programmatic needs.

Subject to the necessary reviews and approvals, FDR would pursue development on both parcels, incorporating a connecting pedestrian bridge to provide seamless access between the proposed buildings.

FDR has demonstrated experience in undertaking projects within complex and challenging development environments. Based on this experience, MDAD believes that FDR possesses the capabilities and expertise necessary to successfully execute the proposed development while maintaining high standards of quality and operational excellence.

As a preliminary step, MDAD is prepared to submit the proposed portion of the Taxi Lot to the FAA for review and approval. Any subsequent amendment to the existing FDR Agreement would be contingent upon obtaining the necessary FAA approval and satisfying all applicable County requirements and approval processes. Should this opportunity prove unsuccessful, we will resume preparations for a new expedited competitive solicitation.

Unsolicited Proposal

During the October 6, 2026, Board meeting, Commissioner Natalie Milian-Orbis indicated that her office had received an unsolicited proposal from PARMCO Airport Holdings LLC (PARMCO), which would be forwarded to MDAD for review. MDAD received the (**attached**) unsigned proposal on October 7, 2026. An initial review indicated that the submission did not identify a proposed hotel brand or include a letter of intent from a hotel operator. Additionally, PARMCO did not provide financial documentation supporting the viability of the proposed hotel based on its limited number of guest rooms.

As requested by Commissioner Milian-Orbis, MDAD conducted a preliminary evaluation of PARMCO's submitted documents, including the proposed site plans and revisions to the existing agreement. The review identified several critical technical matters that are not adequately addressed and require further clarification, supporting documentation, and potential revisions before the proposal can advance for further consideration. The concerns are outlined below.

- Vertical Clearance Height: The submitted site plans do not indicate the proposed vertical clearance heights. Technical information is necessary to determine whether the proposed design provides sufficient clearance and complies with applicable operational, safety, and regulatory requirements.

- Pedestrian Bridge Connection Level: The proposal does not adequately identify the specific Hotel level or elevation at which the proposed pedestrian bridge would connect to or interface with the existing parking garage.

- Bridge Clearance Requirements: The submitted documentation lacks sufficient detail regarding the proposed bridge clearances, including the dimensions and spatial requirements necessary to ensure that the structure does not interfere with existing vehicular circulation, airport operations, or other applicable infrastructure requirements.

- Structural Attachment to the Parking Garage: The pedestrian bridge, as known, is impacting vehicle stalls and connects to the parking garage, not the terminal. Furthermore, the bridge cannot be attached to the parking facilities structure.

- Site Plan: The hotel site plan does not identify the required fire lane.

- Traffic Plan: A traffic management plan to queue hotel traffic away from MIAD Circle Drive, which feeds traffic to the lower vehicle drives of the terminal.

Given the significance of these outstanding matters, MDAD has determined that additional technical clarification and supporting documentation are necessary to complete a comprehensive evaluation of the proposed development. Furthermore, the proposed redlined contractual revisions must be reviewed to ensure consistency with the final design, applicable County requirements, and the operational needs of Miami International Airport.

Finally, PARMCO did not submit a copy of the $25,000 application fee required under Section 2-8.2.6 “Public-private partnership; unsolicited proposals” and Section 255.065, Florida Statutes as well as submit required documentation. Accordingly, the proposal cannot be considered at this time, and the County is not obliged to respond within 30 days of receipt, as required by law.

Roy Coley

Roy Coley
Deputy Mayor

C: Geri Bonzon-Keenan, County Attorney
Jess McCarty, First Assistant County Attorney
Office of the Mayor Senior Staff
Christina Cicilia, Director, Office of Policy and Budgetary Affairs
Ralph Cutié, Director, Miami-Dade Aviation Department
Basia Pruna, Director, Clerk of the Board
Adeyinka Majekodunmi, Commission Auditor
Eugene Love, Agenda Coordinator

Appendix A

1/7/2025 – FAA issues a determination letter disapproving 7460 applications with the plans, claiming impacts to the Airport Surveillance Radar.

1/7/2025 – Contacted local FAA ATC Technical Operations to discuss the possibility of raising the structure height of the Airport Surveillance Radar (ASR) to mitigate the 3-degree blind spot created by the proposed hotel.

1/8/2025 – Contacted the MIAMI ATCT Manager to discuss the impacts on the ASR. The FAA Letter of Determination (LOD) provided a provision to resolve Technical Operations surveillance objections, provided that there is no objection from Air Traffic Control users (MIA users or others) to any degradation to the radar service within the defined shielding area. The ATCT team shared concerns and objected to the 3-degree blind spot in the ASR.

1/10/2025 – Contacted the FAA ADO and requested clarification on how far the radar signal's 3-degree blind spot will extend. This information was requested by the ATCT Manager for consideration.

1/13/2025 – Received a response from the FAA that the 3-degree blind spot will extend 60 nautical miles and will create a physical blockage where there will not be any fill behind it from the primary radar. We were also advised by the FAA that the radar could not be raised because of limitations on the waveguide at its maximum height.

1/13/2025 – Contacted PTI (airport consultant) for assistance in evaluating the FAA determination and potential solutions to the ASR signal degradation. Advised by the consultant that a similar case occurred in Las Vegas, and radar signal redundancy was achieved from a nearby airport.

1/14/25 – Continued coordination with the FAA local Technical Operations team for a potential solution to the signal degradation to the ASR from the proposed hotel. Inquired about the existing ASR feedhorn height.

1/23/25 – Met with FDR to share the FAA LOD and to share the mitigation efforts.

1/30/2025 – MDAD continues its discussions with the FAA regarding the impact of the proposed Westin Hotel. Met with representatives from the broader FAA, including the specific divisions that contributed to the letter of

determination, to clarify their concerns and explore potential solutions. At this meeting, the ATCT officially recorded their unacceptance of the 3-degree blind spot over 60 miles and negated one of the provisions offered as a potential remedy in the FAA determination letter.

2/21/25 – Contacted the MIAMI ATCT Manager to inquire if establishing radar coverage redundancy using nearby airports like FLL and HST was an acceptable mitigating measure.

2/25/25 – Contacted the FAA ADO to inquire about the timing of the approved upgraded radar that is planned in the near-term at HST that could potentially serve as a mitigation to the MIA radar blind spot.

3/4/25 – Followed up with the FAA ADO on the request made on 2/25/25.

3/7/25 – Continued coordination with the FAA ADO on steps required to achieve radar redundancy from HST.

3/14/25 – Followed up with the FAA ADO on the request made on 3/7/25.

3/17/25 – Response received from FAA ADO that they are still working on our request and will respond with their findings as soon as possible.

3/20/25 – Received a call from the FAA ADO advising me that the FAA met internally and advised that a study may be required to understand the effects of redundancy that may be achieved from the signal feed from the HST radar. An FAA reimbursable agreement would be required. Advised that the study could take several months, depending on the complexity and the availability of technical and operational personnel.

3/24/25 – Received a response from the FAA with concerns about the coverage the HST ASR will provide, given its distance from MIA at 20-25 nautical miles away.

3/25/2025 – FDR and MDAD met to discuss the FAA determination letter.

October 1, 2026

The Honorable Natalie Milian Orbis
Miami-Dade County Commissioner, District 6
Stephen P. Clark Government Center
111 NW 1st Street, Suite 220
Miami, Florida 33128

Re: Unsolicited Proposal for a 231-Room Upscale Select-Service Hotel at Miami International Airport

Dear Commissioner Milian Orbis:

On behalf of Parmco Airport Holdings LLC ("Parmco"), we are submitting this unsolicited proposal to you as the Commissioner of the District in which Miami International Airport ("MIA") is located. Given the number of decades that MIA has sought to add another hotel at the airport, we are requesting your consideration of our unsolicited proposal to develop a 231-room select-service hotel at Miami International Airport on the same site that was the subject of the County's RFP No. 01677.

Our predecessor company ranked first in qualifications and ultimately second overall following the financial submission during the RFP No. 01677 process. Given the current lessee's indicated desire to identify another site for its proposed four-star Westin hotel, we believe the County should evaluate whether our proposal offers a timely and credible path to deliver an Upscale select-service hotel on the original parcel covered by the earlier RFP.

Parmco has strengthened its group and is led by Simon Falic, an experienced local business leader, major hotel owner, and investor. Our updated scope and schedule present a practical approach to advancing the project efficiently and meeting the Airport's need for additional hotel accommodations. The hotel will be reasonably priced and accessible to a broad range of MIA travelers, rather than a select few.

We respectfully request an opportunity to brief you and your staff on the proposal and supporting materials. Enclosed are plans and renderings for the proposed hotel, along with a limited strategic redline of the current lessee's lease that reflects the terms under which we are prepared to proceed with the Miami-Dade Aviation Department. The redlined lease includes, as attachments, a scope of work consistent with the plans and a proposed project schedule.

6100 Hollywood Blvd 7th Floor Hollywood FL 33024
(305) 503-4095

Thank you for your consideration. We would welcome the opportunity to meet at your convenience.

Sincerely,

Parmco Airport Holdings LLC

Enclosures:

2007-2026 Airport Hotel Timeline
2023 County Attorney Drafted Resolution
Proposed airport hotel design presentation
Redline proposed terms and conditions of lease

MIAMI INTERNATIONAL AIRPORT HOTEL

2100 NW 42nd Ave,
MIAMI, FL 33142



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SITE

CONTEXT MAP

N.T.S

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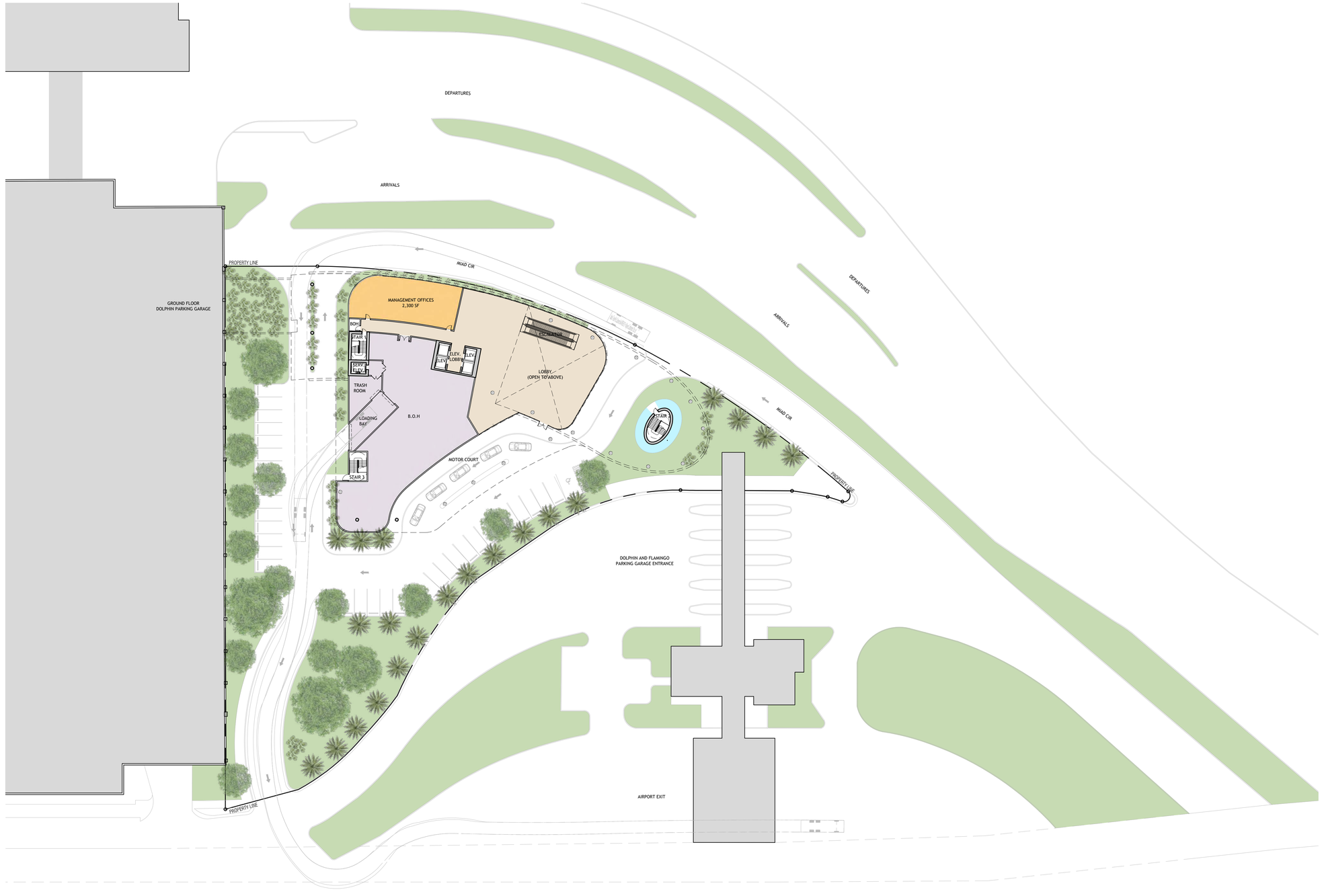
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SITE PLAN

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GROUND FLOOR PLAN

SCALE: 3/32"=1'-0"

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2ND FLOOR PLAN

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2ND FLOOR PLAN

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3RD FLOOR PLAN

SCALE: 3/32"=1'-0"

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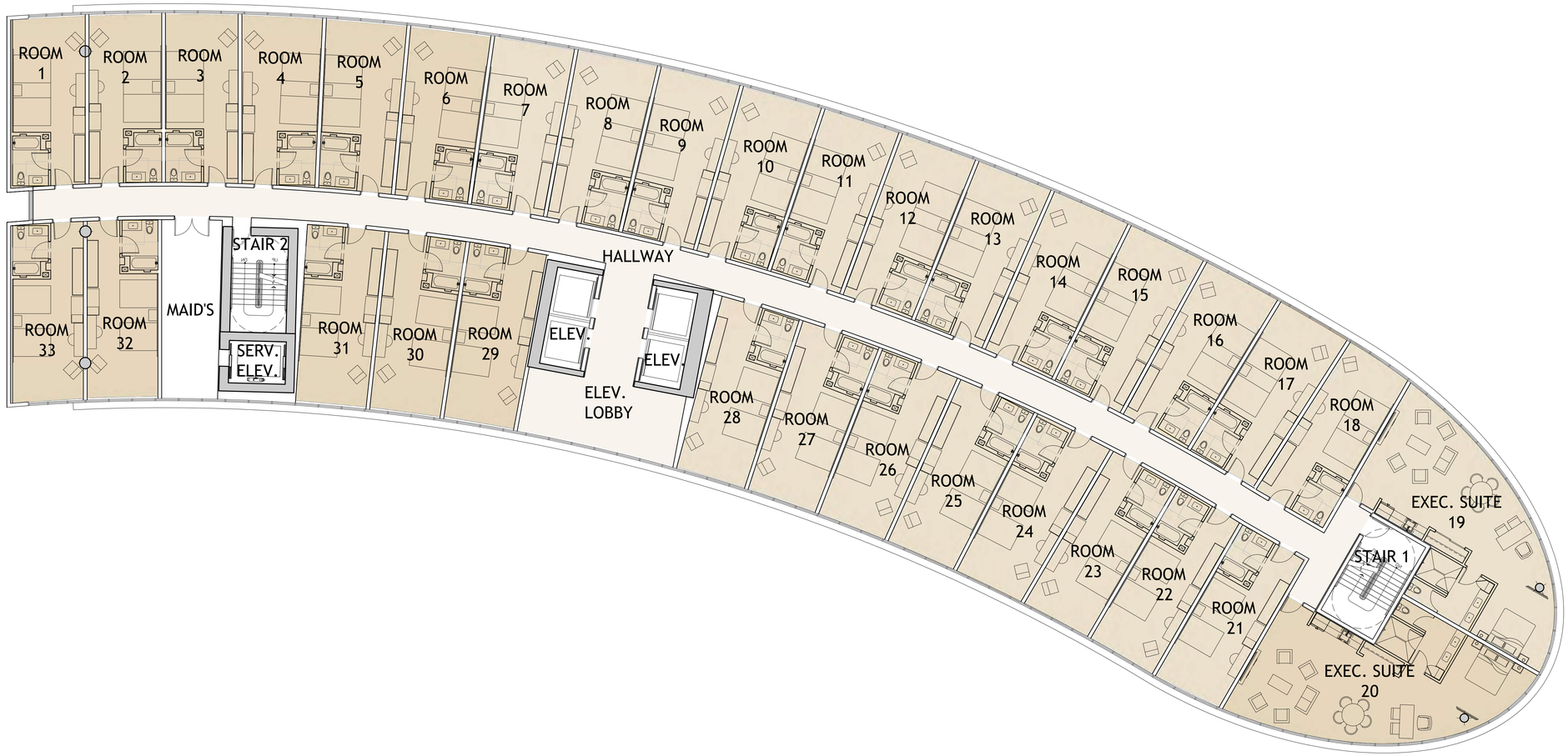
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TYP. UNITS FLOOR PLAN (4TH THRU 9TH)

SCALE: 3/32"=1'-0"

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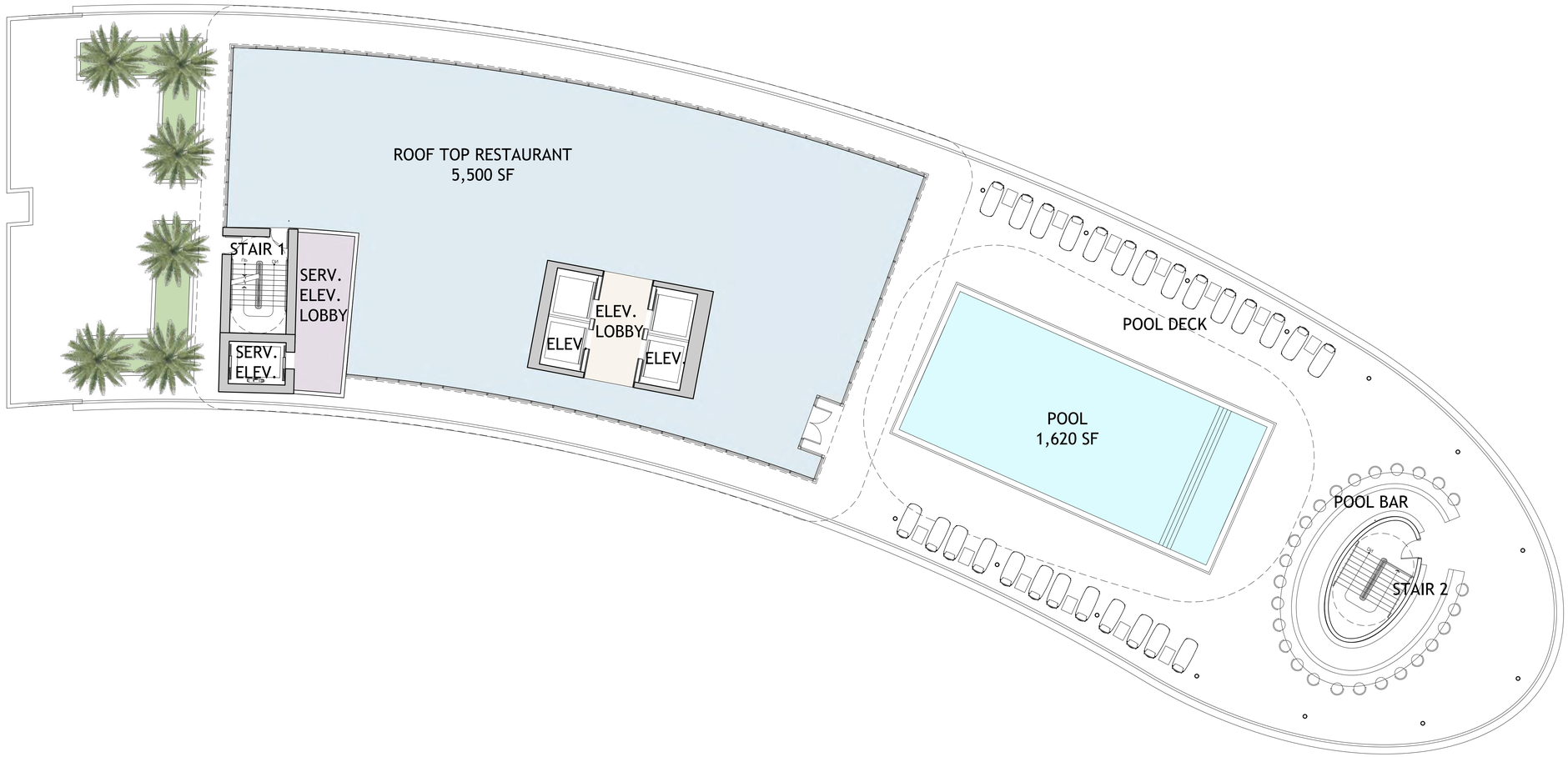
DATE: 07-24-2026

PROJECT NO:

DRAWING NAME:

SHEET NO:

A-1.04



10TH LEVEL - ROOF AMENITIES PLAN

SCALE: 3/32"=1'-0"

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ARCHITECTURE · PLANNING · INTERIORS
CORAL GABLES · ATLANTA

SEAL:

ROBERT BEHAR AR No. 14339

MIAMI INTERNATIONAL AIRPORT HOTEL

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MIAMI, FL 33142

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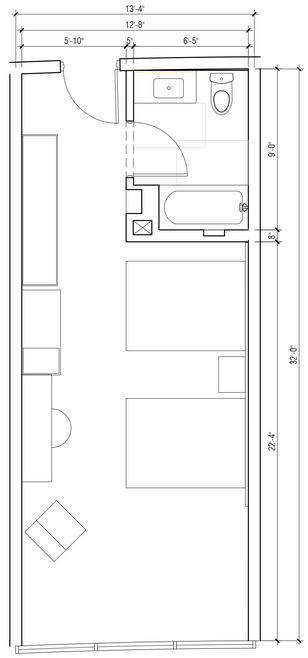
DATE: 07-24-2026

PROJECT NO:

DRAWING NAME:

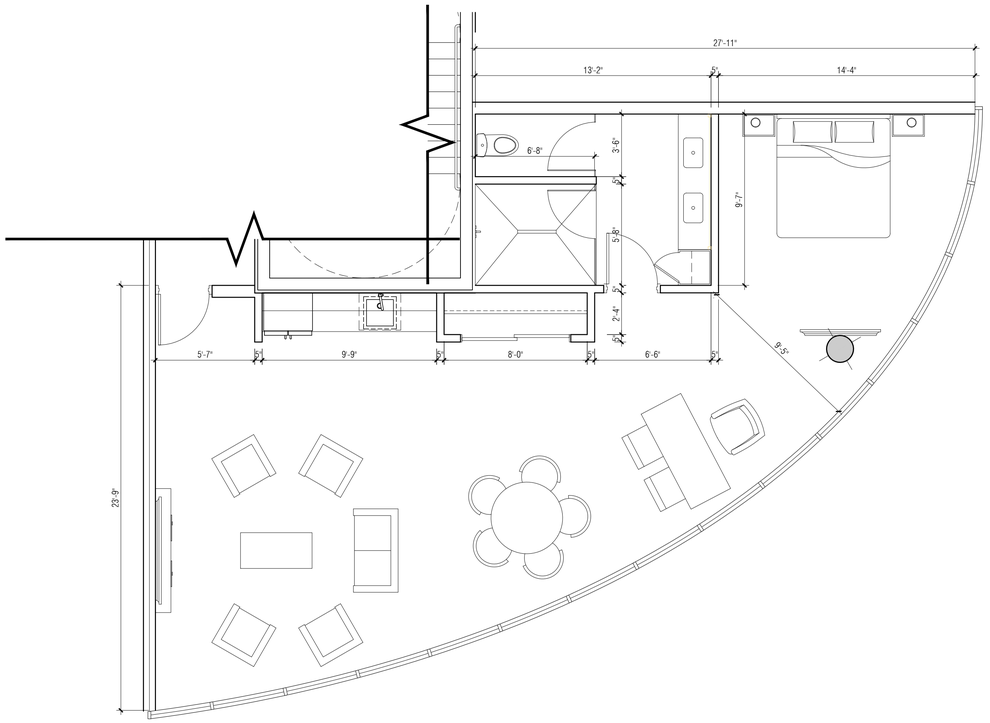
SHEET NO:

A-1.05



TYPICAL UNIT: 405 SF

SCALE: 1/4"=1'-0"



EXECUTIVE SUITE: 955 SF

SCALE: 1/4"=1'-0"

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PARTNERS, P.A.

ARCHITECTURE · PLANNING · INTERIORS

CORAL GABLES · ATLANTA

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DATE: 07-24-2026

PROJECT NO:

DRAWING NAME:

SHEET NO:

A-1.06

Timeline of RFP-01677

Date	Event	Comments
June 5, 2007	Resolution R-650-07 Adopted *(Vote: 11-0)*	Issued RFP MDAD-06-03 to seek qualified investor entities to finance, construct, renovate, manage and/or operate projects in certain airport Investment areas. Mentioned near future plan to solicit interest from the private sector for a hotel developer.
July 17, 2008	Resolution R-831-08 Adopted *(Vote: 7-0)*	Directed Mayor to solicit expressions of interest without a formal competitive process for firms willing to finance, construct, operate, and maintain a new hotel at MIA.
In 2013	Negotiations Under R-831-08 Ceased	Miami-Dade Aviation Department determined that it wished to self-finance construction of a new hotel and ceased negotiations
June 4, 2019	New MDAD Capital Improvement Program Approved	The new CIP confirmed the need for two new airport hotels.
December 3, 2019	Ordinance No. 19-122 Adopted *(Vote: 7-3)*	Created expedited procurement authority for capital projects, including hotels at MIA. **No Votes: Edmonson, Higgins, Cava*
May 19, 2020	Resolution R-521-20 Adopted *(Vote: 12-0)*	Initiated the expedited competitive procurement process for the construction of a new airport hotel.
September 15, 2020	RFP Phase 1 Issued	The RFP was divided into two phases. Phase 1 was the prequalification phase, whereby the County could prequalify up to three firms to participate in Phase 2.
October 16, 2020	RFP Phase 1 Proposals Due	Rankings 1) Parmco Airport Hospitality LLC – 4750 Points 2) FDR Miami Hotel LLC – 4725 Points 3) Mainsail Development International LLC – 4620 Points
November 30, 2020	Shortlist of Proposers Released	All three proposers were shortlisted.
February 9, 2022	RFP Phase 2 Issued	Phase 2 required proposers to submit proposals with their technical and financial solutions.

May 25, 2022	RFP Phase 2 Proposals Received	Rankings 1) FDR Miami Hotel LLC – 3850 Points 2) Parmco Airport Hospitality LLC – 3390 Points **Mainsail Development was found un-responsive*
December 21, 2022	Mayor's Memo to Reject All Proposals	Mayor desired a new RFP process designed under more rigorous procurement standards that would help the County reach a stronger financial outcome and create the greatest value possible for taxpayers.
April 7, 2023	Mayor's Recission of Memo to Reject All Proposals	Mayor determined that proceeding with a new RFP would delay progress on this important infrastructure project. Mayor found merit in both proposals and recommended that the Board make a final recommendation to award the RFP.
April 10, 2023	Mayor's Updated Recission of Memo to Reject All Proposals	Mayor amended her conclusion to recommend that the Board award the RFP to FDR.
July 18, 2023	Resolution R-700-23 Adopted *(Vote: 13-0)*	Approved the award of the RFP to FDR.
July 18, 2023	Resolution to Negotiate Second Hotel with Parmco Denied *(Vote: 6-7)*	Vice Chairman Rodriguez expressed reservations regarding circumventing the bidding process. **No Votes: Steinberg, Higgins, Regalado, Cohen Higgins, Rodriguez, Gonzalez, Garca*
June 10, 2026	Miami International Hotel Design Look & Feel Overview Submitted by FDR for Hotel Relocation	Following MDAD MIA Hotel Alternative Evaluation of February 2026, FDR submits a Design Proposal for Newly Proposed Site on one of three sites identified by MDAD in February.

DEVELOPMENT LEASE AGREEMENT

BETWEEN

MIAMI-DADE COUNTY, FLORIDA, AS LESSOR,

AND

PARMCO AIRPORT HOLDINGS LLC, AS LESSEE,

FOR THE NEW AIRPORT HOTEL

THIS DEVELOPMENT LEASE AGREEMENT ("Agreement") is made and entered into as of the _____ day of_____, 20__, (“Effective Date”) by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida ("County"), and Parmco Airport Holdings LLC a limited liability company, organized and existing under the laws of the State of Florida (“Lessee”).

W I T N E S S E T H:

WHEREAS, the County is the owner of Miami International Airport (known as “Airport” or “MIA”) and operates it through the County's Aviation Department (the "Department" or "MDAD”), and Lessee desires to develop a portion of such airport for aviation and aeronautical purposes; and

WHEREAS, Lessee desires to lease the Premises for the development of a new airport hotel, and Lessor is willing to lease the Premises to Lessee for the design, build, finance, operation, and maintenance of a new hotel at the Airport (the “Hotel”); and

WHEREAS, the Lessee has offered to develop the Hotel that shall conform to the Scope of Services (Appendix A);requirements of this Agreement; and,

WHEREAS, the Lessee has submitted a written proposal dated October , 2026, hereinafter referred to as the "Lessee’s Proposal" which is incorporated herein by reference; and

WHEREAS, Lessee acknowledges that all such development activity must occur in strict compliance with requirements of U.S. Federal agencies including but not limited to the Federal Aviation Administration (“FAA”), the Transportation Security Administration, US Customs and Border Protection and with all regulatory requirements of the State of

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Deleted: **WHEREAS**, on May 12, 2020, the Board of County Commissioners adopted County Resolution No. R-521-20, directing the County Mayor or Mayor’s designee to develop and publish a solicitation for the competitive selection of, and contracting with, a private entity for a new hotel at the Airport; and¶

Deleted: Miami-Dade County's Request for Proposals (RFP) No. 01677 and all associated addenda and attachments, incorporated herein by reference; and the …

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Florida and the County and that this Agreement is expressly subject to such regulatory approvals in accordance with the provisions of this Agreement;

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

ARTICLE 1

Definitions

Affiliate: A business entity in which Lessee maintains a majority ownership of fifty-one percent (51%) or more in such business entity.

Agreement: This written Development Lease Agreement between the County and the Lessee, including 1) collectively these terms and conditions all amendments issued hereto, 2) all Appendices and Attachments hereto; 3) the Scope of Services which details the work to be performed; and 4) the Lessee's Proposal. The Agreement shall include the Commence Construction Security, surety performance bond, and surety payment bond as attachments to the terms and conditions. In the event of any conflict, ambiguity or inconsistency among the Agreement documents that cannot be resolved by application of the most stringent standard set forth below, the order of precedence shall be in the order that the documents are listed above in this paragraph. Where more than one standard applies to any particular performance obligation of the Lessee hereunder, each such applicable standard shall be complied with. In the event there are different levels of stringency among such applicable standards, the most stringent of the applicable standards shall govern.

Deleted: RFP No. 01677 and all associated addenda and attachments, and includes

Airport or MIA: Miami International Airport.

Airport Development: For purposes of this Agreement, Airport Development shall mean any airport design, construction, operation, lease, concession or development project or program approved by the County's Board of County Commissioners in its sole discretion.

Baseline Audit: Shall have the definition set forth in **Article 10.03** of this Agreement.

Board: Means the Board of County Commissioners of Miami-Dade County, Florida.

Builder: The Lessee's Project Contractor that will be responsible for all construction activities related to the Project, including the general contractor and any Subcontractors, and which are duly authorized to perform this work in the state of Florida.

Business Day: Any day except Saturday, Sunday, or a day which is a County holiday.

Certificate of Occupancy (CO): That Certificate of Occupancy issued by the applicable governmental entity.

Commence Construction Deadline: Shall be twenty-four (24) months from the Effective Date. The Commence Construction Deadline is subject to extension pursuant to **Article 5.02(D)** regarding the design of the Improvements and **Article 21.18** (Force Majeure).

Commence Construction Security: Shall have the meaning set forth in **Article 2.01** (Commence Construction Security).

Commencement of Construction: Shall mean the later of (a) the filing of the notice of commencement under Florida Statutes, Section 713.13 and (b) the visible start of construction work on the Premises, including on-site utility, excavation or soil stabilization work (but specifically excluding any necessary testing or ceremonial groundbreaking). In order to meet the definition of "**Commencement of Construction**", such filing of the notice of commencement and visible start of work must occur after Lessee has secured all of the necessary building permits for the Hotel and issued the notice to proceed to its prime contractor for any horizontal improvements.

County: Miami-Dade County acting through the Miami-Dade Aviation Department.

Date of Beneficial Occupancy (DBO): Shall have the meaning set forth in **Article 4.03** (Regular Rent).

Department: Miami-Dade County Aviation Department, a department of Miami-Dade County Government, sometimes referred to as MDAD or the Aviation Department, represented by and acting through the Director or their designee(s).

Department's Project Manager: The Miami-Dade County Aviation Department Director or duly authorized representative designated to manage the Project.

Designer: The Lessee's Project Contractor that will be responsible for all tasks related to the design of the Improvements. This reference includes the personnel performing as the architect(s), landscape architect(s), engineer(s), and other professionals, that are duly authorized to perform this work in the state of Florida.

Director: The Director of the Miami-Dade County Aviation Department, or his/her (or their) designee.

Dolphin Parking Garage: The parking garage at MIA immediately to the west of the Premises.

Effective Date: Shall be the date set forth on the first page of this Agreement above which date shall be the first day of the month following the date the Board's resolution approving this Agreement becomes effective.

Environmental Claim: Any investigative, enforcement, cleanup, removal, containment, remedial or other private, governmental or regulatory action at any time threatened, instituted or completed pursuant to any applicable Environmental Requirement, against Lessee with respect to its operations at Miami International Airport or against or with respect to the Premises or any condition, use or activity on the Premises (including any such action against County), and any claim at any time threatened or made by any person against Lessee with respect to its operations at Miami International Airport or against or with respect to the Premises or any condition, use or activity on the Premises (including any such claim against County), relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or in any way arising in connection with any Hazardous Material or any applicable Environmental Requirement.

Environmental Law: 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; environmental laws and regulations by the US Environmental Protection Agency (EPA), Florida Department of Environmental Protection (FDEP), South Florida Water Management District (SFWMD), and Miami-Dade County Department of Regulatory and Economic Resources - Division of Environmental Resources Management (DERM); Section P-160 of MDAD Standard Technical Specifications which provides guidelines for the proper handling of contaminated soil/groundwater during construction; and any other applicable local, state or federal environmental statutes, codes, or ordinances, and all rules, regulations, orders and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

Environmental Requirement: 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.

Financier(s): All Lenders, mortgagees and secured parties that provide financing for the construction of the Hotel.

Force Majeure Event: Shall have the meaning set forth in **Article 21.18** (Force Majeure).

Gross Revenues: As used in this Agreement means all monies paid or payable to, or considerations of determinable value received by the Lessee for sales made, transactions had, 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 the following shall be excluded from the definition of gross revenues (i) any 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; (ii) any payments paid by sublessee which is for taxes imposed by law, insurance premiums, or utility charges; (iii) all sales refunds; (iv) sales of trade fixtures not sold in the ordinary course of Lessee's business; (v) occupancy taxes for hotel guests and taxes actually paid by Lessee to Lessor pursuant to the terms of this Lease; (vi) insurance proceeds (other than business interruption); (vii) condemnation awards; (viii) proceeds from financing or refinancing; (ix) advance deposits from hotel guests (unless forfeited); and (x) refunds/credits to hotel guests.

For all exclusions from Gross Revenues, sufficient documentation must be maintained to support the nature of the revenues, including, but not limited to (i) contracts and agreements; (ii) bills of lading and other shipping documentation; and (iii) payroll and personnel records (for location of employees).

Hazardous Material: 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.

Hotel Brand: [Select Service], or its assignees or replacement permitted under this Agreement.

Deleted: Westin Hotels & Resorts

Impact Fees: Those fees payable to the County's Department of Planning, Development and Regulation (Building and Zoning) or to another jurisdiction by the Lessee when making permit application for the construction of the Improvements.

Improvement: Any facility (including any pedestrian connection) that the Lessee will design and construct, or cause to be designed or constructed, on the Premises, including any infrastructure and utility facility, and as further described in **Article 5** (Improvements to Premises).

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Improvements: All facilities that the Lessee will design and construct, or cause to be designed or constructed, on the Premises, including all infrastructure and utility facilities, and as further described in **Article 5** (Improvements to Premises).

Lessee: Parmco Airport Holdings LLC, or its permitted assignees.

Deleted: FDR Miami Hotel

Lessor or Landlord: Miami-Dade County acting through the Miami-Dade Aviation Department.

Operations and Maintenance Provider: The Lessee's Project Contractor that will be responsible for the ongoing operations and maintenance component of the Improvements following completion of the design and construction.

Other Airport Property: Shall mean all property at the Airport other than the Premises, whether used or not used by Lessee, and 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.

Plans and Specifications: The drawings and specifications prepared by the Lessee's Designer that show the locations, characters, dimensions and details of the Work to be done and which are part of the Design and Construction Documents.

Premises: The vacant, unimproved land, legally described in **Attachment 1** (Premises) and the Improvements as further set forth in **Article 2.04** (Premises). "On" or "in" when used with respect to the Premises or any sites adjacent to the Premises, means on, in, under, above or about.

Premises Rent: Shall have the meaning set for the in **Article 4.01** (Premises Rent).

Project: All matters and things required to be done by the Lessee to design, build, finance, operate and maintain the Improvements in accordance with the provisions of this Agreement.

Project Contractors: The Lessee's Designer(s), Builder(s), and Operations and Maintenance Provider(s). Project Contractors will be contractually bound to the Lessee.

Project Schedule: The schedule in **Attachment 2** (Project Schedule) that the parties have relied upon in entering this Agreement and that may be updated to reflect extensions as allowed in this Agreement per **Article 5.05** (County Extension to Complete Improvements). The Project Schedule shall identify specific key tasks and duration for the Project and describe all phases and important milestones to include, at a minimum, financial close or date to obtain sufficient financial funding to complete the Improvements, design, construction, start of operations, end of the operations and maintenance term, and handback.

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.

Record Drawings (As-built Drawings): Reproducible drawings showing the final completed Work as built, including any changes to the Work performed by Lessee's Builder that Lessee's Designer considers significant, based on marked-up as-built prints, drawings and other data furnished by Lessee's Builder.

Regular Rent: Shall have the meaning set forth in **Article 4.03** (Regular Rent).

Release: Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment.

Remediation: 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.

Subcontractor: Any person, firm, entity or organization, other than the employees of the Lessee, who contracts with the Lessee or a Project Contractor to furnish labor, or labor and materials, in connection with the Services, whether directly or indirectly, on behalf of the Lessee.

Substantial Completion: The stage in the progress of the Work when the Work or designated portion thereof is completed in accordance with the approved Plans and Specifications so Lessee can occupy or utilize the relevant portion of the Improvements for their intended use, as reasonably determined by the Department.

Temporary Certificate of Occupancy (TCO): That temporary or partial Certificate of Occupancy used under South Florida Building Code.

Trespassers: Third parties who have entered the Premises and whose actions while on the Premises have resulted in Release of Hazardous Materials directly onto the Premises or onto other Airport Property accessed by such persons through the Premises. Notwithstanding the foregoing, for purposes of this Agreement, Trespassers shall not include those third parties whose actions took place off of the Premises and which resulted in the presence of Hazardous Materials on the Premises due to the migration of Hazardous Materials from that off-Premises location.

Upscale: Shall have the meaning set forth by STR, Inc. (Smith Travel Research) classifications.

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Work: All labor, materials, tools, equipment, services, methods, procedures, etc., necessary or convenient to performance by the Lessee, its Project Contractors, and

Subcontractors for the fulfillment of Lessee's obligation to design, build, finance, operate and maintain the Improvements in accordance with the terms of this Agreement.

ARTICLE 2

Financing, Term and Premises

2.01 Commence Construction Security:

(A) On or before the Effective Date, the Lessee shall provide security for the performance of its obligations to achieve Commencement of Construction, including the Hotel by delivering to the County one or more irrevocable unconditional direct pay letters of credit meeting the requirements set forth in this section (the "Commence Construction Security"). The Commence Construction Security shall be:

(1) Issued or confirmed by a bank or financial institution having long-term, unsecured debt ratings of not less than "A/A2" from two of the major national ratings agencies (i.e., Fitch Ratings, Moody's Investor Service, Standard & Poor's Ratings Group, and Kroll Bond Rating Agency);

(2) In substantially in the form set forth in RFP-01677 and with an expiration date no earlier than twenty-five (25) months following the Effective Date, provided however that it can be terminated with notice from the Lessee five (5) Business Days following the date Lessee demonstrates to the County that Lessee has met the Commencement of Construction requirements; and

(3) In an aggregate amount equal to $1,000,000.00.

Should the Commencement of Construction Deadline be extended, the Lessee will provide an updated Project Schedule and Commence Construction Security with an expiration date one (1) month beyond the then current date for the Commence Construction Deadline.

(B) The Lessee shall achieve the Commencement of Construction on or before the Commence Construction Deadline.

(C) The County shall have the right to draw upon the Commence Construction Security in the full stated amount thereof should the Lessee fail to achieve Commencement of Construction by the Commence Construction Deadline. The parties acknowledge and agree that the County's rights to retain for its own account the proceeds of a drawing on the Commence Construction Security under the circumstances specified herein are in the nature of liquidated damages for the County's loss of goodwill, loss of opportunity, and other damages.

(D) The County shall return the Commence Construction Security to the Lessee once the Lessee achieves Commencement of Construction.

2.02 Term: The County hereby leases to the Lessee, and the Lessee hereby leases from the County, the Premises described in **Article 2.04** (Premises) for the purposes and uses set forth in **Article 3** (Use of Premises) and **Article 5** (Improvements to Premises), with the right of Lessee to construct or cause to be constructed and thereafter occupy and make use of those Improvements, structures, and facilities described in **Article 5** (Improvements to Premises) hereof, for a lease term of fifty (50) years (the "Term") from the Effective Date, unless terminated earlier as provided for herein.

2.03 Improvement Deadline: The Lessee shall achieve Substantial Completion of the Improvements, including the Hotel, within forty-two (42) months after all permits to allow for the start of construction are obtained, and have a Certificate of Occupancy (CO) or a Temporary Certificate of Occupancy (TCO) issued by such deadline. If Lessee fails to achieve Substantial Completion of the Improvements within this period, Lessor shall have the remedies set forth in **Article 2.07** (Development Schedule and Failure to Develop). This period may be extended by Lessor for a time period pursuant to **5.05 Article** (County Extension to Complete Improvements).

2.04 Premises: The Premises leased herein is generally located adjacent and to the east of the Dolphin Parking Garage and south of the terminal in the Northeast Area of Miami International Airport, and are more particularly described as follows and as shown on **Attachment 1** (Premises) hereto and made a part hereof. The total land area of the Premises is 79,133 Square Feet, shall not include any subsurface rights, and the Premises shall be limited to the area that is 129 feet extending vertically from ground level of the 79,133 Square Feet floor area of the Premises. The County controls and shall have all possessory and all other rights to and in the air space above the 129 feet height limitation of the Premises. The County retains the Subsurface rights.

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2.05 Suitability of Premises: The Lessee acknowledges that (a) the Lessor has made no representations as to the physical condition or condition of title of the Premises or the suitability of the Premises for the purposes of the Lessee, (b) the Lessee has made sufficient investigation into the condition of title of the Premises and has determined that the Premises are suitable for the Lessee's proposed use, (c) that the Lessor has no obligation to perform or cause to be performed any maintenance, repairs, renovations, clean-ups, painting, or the like of the existing facilities on the leased Premises which are leased in an "as-is" condition, except to the extent of Lessor's responsibilities for environmental conditions under **Article 10** (Environmental Compliance), (d) Lessee has made whatever site inspections it deems necessary so as to be apprised of the conditions of the Premises and has made its own determination that the Premises are suitable for its intended use, (e) Lessee has reviewed all publicly available documents and those provided by the Lessor or its agents applicable to the Premises and the adjacent areas, and (f) Lessee has otherwise satisfied itself that the conditions of the Premises, and utilities in their current state are satisfactory to the Lessee.

The Lessee's obligation under this Agreement, such as in **Article 8.01(B)** (Permits and Licenses), to obtain all land use, construction and operating permits and approvals required of the Lessee, and to pay all applicable impact or use fees, at the Lessee's sole cost and expense, shall not require the Lessor to take any action or perform any tasks within the Premises to enable the Lessee to obtain such permits and approvals, including, but not limited to, certificates of occupancy, which shall remain the Lessee's exclusive obligation to take or perform in order to obtain such permits and approvals. The Lessee further acknowledges that, by executing this Agreement, the Lessee at its own cost, risk, and expense must make the necessary investments and all Improvements to the Premises, including all infrastructure Improvements and utilities services necessary for Lessee's construction and use of the Premises, to make the Premises suitable for the Lessee's use and to satisfy the County's building, life, safety, fire, and occupancy requirements, and that the Lessor shall have no obligation to Lessee to compensate or reimburse Lessee for such cost, risk, expense, investment, and Improvements.

MDAD controls the system for water and sewer services at the Airport and reserves the right to require Lessee to make system upgrades to ensure the Improvements do not diminish current or future water, wastewater or stormwater capacity. Department's Project Manager will cooperate with providing information needed to obtain permits, as part of MDAD's role as owner; provided, however, that such cooperation shall not require MDAD to incur any expenses, costs or additional liability as a result thereof.

2.06 Title to Improvements; Standards of Construction: Title to all Improvements shall be in the name of Lessee. Lessee shall have the option of (a) conveying to the County all Improvements installed or constructed by Lessee upon the Premises, free and clear of all liens and encumbrances, except for any financial interests or liens in Lessee's leasehold rights specifically approved by County under the loan documents as provided under **Article 12.04(B)** (Lessor Approval of Financing Documents), or (b) retaining title to such Improvements in Lessee's name. Any conveyance to the County of the Improvements shall be done by a Bill of Sale in a form that shall be subject to the reasonable approval of the County and shall include assignment of all warranties or other guarantees related to the construction of the Improvements.

2.07 Development Schedule and Failure to Develop: Lessor has granted this Agreement for a term as described in **Article 2.02** (Term), on the basis of Lessee's assurance that Lessee will obtain CO or TCO for Improvements by the date specified in **Article 2.03** (Improvement Deadline). If Lessee fails to obtain CO or TCO for Improvement by the date specified in **Article 2.03** (Improvement Deadline), the Lessor may terminate this Agreement or grant an extension to the date specified in in **Article 2.03** (Improvement Deadline), at its sole discretion and in accordance with **Article 5.05** (County Extension to Complete Improvements).

If Lessor grants said extension and Lessee fails to obtain a CO or TCO for Improvements within the extension period, Lessor shall be entitled to take any or all of the following actions at its discretion:

(1) Begin charging Minimum Annual Guarantee rent; and/or

(2) If it has been at least five (5) years since the Effective Date, Terminate the Agreement.

2.08 Review by FAA: This Agreement is subject to the review of the Federal Aviation Administration (FAA) which will occur before the Effective Date of this Lease. 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) calendar 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. If Lessee rejects such changes, this Agreement shall terminate. 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 (i) the Department declares this Agreement to be null and void, (ii) the Department makes a determination to lease the Premises to another party, or (iii) the parties are unable to agree to the terms of a revised Agreement that will overcome the concerns raised by the FAA.

2.09 Early Termination for Airport Purposes:

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

(B) In the event such notice is given prior to completion of construction of any Improvement, the notice shall specify the effective date of termination, which may be immediately upon Lessee's receipt of the notice or at such other time specified in the notice. Lessor shall have the option of requiring Lessee to complete construction of the Improvement and to obtain a CO therefor or else requiring the Lessee to cease all construction activity as of the date set forth in the notice. Lessee shall submit to Lessor all construction costs incurred by Lessee as of the effective date of termination. The determination of costs eligible for reimbursement to Lessee shall be based on the calculation of costs as of the effective date of the notice as determined under **Article 5.09** (Final Improvement Costs). Within one hundred twenty (120) calendar days of Lessor's acceptance of the costs, which may be subject to negotiations by the parties prior to Lessor’s acceptance thereof, Lessor shall pay Lessee the amount of the costs.

(C) In the event such notice is given after completion of any Improvement, the notice shall provide Lessee with a reasonable period of time to vacate the Improvement, which shall be not less than sixty (60) calendar days after the notice. Lessor shall be responsible for paying to Lessee the stabilized appraised value as determined by two Members of the Appraisal Institute (MAI appraisers). One appraiser shall be chosen by Lessee and one shall be chosen by Lessor. If the average of the two appraisals is 10% or less of each appraisal amount, then such average shall be the stabilized appraised value. If the average of the two appraisals is over 10% of either appraisal, then the two appraisers shall choose a third MAI appraiser to determine the stabilized appraised value. Amortization shall be calculated in a straight line declining basis over the Term of the Agreement. Within one hundred twenty (120) calendar days of Lessor's acceptance of the stabilized appraised value from all three appraisers, which may be subject to negotiations by the parties prior to Lessor's acceptance thereof, Lessor shall pay Lessee the amount of the costs.

ARTICLE 3

Use of Premises

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

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

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

(C) The parties may agree to the use of MDAD land that is outside the boundaries of MIA for the sole purpose of a temporary staging area for materials and personnel of the Lessee, during the planning and construction phases.

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

(D) In connection with the Improvements, the Lessor will join in such easements, restrictive covenants, easement vacations or modifications and such other documents, including but not limited to, non-disturbance and attornment agreements as provided in this Agreement, as may be necessary for Lessee to develop and operate the Improvements in accordance with the Agreement, provided that such joinder by Lessor shall be at no liability, exposure, or cost to Lessor other than its costs of review, and also provided that the location, terms, and form of any such easements or other documents shall be reasonably acceptable to Lessor, which acceptance shall not be unreasonably withheld or delayed.

3.02 Use of Premises: The Lessee shall use the Premises leased herein to design, build, finance, operate, and maintain a Hotel that will provide functional and aesthetic integration with MIA to encourage use of MIA. The Project must comply with all applicable local, state and federal regulations, to include construction codes and Miami-Dade Aviation Department Design Guidelines. The Project should be consistent with world-class standards for international airports and capable of accommodating both the present and the future needs of MDAD's airports. The Lessee may also provide goods and services commonly available in an airport hotel, such as food & beverage and ground transportation to and from the Hotel. All such planned concessions, must be generally consistent with the attached Scope of Services or require approval of the Department, in its sole discretion. The Department does not contemplate approving certain types of concessions that would create a conflict with other agreements in place at MIA. For information on concessions at MIA, visit the Miami International Airport website at: https://www.miami-airport.com/home.asp.

3.03 Concession Services: The Lessor reserves the right to require permits, that include fees, for the operation of concessions, restaurants, taxicab and other ground transportation services and other commercial activities at the Hotel, pursuant to the applicable legislation.

3.04 Lessee's Rights Not Exclusive: Notwithstanding anything herein contained that may be, or that may appear to be, to the contrary, it is expressly understood and agreed that the rights granted under this Agreement to develop an on-site Hotel at the Airport are non-exclusive and Lessor reserves the right to grant similar privileges and similar leases to other lessees on other parts of the Airport, not including the Premises, and to take any and all actions (including the leasing of property for any lawful purpose) that Lessor is permitted to take under federal, state, and local law pertaining to the Airport. The Department commits to not award a contract for development of another new Upscale hotel at MIA for the first sixty (60) months after the Effective Date of this Lease.

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3.05 Franchise Agreement: A copy of the executed franchise agreement between the Lessee and Hotel Brand shall be provided by the Lessee to the Lessor within five (5)

Business Days' execution thereof and in all events prior to Phase 1A submission of the design review per **Article 5.02(D)**.

ARTICLE 4

Rentals and Payments

4.01 **Premises Rent**: Lessee shall pay Premises Rent starting from the Effective Date and throughout the Term. The Premises Rent shall be determined by multiplying the total land square footage, as stated in **Article 2.04** (Premises), by the appraised rate per square foot of $X.XX. The appraised rate is effective as of October 1, 2025, and subject to annual adjustments, as appraised yearly by an MIA appraiser and approved by the Board of County Commissioners in the Annual Published Rates and Charges approved through the annual budget process.

4.02 **Monthly Premises Rent Payment:** Lessee shall pay the Premises Rate, divided by 12, on a monthly basis, due in advance on the first of each month.

4.03 **Regular Rent:** Lessee shall pay a monthly Regular Rental for the lease of the Premises, beginning on the earlier of: (i) the first day of the forty-third (43rd) month after Commencement of Construction, and if the deadline to achieve Substantial Completion of the Improvements is extended by the County per **Article 5.05** (County Extension to Complete Improvements), then the first day of the month following the exhaustion of said extension period; or (ii) the first day of the month immediately following the Date of Beneficial Occupancy.

The monthly Regular Rent shall consist of two parts: 1) the Premises Rent; and 2) an opportunity rent which will be either the Minimum Annual Guarantee (MAG) or Percentage of Gross Revenues, whichever is greater.

The MAG shall be Seven Hundred and Fifty Thousand Dollars ($750,000) payable in equal monthly installments of Sixty Two Thousand Five Hundred Dollars and 00 Cents ($62,500.00) as the Minimum Monthly Guarantee (MMG) subject to **Article 3** (Use of Premises) and due each month. The Percentage of Gross Revenues shall be 3.5% of Gross Revenues.

If the Percentage of Gross Revenues for any given month is greater than the MAG, then the Percentage of Gross Revenues will be the opportunity rent.

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The MAG is subject to adjustment based on the applicable CPI-U on an annual basis, and which may be no higher than 3% in any index year and not less than zero. The CPI-U means the percentage increase in the Consumer Price Index for All Urban Consumers; U.S. City Average; All items, not seasonally adjusted, 1982-1984 = 100 reference base for the applicable base Lease Year. All rent shall be payable monthly in U.S. funds, plus applicable state sales tax, as required by law, on the first day of each and every month as shown below and without billing, at the offices of the Department as set forth in **Article 4.09** (Method of Payment).

(A) Date of Beneficial Occupancy: The DBO is defined to be the earliest of (i) the date on which Substantial Completion of the Work associated with any Improvement on the Premises has occurred and the appropriate code enforcement agency has issued a CO or a TCO that enables the Lessee to occupy or utilize the Improvement in any manner for its intended use, (ii) the date on which the Lessee commences the use of any Improvement for its intended use (with or without a TCO or CO), or (iii) the date on which Substantial Completion of the Improvement would have occurred and on which the appropriate code enforcement agency would have issued a CO or TCO if not for the occurrence of Lessee's delays, all as determined per the Project Schedule approved by the County.

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

(C) **4.04 Improvement Rent:** Improvement Rent shall be in addition to Premises Rent and Regular Rent and shall be a rent payment for Improvements constructed on the Premises, in the amount of three percent (3%) of the Gross Revenues realized by Lessee from the operation of Improvements in the Premises. Improvement Rent for the Improvements on the Premises shall commence on the first day of the month following the date that is twenty-five (25) full years following the Effective Date. Lessee shall pay such Improvement Rent to the County quarterly on or before the first day of the second month following the quarterly period in which the Gross Revenues were generated.

4.05 Parking Fee: From the Date of Beneficial Occupation for the Hotel to the termination of this Agreement, the Lessee will pay the County a fee for the exclusive use of up to 100 reserved parking spaces at the Dolphin Garage and/or Flamingo Garage and/or other nearby parking for the Hotel patrons and valet parking at the then current monthly Airport rate for such parking, and as may be amended from time to time for any patron or employee. The location of such spots in the Dolphin Garage shall be assigned by the County, and the County reserves the right to alter the location of such spots at its discretion. The parties may negotiate a mutually agreeable adjustment to the number of reserved parking spaces, and in the case of additional spaces, if MDAD determines additional spaces are available.

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For hotel employee parking, the Lessee, for the applicable fee, may use the MIA facilitated employee parking, as available, similar to other airport workers and which is located in a remote parking lot accessible by an employee shuttle bus. The 2026 employee remote parking rate is $XX per month per parking spot and is subject to change at the sole discretion of MDAD.

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4.06 Security Deposit: Unless previously deposited with the County, within three (3) calendar days after the Effective Date, Lessee will deposit with the County an amount equal to two times the required total monthly Premises Rent as determined pursuant to **Article 4.01** (Premises Rent) above, plus applicable State sales tax thereon, as security for the payment of the Lessee's obligations hereunder. Said deposit shall be in addition to any rental payments required hereunder, and the Department shall be entitled to apply such payment to any debt of the Lessee to the Department that may then exist, as permitted by law, including but not limited to the rentals required hereunder. In lieu of the Security Deposit being made in cash, the Department, in its sole discretion, may authorize the Lessee to provide an irrevocable Letter of Credit, in a form provided by the Department, in like amount. The amount of the Security Deposit is subject to adjustment by the Department at any time there is a change in the annual or monthly rentals pursuant to the terms of this Agreement; provided further, that the Department shall have the right to demand an increase in the Security Deposit requirement of up to an additional two (2) months rental to provide the Department with adequate assurance of the Lessee's payment of its obligations, which assurance is required because of the Lessee's defaults in the timely payment of rents, fees and charges due hereunder, or because the Department has reason to believe, based on published reports, that the Lessee's future ability to pay such rentals, fees and charges, on a timely basis, is in jeopardy.

4.07 Common Use Service Charge: There are no common use service charges applicable.

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

4.09 Method of Payment: The Lessee shall pay, by mail, hand delivery or electronic funds transfer, all rentals, fees and charges required by this Agreement to the following:

By Mail: Miami-Dade Aviation Department
Finance Division
P.O. Box 592624
Miami, Florida 33152-6624

By Express Mail: Miami-Dade Aviation Department
Finance Division
4200 N.W. 36 Street
Building 5A, Suite 300
Miami, Florida 33122

By Wire Transfer: In accordance with Wire Transfer instructions provided by MDAD's Finance Division at 305-876-7383.

By Online Payment: Via the MIA-Pay website (www.miami-airport.com) by setting up user and password with an accurate invoice number.

4.10 Late Payment Charge: In the event the Lessee fails to make any payments required to be paid under the provisions of this Agreement, within ten (10) calendar days after the same shall become due, interest shall be due and payable on the unpaid payments in the amount of one and one-half percent (1.5%) per month against the delinquent payment from the original due date until the Lessor actually receives the payment. Such interest rate shall apply unless the Board of County Commissioners has established a different rate or a specific provision of federal or state law requires otherwise. The right of the Lessor to require payment of such interest and the obligation of the Lessee to pay same shall be in addition to, and not in lieu of, the rights of the Lessor to enforce other provisions herein, including the termination of this Agreement, and to pursue other remedies provided by law.

4.11 Dishonored Check or Draft: In the event that the Lessee delivers a dishonored check or draft to the County in payment of any obligation arising under the terms of this Agreement, the Lessee shall incur and pay a service fee of TWENTY-FIVE DOLLARS, if the face value of the dishonored check or draft is $50.00 or less, THIRTY DOLLARS, if the face value of the dishonored check or draft is more than $50.00 and less than $300.00, or FORTY DOLLARS, if the face value of the dishonored check or draft is $300.00 or more, or Five Percent of the face value of such dishonored check or draft, whichever is greater. Further, in such event, the Department may require that future payments required pursuant to this Agreement be made by cashier's check or other means acceptable to the Department.

4.12 Utilities: The Lessee shall pay for all utilities it uses or that are imposed on Lessee as a matter of law. The County shall have no obligation to provide utilities to the Premises. Lessor shall have no obligation to maintain or repair any utilities that exist on the Effective Date or may exist on the Premises in the future, and Lessee shall be exclusively responsible for all such maintenance and repair of utilities on the Premises in accordance with its obligations under utility agreements or as a matter of law. Department's Project Manager will cooperate with providing information needed from MDAD, as part of MDAD's

role as owner; provided, however, that such cooperation shall not require MDAD to incur any expenses, costs or additional liability as a result thereof.

4.13 Other Fees and Charges: The Lessee acknowledges that the Board of County Commissioners, pursuant to applicable legislation, has or may establish or direct the establishment, from time to time, of various fees and charges for the use of various facilities, equipment and services provided by the County and not leased to, leased to, or specifically provided to the Lessee hereunder, and procedures relating to the payment of same. The Lessee shall pay, upon billing, for its use of such facilities, equipment and services those fees and charges, which are billed monthly. For other fees and charges which are based on usage, the Lessee shall, in writing, report its uses of applicable facilities, equipment and services and simultaneously pay the applicable fees and charges at such frequency and in such manner as may be prescribed by the Department. Notwithstanding the absence of any identification in this Agreement of particular charges to be paid by Lessee for its use of the Premises and the Airport, Lessee agrees to pay whatever charges are imposed by the County on all tenants and users of the Airport.

Lessee shall be solely responsible for payment of all fees and charges applicable to its development and use of the premises, including, but not necessarily limited to, all concurrency fees, Impact Fees, offsite improvements made necessary or desirable by Lessee's development activities or Improvements, and security fees or charges imposed by or made necessary by federal, state, or local security requirements, as they may be imposed or amended from time to time.

ARTICLE 5

Improvements to Premises

5.01 Improvements:

(A) As authorized pursuant to Chapter 125.012(24), Florida Statutes, subject to the provisions of this **Article**, the Lessee shall, design, finance, construct and pay for such Improvements to the Premises as shall be approved by the Lessor (as hereinafter provided), as shall be necessary to make the Premises suitable for Lessee's use and occupancy for the purposes and uses described in **Article 2** (Financing, Term and Premises) hereof, in accordance with all applicable FAA and Aviation Department requirements and all building, fire and environmental codes and the Americans with Disabilities Act. Any pedestrian connection bridge(s) constructed or improved by Lessee, whether new construction or supplemental to an existing structure, shall be considered part of the Hotel and maintained by the Lessee.

At its sole cost and expense, Lessee shall duly apply for, obtain, and maintain any and all permits, licenses, easements, and approvals necessary prior to, during and after construction.

(B) The Lessee hereby agrees to invest a minimum amount which is reasonably consistent to the design and construction costs identified in Design and Construction

Budget Worksheet in the Lessee's Scope of Services to design and construct the Improvements on the Premises. Expenditures that satisfy such minimum shall be limited to actual expenditures made by Lessee prior to the CO that relate directly to the design and construction of the Improvements as reasonably determined by the Lessor under **Article 5.09** (Final Improvement Costs).

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

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

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

(D) All of the Lessee's contracts with architects, engineers, and construction contractors for the Premises shall contain provisions permitting said contracts to be collaterally assigned to the Landlord, upon the Landlord's election to be effectuated in writing, if there is a default by the Lessee; it being understood that the Lessor shall have no obligation to accept the assignments. These assignments shall be subordinate to the rights of Lessee's Lender and the rights, if any, of any subtenants; provided, however, such assignments shall not be subordinate to the extent the Lessor takes actions thereunder to remedy contract matters affecting life, safety or public health not being remedied by Lessee's or Lessee's Lender. Lessee shall make the Lessor an express third-party beneficiary to all such contracts, and shall in all such contracts with architects, engineers, and construction contractors for the Premises, along with all other contracts pertaining to the Premises, require that the Lessor be named an additional insured and beneficiary to all insurance policies required to be maintained pursuant to this Lease, and that the Lessor be fully indemnified and held harmless from any and all claims arising out of such third-party's activities on or relating to the Premises.

5.02 Design of Improvements:

(A) Within one (1) month of the Effective Date, Lessor and Lessee shall hold a preliminary meeting, coordinated through the Department's Project Manager, to begin the Tenant Airport Construction Non-Reimbursable (TAC-N) process. Department's Project Manager shall also provide guidance on project design, permitting and project closeout processes, Small Business Development (SBD) and Arts in Public Places (AIPP) review, and determine the date for the pre-design meeting to be held per **Article 5.02(B)**.

(B) Lessor and Lessee shall hold a pre-design meeting to be coordinated through the Department's Project Manager with the participation from all parties deemed by Lessor to be necessary for such meeting, for discussions regarding utilities, grading drainage, airside, security, existing as-built drawings, compliance with the Airport Master Plan, and the terms of the Agreement and any other related item(s). Information on the Capital Improvement Program can be found at:

http://www.miami-airport.com/capital_improvement.asp.

That website includes a link to the presentation to the Board of County Commissioners which can also be found at:

http://www.miami-airport.com/library/CIP%202019/MIA%20CIP%20PowerPoint%20Presentation%20%20Slides_Memo_Video%20Link.pdf.

Lessee acknowledges its obligation to assure that FAA approval is obtained, even though MDAD must be involved in such process, and that such FAA approval is communicated to Lessee in writing prior to the commencement of construction of each Improvement. The Lessee and its Designer have the responsibility to ensure that the Project design shall be in accordance with all applicable laws, codes, regulations, and other requirements of County, State and/or Federal authorities having jurisdiction over the construction of the Improvements by law or by contract with the County, including all then current requirements of the County as they relate to Tenant Airport Construction, reimbursable/non-reimbursable projects (TAC-R/TAC-N projects). The MDAD Procedures for TAC-N can be found at http://www.miami-airport.com/resources.asp. The Lessee shall be responsible for obtaining and confirming as-built drawings and information pertaining to the design of the Improvements.

(C) Lessee acknowledges that before the Regulatory and Economic Resources Department may issue any permit for an Improvement on County-owned property, the Aviation Department must issue a "Letter of Concurrence" that constitutes the owner's authority for the Lessee to apply for and obtain the building permit. The Department shall not be required to issue the Letter of Concurrence until such time as Lessee has complied with all obligations in this Agreement as to the design and construction of the Improvement, including compliance with the Aviation Department's TAC-N procedures, submission of approved Design and Construction Documents per **Article 5.02 (D)**, and compliance with the regulatory provisions of the County's other departments having jurisdiction over the construction, such as, but not limited to, the Fire Department.

(D) As described in subsection (1) below, the Lessee shall submit to the Facilities Division of the Department the Design and Construction Documents for each Improvement for the Department's review, modifications, and approval. In no event shall the Department's review hereunder be unreasonably withheld, conditioned or delayed. Department's failure to submit modifications within twenty-one (21) Business Days from the date the complete Design and Construction Documents are submitted by the Lessee to the Department shall cause the Development time schedule required herein to be extended for a period equal to the time taken by Lessor after the 21st Business Day to submit modifications provided. If the Department has requested changes on such Design and Construction Documents, Lessee shall not go forward with the Project until it has incorporated such changes and resubmitted to the Department for confirmation that the changes in the Design and Construction Documents have been made.

The Lessee shall submit copies of the following stages of project development to the Department for review: Phase 1A, Phase 2A, Phase 2, Phase 3A, Phase 3B, Phase 3C and Phase 3D (refer to the Deliverables Requirements Manual). Additionally, MDAD reserves the right to hold progress meetings, with written notice to the Lessee, prior to phase submittals, with the Lessee. Design meetings shall be conducted to ensure all minimum design requirements have been met per Deliverables Requirements Manual and that the design intent as originally approved by MDAD is consistent throughout all phases of design.

(1) At each of the design stage submissions, Lessee shall submit to the Department ten (10) sets of the Design and Construction Documents consisting of: i) Plans and specifications; ii) a Project Schedule based upon calendar days without dates for the design, bid and construction; and iii) cost estimates for the Improvements, prepared by an architect/engineer registered in the State of Florida (the "Design and Construction Documents"). The Department may, from time to time reasonably request that other documents be submitted by Lessee as part of the Design and Construction Documents for a particular Improvement, and Lessee shall comply with such request. Lessee acknowledges that failure to comply with Lessee's obligations to submit complete Design and Construction Documents may delay the Department's review of the Design and Construction Documents, which may cause the Lessee to miss other design or construction deadlines contained herein or desired by Lessee. The Lessee shall continue to be held responsible for meeting the deadlines contained herein and shall be subject to the Department's remedies specified herein for not meeting said deadlines. The Department shall in no way be held responsible for delays resulting from the failure of the Lessee to meet all submittal requirements contained herein.

(2) Upon submission of the Design and Construction Documents to the Department for design review at the design stages, the Department shall also review the plans for compliance with the following:

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

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

The Department shall comment in writing on the submission. All comments by the Department shall be incorporated into the Design and Construction Documents. However, Lessee may request reconsideration of any of the Department's comments. Such request shall include documentation supporting the Lessee's position. The Department shall review the request for reconsideration and shall either approve or disapprove in writing the request or alter its initial comments. The determination of the Department at this time shall be final and binding upon the Lessee and accordingly shall be incorporated in the revised Design and Construction Documents for final resubmittal.

(3) After the Department reviews the Design and Construction Documents as submitted by the Lessee, the Lessee may not make a material change in the documents, including at any time during construction, without the Department's further review, which shall not be unreasonably withheld or delayed. The Department's review for Lessee's design and compliance with all applicable codes and regulations does not constitute certification or warranty by the Department (a) as to the quality of the Design and Construction Documents prepared by the Lessee's architect/engineer(s), (b) that the Design and Construction Documents are free of design errors or omissions, or (c) that the Design and Construction Documents are in compliance with applicable laws, codes, rules or regulations of the authorities having jurisdiction over the construction of the Improvements.

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

(A) Lessee shall submit the following to the Department's Project Manager assigned to this Agreement:

(1) A copy of the building permit(s);

(2) All construction bonds including performance, payment, contract completion bonds or their substitute required under **Article 5.07** (Construction Bonds).

(3) The Builders Risk and Property Insurance required under **Article 13** (Insurance); and

(4) Consents from Lessee's Project Contractors to the assignment of Lessee's rights under its contracts with such parties to the County.

(B) Unless the Lessor directs otherwise, Lessee shall submit the following documents to the Department's Finance Manager:

(1) A check made payable to the Department in the amount that represents one percent (1%) of the budgeted construction hard costs for reimbursement of Regulatory and Economic Resources Department fees together with a copy of the construction contract. If the final construction hard costs are higher or lower than the budgeted amount, the difference shall be multiplied by 1% and shall either be paid by Lessee to the Department if the resulting number is a positive amount, with the certified audit of the monies actually expended in the design and construction of the Improvements in accordance with the timeframe established under **Article 5.09(A)** (Final Improvement Costs)**,** or refunded to the Lessee by the Department if the resulting number is negative. Such fee shall be non-refundable. In addition, if Lessee obtains a building permit and allows the permit to expire prior to completion of the Improvements then Lessee shall be required to pay an additional one-half of one percent (½ of 1%) of the budgeted construction hard costs as administrative fees for plans processing reviews required by Regulatory and Economic Resources Department staff to issue a building permit. Such fee shall be non-refundable and shall be payable in addition to the 1% fee required pursuant to this **Article 5.03(B)(1)**; and

(2) Copy of any Lessee Audit pursuant to **Article 10.04** (Lessee Audit).

(C) Lessee shall submit the following to the Department's Project Manager:

(1) Copy of Lessee Financing Documents pursuant to **Article 12.04(B)** (Lessor Approval of Financing Documents); and

(2) any other documents related to the Lessee Financing Documents reasonably requested by the Department.

(D) Lessee shall not be authorized to begin construction until the above-listed items have been submitted to the Department. If Lessee begins construction prior to submission of the Documents and Fees in the required form and amounts, satisfactory to the Department, as required pursuant to this **Article 5.03** (Submission of Certain Documents and Fees Prior to Commencement of Construction), the Department shall be authorized to halt Lessee's construction activities without any liability to the County until such time as Lessee satisfies this requirement. In such event, no extensions of time shall be granted by the Department to Lessee. During construction, the Department's Project Manager or a designee will be permitted by Lessee to observe all aspects of the progress of the work.

5.04 Construction of Improvements: Promptly following Lessor's approval of the Design and Construction Documents in accordance with **Article 5.02** (Design of Improvements) and obtaining the permits required to begin construction, the Lessee shall cause the construction of the Improvements to be completed.

5.05 County Extension to Complete Improvements: The Lessor may grant an extension to the time period to achieve Substantial Completion set forth in **Article 2.03** (Improvement Deadline) for up to twenty-four (24) months, and pursuant to **Article 5.02(D)** (Design of Improvements), and **Article 21.18** (Force Majeure).

In the event the Lessee fails to comply with the time requirements to achieve Substantial Completion of the Improvements, as specified in **Article 2.03** (Improvement Deadline), unless Lessee submits evidence that any delay is outside of Lessee's reasonable control or such time requirements are extended by the Department in writing as permitted by this Article, the Lessee shall have sixty (60) calendar days to cure such failure. In the event the Lessee fails to cure the failure to comply with the stated time requirements herein, the County shall have the right to terminate this Agreement on sixty (60) calendar days' notice or else take whatever appropriate legal steps may be available to protect the County's interests.

5.06 Certain Construction Contract Terms: All contracts entered into by the Lessee for the construction of the Improvements shall require completion of the Improvements within a specified time period following the execution of said contract(s) and shall contain, unless otherwise authorized by the Department, reasonable provisions for the payment of actual or liquidated damages in the event Lessee's Builder fails to complete the construction on time. The Lessee agrees that it will use it best efforts to take all necessary action available under such construction contract to enforce the timely completion of the work covered thereby. Further, as a standard construction practice, all such contracts shall contain provisions requiring the retention of 5% of Builder billings or such lesser percentage amount as may be approved by the Department and in compliance with Florida law. All contracts shall provide that the County is an express third-party beneficiary thereof.

5.07 Construction Bonds: Lessee shall execute, deliver to the Lessor, and record in the public records of the County the following construction bonding prior to the commencement of the construction of the Improvements as well as prior to the commencement of construction of any major capital repairs or maintenance that have a value in excess of the threshold then in place in section 255.05, Florida Statutes (currently $200,000.00 or more):

Separate performance and payment bonds shall be provided, satisfactory to the County, in the full amount of the Improvements, to assure completion of contract work and payment of the costs thereof, free and clear of all claims, liens and encumbrances of subcontractors, laborers, mechanics and suppliers. The required bonds shall be in compliance with all applicable laws including the terms of section 255.05, Florida Statutes, shall name the County as a beneficiary and oblige thereof, and shall be written

by or through, and shall be countersigned by, a licensed Florida agent of the surety insurer in accordance with Florida Statutes.

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

(A) Documents showing that the Improvement has met the requirements of the final inspection and that all permits have been closed out;

(B) Documents that Lessee has obtained lien waivers from the Builder and all parties designated by the Department, along with any final affidavit of the Builder required by Chapter 713, Florida Statutes;

(C) CO for the Improvement;

(D) Certification from the Lessee's architect that the Improvement has been completed in conformance with the approved Plans and Specification as well as all permits and applicable governmental requirements;

(E) At least one copy of an as-built survey of the area covered by the Improvement;

(F) Two (2) complete sets of as-built construction drawings and two (2) AutoCAD files of the as-built construction drawings in a compact disk format or other format designated by the Department, including all pertinent shop and working drawings and such other as-built drawings as the Department may reasonably require; and

(G) Copies of all releases of contractor claims and liens.

5.09 Final Improvement Costs:

(A) For purposes of verifying Lessee's expenditure in design and construction costs of the Improvements, within ninety (90) calendar days of completion of construction of the Improvements or, in the event of a termination of this Agreement prior to the completion of construction, within ninety (90) calendar days of the termination, the Lessee shall submit to the Finance Division of the Department, a certified audit of the monies actually expended in the design and construction of the Improvements, including all infrastructure and utility facilities (collectively in this Agreement, unless specifically stated otherwise, the "Improvements"), in accordance with the Department approved Design and Construction Documents described in **Article 5.02** (Design of Improvements), prepared by an independent certified public accounting firm ("Auditor"), that is approved in advance by the Department, which approval shall not be unreasonably withheld, conditioned or delayed. The audit report shall provide a detailed list of all expenditures in the design and construction costs of the Improvements on the Premises. Eligible costs for such Improvements are those costs for project management, any design costs paid by the Lessee which are not attributable to items considered to be non-reimbursable obligations

of the Lessee, and construction in accordance with the Department approved Design and Construction Documents, including the costs of required bonds and construction insurance ("Approved Improvements Costs"). The Lessee shall be responsible for providing documentation of the Improvements on the Premises, whereby the Auditor can validate all costs incurred on the Premises and render an opinion in the audit report. The Department's failure to disapprove the audit submitted by Lessee as required in this **Article 5.09** (Final Improvement Costs) within one hundred eighty (180) calendar days from the date of submission shall constitute an unconditional approval. In the event of any disputes between the Department and the Lessee as to whether certain costs are to be included in Approved Improvements Costs, said dispute(s) shall be submitted to the Consulting Engineers under the County's Trust Agreement, as defined in **Article 20.01** (Incorporation of Trust Agreement by Reference). The decision of said Consulting Engineers shall be final and binding upon the parties hereto.

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

5.10 Temporary Structures: Trailers or temporary structures used for construction purposes but not for business purposes shall be allowed on the leased Premises or at the off-site location as specified in **Article 3.01(C)** (General Privileges, Uses and Rights) during the period of construction of the Improvements subject to all required permitting. All trailers or temporary structures must comply with the Florida Building Code and must be removed prior to or upon the ending of construction. Copies of the building permits shall be submitted to the Department's Project Manager within ten (10) calendar days of issuance to Lessee. The County may, in its discretion, make space off-Premises available for temporary structures or materials storage through a separate agreement.

5.11 Review of Construction: During construction, the Department or it's designee shall have the right to establish and/or attend weekly construction progress meetings as scheduled by the Lessee and to enter the Premises as needed to inspect the construction for the purpose of ensuring conformity with the Department approved Design and Construction Documents. Failure of the Department to make such review or inspection shall not impose any liability on the Department or the County, nor constitute Lessor's

acceptance of the Improvements as being in accordance with the Agreement and Lessee's obligations hereunder.

5.12 Tenant Airport Construction Contracts: From time to time, the Lessee and the County through its Airport Director shall be entitled to enter into separate Tenant Airport Construction, reimbursable (TAC-R) or non-reimbursable (TAC-N) contracts for the purpose of enabling Lessee to construct additional facilities or improvements on the Premises or on the Airport deemed necessary or appropriate for Lessee's construction and use of its Improvements on the Premises. Such contracts shall comply with the Department's TAC-R or TAC-N contract requirements, as such requirements may be amended by the Department from time to time.

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

5.14 Standards of Construction: The Lessee shall construct all Improvements to the standards established by the Lessor at the time of final plans approval. For Improvements that remain in the Lessee's name, under **Article 2.06** (Title to Improvements; Standards of Construction), the County may require, no earlier than forty (40) years after the Effective Date, that the Lessee provide an Irrevocable Letter of Credit or alternative form of financing security acceptable to Lessor for 15% of the value of the Improvements at the time the financing security is requested to assure that the Improvements will be demolished or removed at the termination of this Agreement for any reason. Such Letter of Credit or financing document shall be periodically adjusted, not less than annually, so as to reflect the estimated cost, as of December 31 of the year immediately preceding the year in which the adjustment is made, of demolition or removal of all Improvements on the Premises, whether such Improvements are completed or not.

5.15 Compliance with Responsible Wages and Benefits: Lessee is aware of the policy of Miami-Dade County that all leases of County-owned land which provide for privately funded construction improvements thereon whose construction costs are greater

than or equal to $5 million dollars, are subject to the requirements of Section 2-11.16 of the Miami-Dade County Code for Responsible Wages as well as Implementing Order No. 3-24. The Lessee shall comply with all applicable Responsible Wages provisions and include such requirements in all applicable construction contracts.

5.16 Other Programs: Lessee shall comply with applicable provisions as well as any Implementing Orders and other directives issued by the County relating to other programs, as applicable, to include:

(A) Small Business Enterprise Architecture and Engineering Program (Section 2-10.4.01 of the County Code);
(B) Small Business Enterprise Construction Services Program (Section 10-33.02 of the County Code);
(C) Small Business Enterprise Services Program (Section 2-8.1.1.1.1 of the County Code)
(D) Small Business Enterprise Goods Program (Section 2-8.1.1.1.2 of the County Code)
(E) Living Wage Ordinance (Section 2-8.9 of the County Code);
(F) Paid Sick Leave Requirement for County Service Contracts (Section 2-8.11 of the County Code);
(G) Airport Concession Disadvantaged Business Enterprise (ACDBE) (US Department of Transportation, 49 CFR Section 23);
(H) Community Workforce Program (Section 2-1701 of the County Code); and
(I) any other program of the County made applicable to the Lessee's activities hereunder, as such programs, ordinances, or code provisions may be amended from time to time.

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

5.18 Employ Miami-Dade Program: Lessee shall comply with the requirements of Miami-Dade County Administrative Order No. 3-63, as same may be amended from time to time during the term of this Agreement.

The Lessee is hereby notified that the County will consider whether the Lessee made its best reasonable efforts to promote Employ Miami-Dade under this Agreement, as defined in such Administrative Order, as a part of the County's evaluation and responsibility review of the Lessee for new County awards.

5.19 Art in Public Places: Art in Public Places ("AIPP") provisions of the Miami-Dade County Code and Administrative Orders, as managed by the Miami-Dade County Department of Cultural Affairs ("Department of Cultural Affairs") are pursuant to Procedure 358 in the Miami-Dade County Procedures Manual ("Procedures Manual"). The Lessee shall transmit 1.5% of the costs for all development on County land (as

outlined in the Procedures Manual) to the Miami-Dade Aviation Department to be deposited in the Aviation Art in Public Places Trust Account for the implementation of the AIPP program. The Lessee is required to work collaboratively with the Department of Cultural Affairs on the implementation of the AIPP program pursuant to the requirements of said program. The referenced documents can be accessed at:

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

5.20 Construction Practice, Safety and Security:

(A) Means and Methods: The Lessee shall perform the Work in accordance with this Agreement and shall have exclusive responsibility for all construction means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt, and orderly prosecution and completion of the Improvements. The responsibility to provide the construction means, methods, techniques, sequences and procedures referred to above shall include, but shall not be limited to, the obligation of the Lessee to provide the following construction requirements: temporary offices and construction trailers; required design certifications; required approvals; weather protection; clean-up and housekeeping of the Premises; construction trade management; temporary parking; vehicle traffic; safety and first aid facility and equipment; correction of or compensation for defective work or equipment; Project Contractors' and Subcontractors' insurance; storage areas; workshops and warehouses; temporary fire protection; security of the Premises; temporary utilities; potable water; sanitary services; Project Contractor, Subcontractor and vendor qualification; receipt and unloading of delivered materials and equipment; erection rigging; temporary supports; and construction coordination.

(B) Safety and Security: The Lessee shall maintain safety and security at the Premises at all times in accordance with all local, state and federal workplace regulations. Without limiting the foregoing, the Lessee shall:

(1) Take all necessary precautions for the safety and security of the Improvements and provide all necessary protection to prevent damage, injury or loss caused by trespass, negligence, vandalism, malicious mischief or any other course, for (a) workers at the Premises and all other persons who may be involved with deliveries or inspections; (b) visitors to the Premises; (c) passersby and adjacent properties; (d) materials and equipment under the care, custody or control of the Lessee, Project Contractors or Subcontractors on the Premises; (e) other property constituting part of the Premises or the Project under construction; and (f) County property;
(2) Establish and enforce all necessary safeguards for safety and protection, including posting danger signs and other warnings against hazards;
(3) Implement a comprehensive safety program;
(4) Give all notices and comply with all applicable law relating to the safety of persons or property or their protection from damage, injury or loss;

(5) Operate and maintain all equipment in a manner consistent with the manufacturer's safety requirements; and
(6) Provide for safe and orderly vehicular movements.

(C) Health and Safety Plan: The Lessee shall develop and implement a written site-specific health and safety plan (the "Health and Safety Plan") that includes management commitment to maintaining a safe workplace, employee participation, hazard evaluation and controls, employee training and periodic inspections which shall:

(1) Designate an appropriately certified safety professional with appropriate construction safety experience who is to develop and sign the Health and Safety Plan including all safety rules at the Premises;
(2) Designate a qualified safety professional stationed full-time at the Premises during on-site construction activities whose primary/only duty shall be the implementation of safety rules at the Premises, the prevention of fires and accidents, monitoring compliance with the Health and Safety Plan, and the coordination of such activities as shall be necessary with the County and all governmental bodies having jurisdiction; and
(3) Require the Project Contractors and all Subcontractors to work and implement the Health and Safety Plan.

5.21 LEED Certification: The Lessee shall obtain LEED Silver Certification of the Project. LEED Silver Certification means formal certification of the Project as meeting the requirements for the Leadership in Energy and Environmental Design Green Building Rating System for New Construction, developed and maintained by the U.S. Green Building Council ("LEED') "silver" rating for new construction under the LEED-NC Rating System.

The Lessee shall comply with all requirements of the County's Sustainable Buildings Program, as set forth in Sections 9-71 through 9-75 of the County Code and Implementing Order 8-8.

ARTICLE 6

Maintenance and Repair by Lessee

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

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

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

The Lessee shall, at the Lessee's sole, cost, risk, and expense, keep and maintain the Improvements, including appurtenances, furniture, fixtures, and equipment, and every part thereof, in good order and condition, ordinary wear and tear excepted, and make all necessary repairs thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, and foreseen and unforeseen. In the event the Lessee fails to perform any of its obligations as required by this Article, after expiration of a reasonable cure period determined by the Lessor to be no less than thirty (30) days from Lessee's receipt of written notice from Lessor of such failure unless there is a life or safety issue in which case the cure period can be less than thirty (30) days from receipt of written notice, and after notifying the Lessee, the Lessor may (but shall not be required to) perform and satisfy same, and the Lessee hereby agrees to reimburse the Lessor for the reasonable cost thereof promptly upon demand. It shall be the Lessee's sole responsibility to maintain the Hotel consistent with the maintenance standards for an Upscale hotel or similar future designation as may be determined in the industry.

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(B) In no event shall Lessor be responsible or liable for any maintenance or repair of the building or any Improvement, fixture, equipment, structure, facility, alteration, or addition thereto on the Premises.

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

This requirement to surrender up the Premises in the same good order and condition as it was at the Effective Date, excludes damage from fire, casualty or condemnation unless such damage is covered under insurance in which case the Premises shall be repaired by Lessee or the proceeds from the insurance shall become owned by Lessor.

6.04 Excavation of Land: No excavation of any of the land shall be made, no soil or

earth shall be removed from the Premises, and no well of any nature shall be dug, constructed or drilled on the Premises, except as may be required for environmental monitoring purposes, without the prior written approval by the Lessor pursuant to **Article 5** (Improvements to Premises).

6.05 Water and Sewerage System: The Lessee shall operate and maintain, at its sole cost and expense, all the components of the existing water, sanitary sewerage and storm drainage facilities within the boundaries of the Premises. The Lessee shall not make any alterations or modifications to these facilities without the advance written approval of the Lessor. The Lessee shall obtain permission for excavation required for construction pursuant to **Article 5** (Improvements to Premises).

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

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

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

6.09 Failure to Maintain: If it is determined by the Lessor that the Lessee has failed to properly clean, remove trash and debris, maintain, repair, replace and refurbish the Premises as required by this **Article 6** (Maintenance and Repair by Lessee) or in conformance with industry standards for an Upscale hotel, the Department shall provide to the Lessee a list of deficiencies, reflecting the amount of time to be reasonably allowed for the Lessee to correct same. If the Lessee fails to correct such deficiencies

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within the time allowed, the Lessor may enter upon the Premises and perform all work, which, in the judgment of the Lessor, may be necessary and the Lessor shall add the cost of such work, plus 25% for administrative costs, to the rent due hereunder on the first day of the month following the date of such work, and such cost shall be and constitute a part of the rent. Subsequent to receipt of the further notice of intent to perform repairs or cleanup from the Lessor, the Lessee shall not undertake performance of such repairs or cleanup without specific prior written authorization from the Lessor.

6.10 Recertification: As may be required by the County, recertification repairs shall be performed by the Lessee when the existing premises reach 40 years old and every 10 years subsequently, or other applicable recertification time period as may be required by law. Lessee shall be responsible for all of the 40-year recertification repair costs inasmuch as maintenance responsibility for premises under the existing Premises is transferred to the Lessee at the Effective Date.

6.11 Hotel Brand:

(A) The Lessee shall notify the Department's Project Manager of any plan to change Hotel Brand at least 90 calendar days before the change will take place. The Lessee shall not change Hotel Brand without the prior written consent of MDAD, and such consent will not be unreasonably withheld or delayed. In order to be considered for the Hotel Brand, the Lessee must prove to the satisfaction of MDAD that such Hotel Brand is beneficial to MIA, meaning the Lessee can meet the requirements of an Upscale hotel designation with the Hotel Brand, in addition to meeting all other requirements herein provided.

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(B) The Lessee shall notify the Department's Project Manager within 3 calendar days if a Property Improvement Plan (PIP), or other similar improvement plan, as dictated by the Hotel Brand for necessary improvements regarding the Hotel is placed by the Hotel Brand. The Lessee's failure to do so shall constitute a default pursuant to **Article 14.03** (Other Defaults). The Lessee and Lessor shall jointly review the PIP and the Lessee's approach to ensure the PIP is effectuated, which may include periodic meetings between the Lessee and Lessor for status updates.

(C) The Lessee shall notify the Department's Project Manager: (1) immediately if either the Lessee becomes aware that the Hotel Brand may cancel or terminate the franchise agreement (i.e., pull the flag for the Hotel); (2) within two (2) Business Days of the Lessee's receipt of any default notice issued by the Hotel Brand to the Lessee where termination or cancellation of the franchise agreement is an available remedy should the default not be cured or rectified; and (3) within two (2) Business Days of Lessee's receipt of notice that the Hotel Brand does or will cancel or terminate the franchise agreement. The Lessee's failure to provide this notification or the flag being pulled for the Hotel by the Hotel Brand shall constitute a default pursuant to **Article 14.03** (Other Defaults). Within 90 calendar days of the Hotel Brand canceling or terminating the franchise agreement, the Lessee shall provide the Department's Project Manager with its plan for a new Hotel Brand and seek the written consent of MDAD per **Article 6.11(A)** for the new Hotel Brand.

ARTICLE 7

Maintenance by County

7.01 County Maintenance: The County shall operate and maintain in good condition all components of the existing water, sanitary sewerage and storm water drainage facilities that lie outside the boundaries of the Premises.

7.02 Maintenance of Airport Facilities: The County shall maintain the Airport so that Lessee may make use of the Airport for the purposes stated in **Article 3** (Use of Premises).

7.03 County Maintenance Subject to Certain Conditions: Such maintenance by the County may be subject to interruption caused by repairs, strikes, lockouts, labor controversies, inability to obtain fuel, power or parts, accidents, breakdowns, catastrophes, national or local emergencies, acts of God, and other conditions beyond the control of the County. Upon any such happening, the Lessee shall have no claim for damages for the County's failure to furnish or to furnish in a timely manner any such maintenance; provided, however, that the Department, in its sole discretion, may provide a rent abatement for that portion of the Premises rendered unusable for the period of time that the County is unable to make the repairs required by **Article 7.01** (County Maintenance).

ARTICLE 8

Regulations, Licenses and Permits

8.01 Rules and Regulations - General:

(A) Rules and Regulations:

(1) The Lessee shall comply with all Ordinances of the County, including the Rules and Regulations of the Department, Chapter 25, Code of Miami-Dade County, Florida, as the same may be amended from time to time, Operational Directives issued there under, all additional laws, statutes, ordinances, regulations and rules of the Federal, State and County Governments, and any and all plans and programs developed in compliance therewith, which may be applicable to its operations or activities under this Agreement, specifically including, without limiting the generality hereof, Federal air and safety laws and regulations and Federal, State and County environmental laws.

(2) During the construction period of the work to be performed by Lessee hereunder, and at any time Lessee performs any work on the Premises,

Lessee shall comply with all design and construction requirements of MDAD, including, but not limited to, MDAD's Tenant Airport Construction (Reimbursable or Non-Reimbursable) requirements ("TAC"), as they may be amended from time to time. All design and construction work must be approved in advance by MDAD, to the extent set forth in such TAC requirements.

(3) County Inspection: The Lessee agrees to permit the entry, at all reasonable times upon prior reasonable notice, of inspectors of the Department, the County's Department of Regulatory Economic Resources ("RER"), as such Departments' names may be changed from time to time, or any Federal, State, or County agency having jurisdiction over any law or requirement referenced in **Article 8.1(A)** (Rules and Regulations - General), to make inspections of the Premises and Improvements to determine the Lessee's compliance therewith.

(B) Permits and Licenses**:**

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

Department's Project Manager will cooperate with providing information needed to obtain permits, as part of MDAD's role as owner; provided, however, that such cooperation shall not require MDAD to incur any expenses, costs or additional liability as a result thereof.

(2) Such permits and licenses shall include, but not be limited to, a Certificate of Use and Occupancy and any required Industrial Waste or Operating Permits from Department of Regulatory and Economic Resources. Prior to DBO, the Lessee shall provide to the Department evidence that it has obtained the Certificate of Use and Occupancy and, as applicable, the appropriate operating Waste Permit(s). Upon written request of the Department, the Lessee shall provide to the Department copies of any permits and licenses, and applications therefor.

(C) Penalties, Assessments and Fines**:** Subject to the County's obligations as confirmed in **Article 10** (Environmental Compliance), Lessee agrees to pay on behalf of the County any penalty, assessment or fine issued against the County, or to defend in the

name of the County any claim, assessment or civil action, which may be presented or initiated by any agency or officer of the Federal, State or County governments, based in whole or substantial part upon a claim or allegation that the Lessee, its agents, employees, invitees, or Trespassers have violated any law, ordinance, regulation, rule or directive described in **Article 8.01** (Rules and Regulations - General) above or any plan or program developed in compliance therewith. The Lessee further agrees that the substance of this **Article 8.01** (Rules and Regulations - General) above shall be included in every sublease, contract and other agreement, which the Lessee may enter into related to its operations and activities under this Agreement and that any such sublease, contract and other agreement shall specifically provide that "Miami-Dade County, Florida is a third party beneficiary of this and related provisions" and shall require all such third parties to indemnify and hold the County harmless to the same extent as Lessee is required to indemnify the County under this Agreement. This provision shall not constitute a waiver of any other conditions of this Agreement prohibiting or limiting assignments, subletting or subcontracting.

(D) If Lessee or its sublessee enters into contracts with its concessionaires, then Lessee shall require such concessionaires to comply with the applicable provisions of Lessor's labor peace agreements policy as currently provided in Resolution No. R-148-07.

(E) Lessor, at its sole cost and expense (but at Lessee's reasonable expense if Lessee is required to pay MDAD more than ten percent of the amount claimed by Lessee to be payable, as a result of an audit), shall have the right but not the obligation to perform the audits under this Agreement pursuant to **Article 21.23** (Inspector General Reviews).

(F) To the extent Chapter 25 of the Code of Miami-Dade County requires authorizations from Lessor for Lessee to engage in certain activities, this Agreement shall constitute authorization from Lessor for Lessee to engage in all customary and standard commercial and retail activities on the Premises that are a reasonable and normal incident of the Premises that are authorized by this Agreement to be constructed by Lessee and thereafter operated by Lessee or its sublessees, subject to Lessee's and the sublessee's compliance with applicable federal, state, and local laws.

8.02. Nuisances Disallowed: Lessee shall not make any use of the Premises, nor shall it allow any of its sub-tenants or invitees to make use of the Premises, in a manner that creates or reasonably will lead to a nuisance as defined by Florida law. Upon notification by Lessor that a nuisance is then being allowed on the Premises, and the nuisance poses an immediate danger to aircraft, passengers, or users of the Airport, Lessee shall promptly take steps necessary to abate such nuisance to the reasonable satisfaction of the County. Lessor shall retain all of its contract rights to abate a nuisance under the terms of this Agreement, as well as its regulatory rights to abate the nuisance in accordance with then-current law.

ARTICLE 9

Alteration of Premises and Erection of Signs

9.01 Alterations: The Lessee shall not alter the Premises after the Date of Beneficial Occupancy in any manner whatsoever without the prior written approval of the Department. Such Department approval shall not be unreasonably withheld. In each instance, the Lessee shall advise the Department's Project Manager of the intended alterations and the Project Manager will advise whether to proceed or to begin the Tenant Airport Construction (TAC) Program process.

In the event the Lessee is given approval to make any alterations to the Premises, the Lessee shall fully comply with the terms and conditions of the approval document, the applicable Tenant Airport Construction (TAC) requirements, as may be amended from time to time, of the Department's TAC Program in effect, the provisions of section 255.05, Florida Statutes, and **Article 8** (Regulations, Licenses and Permits). The Lessee shall comply with the applicable provisions per **Article 5.15** (Compliance with Responsible Wages and Benefits), **Article 5.16** (Other Programs), **Article 5.17** (Residents First Training and Employment Program), **Article 5.18** (Employ Miami-Dade Program), **Article 5.19** (Art in Public Places), and any other program of the County applicable to the Lessee's alteration activities hereunder, as such programs, ordinances, or code provisions may be amended from time to time.

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

9.02 Removal of Alterations: Any alterations pursuant to **Article 9.01** (Alterations) above constructed or installed by the Lessee at its sole expense, including signage and telecommunications equipment, that can be removed from the Premises and Improvements without materially damaging, altering, or altering the use of the Premises and Improvements shall be considered the personal property of the Lessee and may be removed and or replaced by the Lessee in accordance with the TAC process at any time during the Term. All other Improvements shall become a part of the Premises and Improvements and shall become the property of the County upon expiration of the Term, or as earlier designated by Lessee as provided in **Article 2.02** (Term), or the earlier termination of this Agreement; provided, however, that in the case of any Improvements which were constructed, installed, added or altered with proceeds of tax-exempt financing, such Improvements shall immediately vest in the County or the entity providing such financing, if the financing documents so provide, and shall be deemed to be the property of the County or such entity upon their construction, installation or other implementation, subject, however, to all of Lessee's rights under this Agreement. Lessee hereby reserves the right to remove any item of a non-leased nature, including but not limited to personal property, at any time during the Term and upon termination of the Agreement.

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

ARTICLE 10

Environmental Compliance

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

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

(B) Under **Article 10.04** (Lessee Audit), 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, shall be provided to the County. Whether Lessee has conducted such an investigation or not, Lessee is willing to proceed with this Agreement notwithstanding the environmental conditions of the Premises or the properties surrounding the Premises, subject to Lessee's right to terminate this Agreement as otherwise provided herein.

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

(D) Lessee expressly assumes the risk that Hazardous Materials that are or may be present on the Premises on the Effective Date may affect the suitability or usability of the Premises for Lessee's proposed or intended use. Lessee further expressly assumes the risk that Hazardous Materials that are or may be on the Premises may pose to the

obligations, financial condition, health and well-being of Lessee, its employees, consultants, contractors, subtenants or users as a result thereof. Lessee agrees that County shall have no responsibility or liability with respect to any Hazardous Materials on the Premises, including but not limited to, any liability to Lessee or its consultants, contractors, subtenants or users as a result thereof. Lessee understands and agrees that 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) resulting from the presence of Hazardous Materials on the Premises at any time during this Agreement. Lessee shall bear all financial obligations related to the cost of managing, monitoring, treating, removing and/or disposal of contaminated water, soil or media required to develop the Premises. This requirement supersedes any County obligation stated in this Article regarding environmental conditions at the Premises.

10.02 Disclosure of Hazardous Materials: To the extent they exist, the County has made available to Lessee a listing of contamination assessment reports and remedial action plans regarding any soil and groundwater contamination at the Premises. Such information is found in RFP-01677, **Attachment 5**, MIA Hotel Design Criteria Advisory Report and, more specifically, in the Reference Documents therein to include the documents titled *6. Attachment A: 2018 Site Assessment Report*; *7. Attachment B: 2004 SARA Report*; *8. Attachment C: 2001 Level 4 Report*; and *9. Attachment D: 1997 RAP Report*. The County may have already installed remediation systems to clean up the contamination described in such reports to the extent they exist.

Lessee agrees that during the Term, 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; provided, however, the County has no obligation to take any such actions. In exercising the rights in this paragraph, the County's authorized representatives shall take such actions in a manner that does not unreasonably impact the operations of the Lessee.

10.03 County 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 (the initial "Baseline Audit"), which audit may include analyses of soil and groundwater samples and the Phase 1 and 2 Environmental and which audit specifically includes the site information provided by the County. Lessee shall be responsible for all Recognized Environmental Conditions disclosed in the Baseline Audit.

10.04 Lessee Audit: Lessee, at its sole cost and expense, shall have the right to conduct, within sixty (60) calendar days from the receipt of the Baseline Audit, an

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environmental inspection of the Premises (the "Lessee Audit"), through an independent environmental consultant approved in writing by County, and 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) calendar 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) calendar 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, 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) calendar days of receipt of such notice of dispute from the County; (ii) notify Lessee that it has agreed to be responsible for such Recognized Environmental Conditions and delineated subsurface contamination not disclosed in any contamination assessment reports, remedial action plans, or the Baseline Audit, and such responsibility may include negotiating an amendment to this Lease to address the costs; or (iii) terminate the Agreement.

If the County allows Lessee to terminate the Agreement and Lessee elects not to terminate, Lessee's failure to terminate shall constitute a waiver of 1) Lessee's rights to terminate its obligations under this Agreement as to any findings in such Lessee Audit, and 2) as provided in **Article 10.02**, 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 unless Lessee demonstrates to the satisfaction of Aviation Department 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 Effective Date and not caused by Lessee or Lessee's agents, employees, contractors, invitees; or (3) a discharge, disposal or release caused by County or third party. Should the Aviation Department determine that such a demonstration has not been made to Aviation Department's satisfaction, Lessee may invoke the dispute resolution provision of **Article 10.14** (Dispute Resolution). Until such time as the parties reach an agreement or until such time as the dispute is otherwise

resolved, responsibility for such Recognized Environmental Condition shall remain with Lessee.

10.05 Environmental Maintenance of Premises: Except for the obligations of the County under this Article, Lessee shall, at its sole cost and expense, keep, maintain and use the Premises, and operate within the Premises at all times, in compliance with all applicable Environmental Laws, and shall maintain the Premises in good and sanitary order, condition, and repair.

10.06 Lessee's Use of Hazardous Materials: 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) calendar days' written notice prior to bringing such Hazardous Material upon the premises. To the extent certain Hazardous Materials are needed to be used by Lessee on a non-routine basis, such as for emergency repairs, Lessee may provide such notice within twenty-four (24) hours of bringing such Hazardous Material upon the premises. Notwithstanding the foregoing, County may object to the use of any previously approved Hazardous Material should County reasonably determine that the continued use of the Hazardous Material by Lessee presents a material increased risk of site contamination, damage or injury to persons, Premises, resources on or near the Premises or Other Airport Property, or noncompliance due to a change in regulation of such Hazardous Material under applicable Environmental Law. Upon County's objection, Lessee shall immediately remove the Hazardous Material from the Premises. County's objection or failure to object to the use, storage, generation, treatment, transportation, or disposal of Hazardous Material under this paragraph, or the exclusion of certain Hazardous Materials under this paragraph, shall not limit or affect Lessee's obligations under this Agreement, including Lessee's duty to remedy or remove releases or threatened releases; to comply with applicable Environmental Law and/or Environmental Requirements relating to the use, storage, generation, treatment, transportation, and/or disposal of any such Hazardous Materials; or to indemnify County against any harm or damage caused thereby. Lessee shall promptly and completely answer periodic questionnaires from the County concerning Lessee's practices regarding the generation, use, storage, and disposal of Hazardous Materials under this Agreement.

10.07 Entry by County:

(A) Notwithstanding any other right of entry granted to County under this Agreement, and subject to the requirements set forth in **Article 10.07(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 for the purposes of:

(1) determining whether the Premises are in conformity with applicable Environmental Law;
(2) conducting an environmental review or investigation of the Premises;
(3) determining whether Lessee has complied with the applicable Environmental Requirements of this Agreement;
(4) determining the corrective measures, if any, required of Lessee to ensure the safe use, storage, and disposal of Hazardous Materials; or

(5) removing Hazardous Materials (except to the extent used, stored, generated, treated, transported, or disposed of by Lessee in compliance with applicable Environmental Requirements and the terms of this Agreement).

Lessee agrees to provide access and reasonable assistance for such inspections. MDAD shall use its best efforts to reasonably minimize interruptions of business operations on the Premises.

(B) Such inspections may include, but are not limited to, entering the Premises or adjacent property with drill rigs or other machinery for the purpose of obtaining laboratory samples of environmental conditions or soil or groundwater conditions. Lessee shall have the right to collect split samples of any samples collected by MDAD. MDAD shall not be limited in the number of such inspections during the Term of this Agreement. MDAD will conduct such inspections during Lessee's normal business hours, but MDAD may conduct such inspections in other than normal business hours if the circumstances so require. For inspections conducted by MDAD, MDAD agrees to provide Lessee with reasonable notice (not less than twenty four (24) hours) prior to inspecting the Premises; provided however, that such notice period shall not apply under circumstances in which MDAD reasonably determines that there exists an immediate threat to the health, safety, or welfare of any persons. Based on the results of such inspections, should MDAD reasonably determine that Hazardous Materials have been released, discharged, stored, or used on the Premises in violation of the terms of this Agreement, Lessee shall, in a timely manner, at its expense, remove such Hazardous Materials in a manner not inconsistent with applicable Environmental Law and otherwise comply with the reasonable recommendations of MDAD and any regulatory authorities related to the results of such inspections. The right granted to MDAD herein to inspect the Premises shall not create a duty on MDAD's part to inspect the Premises, nor liability of MDAD for Lessee's use, storage, or disposal of Hazardous Materials, it being understood that Lessee shall be solely responsible for all liability in connection therewith. MDAD shall provide the results of such inspections to the Lessee in a timely manner if requested to do so in writing. Nothing herein shall be construed to limit, restrain, impair or interfere with County's regulatory authority to conduct inspections and/or the manner in which it conducts such inspections. Lessee shall not be liable or otherwise responsible for any property damage to the Premises or injury to any person caused by County, its agents or consultants during County's inspection under this **Article 10.07** (Entry by County).

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

10.09 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 cleanup 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.

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

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

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

Lessee shall provide the report required under this **Article** to the County by April 1 of each year for the preceding calendar year.

10.11 **Periodic Environmental Audits**: Lessee shall establish and maintain, at its sole expense, a system to assure and monitor its continued compliance on the Premises with all applicable Environmental Laws, which system shall include, no less than once each year a detailed review of such compliance (the "Environmental Audit") by such consultant or consultants as County may approve, which approval shall not be unreasonably withheld, delayed or conditioned. Alternatively, if the Aviation Department approves, which approval shall not be unreasonably withheld, delayed, or conditioned, such Environmental Audit may be conducted by Lessee's personnel but in either case Lessee shall provide County with a copy or summary of its report of its annual Environmental Audit, which shall be consistent with ASTM's "Practice for Environmental Regulatory Compliance Audits" 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) calendar days of the County's request.

10.12 **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.

10.13 Indemnity: Lessee shall indemnify, defend (with counsel reasonably satisfactory to County), and hold County, its directors, officers, employees, agents, assigns, and any successors to County's interest in the Premises, harmless from and against any and all loss, cost, damage, expense (including reasonable attorneys' fees), claim, cause of action, judgment, penalty, fine, or liability, directly or indirectly, relating to or arising from the use, storage, release, discharge, handling, or presence of Hazardous Materials on, under, or about the Premises or Other Airport Property and caused by Lessee, Lessee's agents, employees, contractors, invitees or Trespassers. This indemnification shall include without limitation: (a) personal injury claims; (b) the payment of liens; (c) diminution in the value of the Premises or Other Airport Property; (d) damages for the loss or restriction on use of the Premises or Other Airport Property; (e) sums paid in settlement of claims; (f) reasonable attorneys' fees, consulting fees, and expert fees; (g) the cost of any investigation of site conditions; and (h) the cost of any repair, cleanup, remedial, removal, or restoration work or detoxification if required by any governmental authorities or deemed necessary in County's reasonable judgment, but shall not extend to such claims, payment, diminution, damages, sums, fees or costs to the extent caused (i) solely by an act of God or (ii) by the negligent or willful misconduct of the County, its officers, employees, contractors or agents. For any legal proceedings or actions initiated in connection with the Hazardous Materials Release, County shall have the right at its expense but not the obligation to join and participate in such proceedings or actions in which the County is a named party, and control that portion of the proceedings in which it is a named party. County may also negotiate, defend, approve, and appeal any action in which County is named as a party taken or issued by any applicable governmental authorities with regard to a Hazardous Materials Release; provided, however, claims for which Lessee may be liable pursuant to this **Article** shall not be settled without Lessee's consent. Any costs or expenses incurred by County for which Lessee is responsible under this paragraph or for which Lessee has indemnified County: (i) shall be paid to County on demand, during the Term of this Agreement as additional rent; and (ii) from and after the expiration or earlier termination of the Agreement shall be reimbursed by Lessee on demand. Lessee's obligations pursuant to the foregoing indemnity shall survive the expiration or termination of this Agreement and shall bind Lessee's successors and assignees and inure to the benefit of County's successors and assignees. Notwithstanding any other provision of this Agreement, this **Article 10.13** (Indemnity) does not apply to the environmental conditions or Hazardous Materials on the Premises or a discharge, disposal or release caused by the County, its officers, employees, contractors or agents.

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

Materials.

(B) In addition, costs of Hazardous Materials discharges are passed on to airlines through the residual rate charging mechanism at Miami International Airport and the charges to Lessee will be increased to offset such costs. Lessee agrees in order to minimize its obligations in this regard to use best efforts to assist the Aviation Department in responding to Hazardous Materials spills in or Airport property reasonably close the Premises used by Lessee by making Lessee's remediation equipment and personnel available for such emergency remediation activity. However, Lessee may provide such assistance only at the direct request of the Aviation Department and only if Lessee's remediation equipment is intended to be utilized for the Hazardous Material spill at issue and only if Lessee's personnel have been trained to respond to the Hazardous Material spill at issue. If Lessee is directed to perform any remedial work under this **Article 10.13(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 10.13(A)**, and without waiving its rights hereunder, County may, at its option, perform such remedial work as described in **Article 10.13(A)**, and thereafter seek reimbursement for the costs thereof. In accordance with this **Article 10** (Environmental Compliance), Lessee shall permit County or its designated representative access to the Premises areas to perform such remedial activities.

(D) Whenever County has incurred costs described in this **Article** as a result of the failure of Lessee to perform its obligations hereunder, Lessee shall, within thirty (30) calendar days of receipt of notice thereof, reimburse County for all such expenses together with interest at the rate of 1½% per month on the outstanding balance commencing on the thirty-first date following Lessee's receipt of such notice until the date of payment.

(E) To the extent of Lessee's responsibility under this **Article** and without limiting its obligations under any other paragraph of this Agreement, and except to the extent of County's responsibility for environmental conditions set forth in this **Article 10**, 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 10** (Environmental Compliance), any liabilities or responsibilities which are assessed against County in any action described under this paragraph.

10.14 Dispute Resolution: County and Lessee agree that any dispute between them relating to this **Article 10** (Environmental Compliance) 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) calendar days after submission to them, either party may refer the dispute to mediation, or institute any other available legal or equitable proceeding in order to resolve the dispute.

10.15 Waiver and Release: Lessee, on behalf of itself and its heirs, successors and assigns, hereby waives, releases, acquits and forever discharges County, its principals, officers, directors, employees, agents, representatives and any other person acting on behalf of the County, and the successors and assigns of any of the preceding, of and from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Lessee or any of its heirs, successors, or assigns now has or which may arise in the future on account of or in any way related to or in connection with any past, present or future physical characteristic or condition of the Premises, including, without limitation, any Hazardous Material in, at, on, under or related to the Premises, or any violation or potential violation of any Environmental Law applicable thereto; provided, however, this **Article 10.15** (Waiver and Release) shall not constitute a waiver or release of (a) any obligation of County under **Article 10** (Environmental Compliance); nor (b) a breach by the County of its Lease obligations or gross negligence by the County following the Effective Date of this Agreement which materially and adversely impacts or alters the physical characteristic or condition of the Premises. Lessee acknowledges that County would not enter into this Agreement without Lessee's agreement to the waiver and release provided herein.

10.16 Reserved.

10.17 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. 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 **Article 10.17** to the extent of County's obligations under this **Article 10** (Environmental Compliance).

10.18 **Breach**: Any breach by Lessee of any provision of this **Article 10** (Environmental Compliance) shall, after notice and a reasonable opportunity for Lessee to cure, constitute a default of the Agreement and shall entitle County to exercise any and all remedies provided in the Agreement, or as otherwise permitted by law.

10.19 **Survivability of Terms**: the terms and conditions of this **Article 10** (Environmental Compliance), including the indemnity, waiver, and release, shall survive the termination of this Agreement.

10.20 **Right to Regulate**: As provided for in **Article 21.12** (Right to Regulate), nothing within this **Article 10** (Environmental Compliance) shall be construed to waive or limit, restrain, impair or interfere with the County's regulatory authority.

ARTICLE 11

Indemnification and Hold Harmless

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

ARTICLE 12

Assignment and Subletting and Conditions of Financing

12.01 **Assignment and Transfer**: Except as provided in **Article 12.03** (Subletting) and **Article 12.04** (Conditions of Financing for Approved Improvement Costs), the Lessee shall not, in any manner, assign, transfer, mortgage, pledge, hypothecate, encumber or otherwise convey an interest in this Agreement, or authorize others to exercise the rights

granted to the Lessee herein, without the prior written approval of the Department. However, without prior approval of the Department, the Lessee may assign or transfer or sell all of the stock or other ownership interest in this Agreement to an Affiliate and shall provide written notice to the Department prior to the assignment or transfer. In addition, without the prior approval of the Department, (i) the Lessee may make a collateral assignment to a Lender (subject to the provisions of **Article 12.04**) or (ii) direct or indirect owners of the Lessee may sell the stock or other direct or indirect ownership interests in the Lessee provided there is no change in the day to day control or management of the Lessee. Lessee may also sell substantially all of its assets without prior approval of the Department, provided that (a) substantially all of the assets are sold, (b) the purchaser is a single entity that will continue substantially all of the operations permitted or required of Lessee hereunder, and (c) the purchaser meets the Department's requirements set forth in **Article 12.04(D)(5)** (Transfer to a Transferee or Successor Lessee). In the event the Lender seeks provisions in the assignment affecting the interests or requiring certain actions by the Department, such provisions must be approved by the Department; however, such provisions shall not be unreasonably withheld or delayed by the Department for so long as the Use of Premises as provided for in **Article 3** (Use of Premises) remain the same and are assigned or transferred to an entity deemed by MDAD to be reputable and credit worthy meeting the Department requirements stated under **Article 12.04(D)(5)** (Transfer to a Transferee or Successor Lessee).

12.02 Assignment or Transfer Fee: For any assignment or transfer pursuant to Article 12.01 **(Assignment or Transfer)**, the Lessee shall pay to the County an Assignment or Transfer Fee which shall be 3% of gross consideration received by Lessee for the assignment or transfer in effect for the first twenty-five (25) years of the Term for all or any portion of the combined Premises; provided however, such Assignment or Transfer Fee shall not be assessed on transfers, subleases, or assignments to Affiliates of Lessee. If Lessee uses all equity to construct the Improvements, then the Transfer Fee shall not be assessed on the first financing. Upon 25th annual anniversary of the Effective Date, the Assignment or Transfer Fee shall no longer be in effect, and Lessee shall pay Improvement Rent in accordance with **Article 4.04** (Improvement Rent).

12.03 Subletting: The Lessee shall submit all subleases to the Department for approval, which shall not be unreasonably withheld. Any objection by the Department must be forwarded to the Lessee within thirty (30) calendar days of receipt of the sublease by the Department's Project Manager. Subleases shall be subject to the provisions of any applicable Board legislation, as amended from time to time, which may describe conditions applicable to subleases or limit the rental to be charged to the sublease by the Lessee. The County shall have the right to audit the Lessee's compliance with such subleasing policy. Subleases are subject to gross revenue reporting requirements. Lessor will use commercially reasonable effort to sign Subordination and Non-Disturbance Attornment Agreements (SNDAs) for major subleases.

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

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

12.04 Conditions of Financing for Approved Improvements Costs:

(A) Financing of Improvements: Lessee may secure private financing (through mortgage loans, mezzanine loans, preferred equity or any other financing structure, with all such financing being defined as "Financing") and to encumber its interest in this Agreement in order to secure such Financing (such encumbrance being defined as a "**Leasehold Mortgage**"). Any such Financing shall be for the purposes of providing funds required for the construction of the Improvements and to refinance any Leasehold Mortgage. No mortgage or other encumbrance the Lessee executes in connection with that Financing will extend to or be a lien or encumbrance upon Lessor's interest in any part of the Premises or in any right appurtenant to that interest. Any proceeds obtained by Lessee from any Financing, and any additional proceeds obtained from any refinancing of any Financing beyond those proceeds necessary to satisfy the balance of any existing Financing, shall be used for payment or repayment of costs of construction, maintenance, and repairs for the Improvements and closing costs incurred in the financing or refinancing. Moreover, the Lessor shall not subordinate the Lessor's interest in the Premises to the lien or security interest of any mortgage or other encumbrance that Lessee may execute on the authority of this **Article 12.04(A)** (Financing of Improvements).

(B) Lessor Approval of Financing Documents: The Lessor reserves the right to approve the documents memorializing any Financing that Lessee secures on the authority of **Article 12.04(A)** (Financing of Improvements), which approval shall not be unreasonably withheld. The County will keep such Financing documents confidential to the extent permitted by Florida Statutes. The Financing documents shall provide, at a minimum, that (i) the term of the Leasehold Mortgage shall not exceed the remaining Term of this Agreement; (ii) the Leasehold Mortgagee will attorn to the County in the event of any default by Lessee under the Leasehold Mortgage and the acquisition of Lessee's interest in the Agreement by the Leasehold Mortgagee; and (iii) that the Leasehold Mortgage is subordinate and inferior to the County's ownership of the Premises. Lessee must submit for the Lessor's review and approval drafts of the Financing documents no less than thirty (30) days in advance of Lessee's execution of those documents. If Lessee is to self-finance the Improvements, then Lessee shall provide the documentation verifying Lessee's ability to self-finance the Improvements in accordance with the deadlines set forth in **Article 2** of this Agreement. Lessor shall use commercially reasonable efforts to negotiate and execute any documents that are customarily executed by public owners in conjunction with tenant financing or improvements.

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(C) Closing of Financing and Recording of Leasehold Mortgage: Following the Lessee's execution of a Leasehold Mortgage, if applicable, and/or closing of Financing, Lessee shall furnish the Lessor: (1) a duplicate original of the Leasehold Mortgage or a photocopy of the Leasehold Mortgage that the Clerk of the Circuit Court for Miami-Dade

County, Florida has certified as being a true copy of the Leasehold Mortgage recorded among its real property records; (2) a duplicate of the Financing documents; and (3) a written notice setting forth the name and address of the lenders, mortgagees or secured party (the "Financier(s)") in whose favour Lessee executed the Leasehold Mortgage and/or from whom Lessee obtained the Financing, as applicable.

(D) Conditions of Financing: Following the delivery of the documents in **Article 12.04(C)** (Closing of Financing and Recording of Leasehold Mortgage) and/or Lessee's closing on any other Financing and continuing until the Leasehold Mortgagee releases the Leasehold Mortgage of record and/or there is no outstanding Financing, the following provisions will apply:

(1) Lessor to Give Notice of Default: At the time that the Lessor gives Lessee written notice of the occurrence of any default in respect of the performance of Lessee's obligations under this Agreement, the Lessor shall simultaneously give the Financier(s) a copy of that notice in a manner established for the delivery of notices in **Article 21.07** (Notices) at the address for the Financier provided by the Lessee to the Lessor. No notice of default to Lessee will be effective until the Lessor delivers the notice required by this **Article 12.04(D)(1)** (Lessor to Give Notice of Default).

(2) Financier's Right to Cure Default: The Financier may rectify a default on Lessee's part but has no obligation to do so. The Lessor will accept the Financier's performance of any of Lessee's obligations to the same extent as though the Lessee has performed. The Lessor may exercise a remedy available to it by reason of a default on Lessee's part only if Lessee and the Financier fail to rectify the default within (a) any time period specifically set forth in **Article 14** (Default, Remedies and Termination) for a cure of a particular default, or (b) if no such time period is set forth, then within thirty (30) calendar days after the date of the delivery of the notice required by virtue of **Article 12.04(D)(1)** (Lessor to Give Notice of Default), or if a cure is not reasonably possible within such thirty (30) calendar day period, then within a period of time reasonably required to cure the default through the exercise of prompt, diligent and continuous effort as determined by the County.

(3) Termination Delayed During Exercise of Financier's Remedies: Even though a default has occurred and neither the Lessee nor the Financier has provided for a cure within the times permitted by **Article 12.04(D)(2)** (Financier's Right to Cure Default), the Lessor will not terminate the Agreement for a reasonable period of time, not to exceed one (1) year, from the date of termination provided in the Lessor's notice of default, if the Financier is then making: (a) prompt, diligent and continuous efforts to gain possession of the Premises and to succeed to Lessee's interest in the Premises by means of a foreclosure or the exercise of any other remedy available to the Financier by virtue of Lessee's default in respect of any of

its obligations under the terms of the Leasehold Mortgage and/or Financing, as applicable, together with (b) the payment to the Lessor of all rent and charges due hereunder with respect to which Lessee becomes delinquent and (c) good faith efforts to rectify other defaults contemporaneously with the efforts to gain possession of the Premises.

(4) Leasehold Mortgagee's Option for Issuance of New Lease: Prior to the expiration of the one (1) year period provided above in **Article 12.04(D)(3)** (Termination Delayed During Exercise of Financier's Remedies), the Financier may request the Lessor to execute and deliver a new lease for the Premises in favour of a successor lessee meeting the criteria of **Article 12.04(D)(5)** (Transfer to a Transferee or Successor Lessee) (a "Successor Lessee"). That new lease will have a term that coincides with what would have been the remainder of the Term had termination of this Agreement not occurred and will otherwise be on the same terms and conditions as those set forth in this Agreement. The new lease will also have the same priority as this Agreement with respect to any lien or other encumbrance affecting the Premises, including any fee mortgage. In order for the Lessor to consider the new lease, the Leasehold Mortgagee must request the execution and delivery of the new lease by the delivery of written notice to the Lessor within the one (1) year period provided above in **Article 12.04(D)(3)** (Termination Delayed During Exercise of Financier's Remedies), and acknowledge and return the new lease to the County for execution on the Lessor's part within twenty (20) calendar days after the date on which the Lessor tenders the new lease to it for signature. Simultaneously with the delivery of the new lease, the Successor Lessee must also execute and deliver to the Lessor a written plan to rectify within a reasonable period of time any default that exists at that time in respect of any of Lessee's obligations under the terms of this Agreement, including, without limitation, any default that may exist in respect of Lessee's obligations arising under the terms of **Article 10** (Environmental Compliance); that plan must set forth in reasonable detail the manner in which the Successor Lessee plans to rectify each default.

(5) Transfer to a Transferee or Successor Lessee: A transfer of Lessee's interest in the Premises to the Financier, or a corporate nominee affiliated with the Leasehold Mortgagee (herein a "nominee"), or a purchaser at a foreclosure sale that occurs by virtue of the Leasehold Mortgagee's acceptance of an assignment of this Agreement in lieu of foreclosure or the exercise of any remedy available to it under the terms of the Leasehold Mortgage (herein a "Transferee") will not constitute an assignment requiring the Lessor's consent under the terms of **Article 12.01** (Assignment and Transfer) above or the fee pursuant to **Article 12.02** (Assignment or Transfer Fee). The provisions of **Article 3** (Use of Premises) will govern any use of the Premises that occurs prior to and after a transfer to the Transferee. The Transferee may make a subsequent transfer of Lessee's

interest in the Premises only with the Lessor's prior written consent as provided in **Article 12.01** (Assignment and Transfer). The Lessor will, however, consent to the subsequent transfer to a Successor Lessee or Lessees if the proposed successor or successors to the Lessee's interest would have been acceptable to the Lessor for the Premises in the reasonable exercise of the Lessor's judgment considering the successor's experience, financial strength, history of meeting contractual obligations and intent to implement a business plan consistent with the Lessor's plan for operating the Airport. The parties agree that the Transferee will be subject to the termination provisions of **Article 14** (Default, Remedies and Termination). After succeeding to Lessee's interest in the Premises, a Transferee that is not a Successor Lessee must use reasonable best efforts to find a Successor Lessee satisfying the criteria set forth above in this **Article 12.03(D)(5)** (Transfer to a Transferee or Successor Lessee), but in any event no later than one (1) year following the date of termination provided in Lessor's default notice. If no Successor Lessee or Lessees are found in such one (1) year period to occupy at least 50% of the Premises and Improvements, then all of the Lessee's, Leasehold Mortgagee's, Financier's and Transferee's interests in the Premises, the Improvements, and this Agreement shall terminate in their entirety, without any right of recovery or compensation from the Lessor.

(6) No Obligations of Transferee; Lessor's Right to Terminate if Obligations Not Satisfied: If a Transferee succeeds to Lessee's interest in the Premises by virtue of the Financier's acceptance of an assignment of this Agreement in lieu of foreclosure or the exercise of any remedy available to the Financier under the terms of the Financing or Leasehold Mortgage, the Transferee and its successors and assigns will only have personal liability for the performance of those obligations incumbent upon Lessee under the terms of this Agreement that arise or accrue during the period between the time at which the Transferee succeeds to Lessee's interest in the Premises and the time at which it divests itself of that interest. The foregoing limitation will not preclude the Lessor from terminating this Agreement if the Transferee fails to rectify without cost to Lessor any default existing in respect of Lessee's obligations at the time the Transferee succeeds to Lessee's interest in the Premises, including, without limitation, any obligation arising under the terms of **Article 10** (Environmental Compliance).

(7) No Amendment of Agreement Without Financier's Consent: Without the Financier's prior written consent, Lessee may not amend this Agreement, exercise any right available to it under the terms of this Agreement or at law to cancel this Agreement, or to voluntarily surrender possession of the Premises to the Lessor. Without the Financier's prior written consent, the Lessor may not amend this Agreement provided, however, the foregoing restrictions will not apply to amendments for which express provision is made elsewhere in this Agreement, including, without limitation, those for

which provision is made in **Article 2** (Financing, Term and Premises), **Article 4** (Rentals and Payments), **Article 20** (Trust Agreement), and **Article 21.13** (Severability). Without the Financier's prior written consent, the Lessor may not cancel this Agreement and accept a surrender of possession of the Premises except in the instances where the cancellation and acceptance of a surrender of possession of the Premises occurs in accordance with **Article 14.05** (Actions at Termination) or in connection with the Lessor's exercise of its remedies following an occurrence of a default in the performance of any of Lessee's obligations. The Financier will not be bound by any amendment, cancellation or surrender that occurs in contravention of the foregoing provisions of this **Article 12.03(D)(7)** (No Amendment of Agreement Without Financier's Consent).

(8) Rights of Leasehold Mortgagee in Insured Losses: The Leasehold Mortgagee will have the right to participate in the adjustment of any insured losses that becomes necessary by reason of damage or destruction occurring to the Improvements, as may be applicable, and the right to supervise and control the receipt and disbursement of insurance proceeds to the extent provided in agreements among Lessee, Leasehold Mortgagees and any Lessee's holding an interest with respect to the Premises; provided, however, that any distribution of insurance proceeds must comply with the requirements of **Article 13** (Insurance).

(9) Rights of Leasehold Mortgagee in Condemnation: If taking of any part of the Premises occurs, the Leasehold Mortgagee will have the right to participate in any condemnation proceedings or settlement discussions pertaining to the Lessee's interests hereunder and the right to supervise and control the receipt and disbursement of all condemnation awards arising from such interests to the extent provided in agreements among Lessee, Leasehold Mortgagee and any other party holding an interest with respect to the Premises. The Leasehold Mortgagee is entitled to receive and apply to the reduction of the indebtedness, the payment of which is secured by the lien of the Leasehold Mortgagee, any portion of a condemnation award arising from a taking of Lessee's interests not applied to the restoration of that portion of the Premises that remains following the taking to a complete architectural unit. After payment to the Lessor by the condemning authority of whatever compensation and damages are determined to be owing to the Lessor for Lessor's property interests in the Premises, and after the indebtedness the payment of which is secured by the lien of the Leasehold Mortgagee is discharged in full by an application of a condemnation award in accordance with the terms of the preceding sentence and after payment to the Lessee by the condemning authority of whatever compensation and damages are determined to be owing Lessee for Lessee's property interests in the Premises, the Lessor is entitled to receive any remaining portion of the condemnation award. If a partial taking of the Premises occurs, this Agreement will continue in effect with respect

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

(10) Lessor Waiver of Right to Certain Rentals: During the entire Term hereof, Lessor will have no right, and expressly waives any right arising under applicable law, in and to the rentals that will become due to Lessee under the terms of any approved sublease of any part of the Improvements. Lessee may assign those rentals to the Financiers without any consent or approval of the County. Nothing in this **Article 12.04** (Conditions of Financing for Approved Improvements Costs) shall (a) alter County's ownership of the Improvements in accordance with **Article 2.06** (Title to Improvements; Standards of Construction), (b) alter Lessee's obligations to commence paying Lessor fair market rentals or other rentals on the Improvements as provided in **Article 4** (Rentals and Payments) or (c) provide Lessee with any ownership claim to the Improvements or the rentals therefrom after the conclusion of the Term of this Agreement.

(11) Non Merger of Fee and Leasehold Interest: Under no circumstances will the fee estate of the Lessor and the leasehold estate created by this Agreement or any sublease created hereunder merge, even though owned by the same party, without the Leasehold Mortgagee's written consent.

(E) Estoppel Certificate: Upon written request from time to time by Lessee, a Financier, a prospective Financier, or a prospective assignee of Lessee's interest in the Premises, the Lessor shall execute and deliver to the requesting party an estoppel certificate in the

form reasonably requested by the requesting party. In each such certificate, the Lessor shall certify, to the extent that it then has knowledge: (i) the amount of the monthly rent that Lessee is then obligated to pay under the terms of this Agreement and the date through which Lessee has paid that rent, (ii) that this Agreement is in full force and effect, (iii) the specific nature of any default that the Lessor knows to exist in respect of either party's performance of its respective obligations under the terms of this Agreement, and (iv) the specific nature of any defence or offset that the Lessor may assert in connection with any effort on Lessee's part to enforce any of the obligations the Lessor undertakes under the terms of this Agreement.

(F) Leasehold Mortgagee's Right to New Lease: The provisions of this **Article 12.04** (Conditions of Financing for Approved Improvements Costs) will survive the termination, rejection or disaffirmance of this Agreement and will continue in full force and effect thereafter to the same extent as if this **Article 12.04** (Conditions of Financing for Approved Improvements Costs) were a separate and independent contract made by the Lessor, Lessee, and the Leasehold Mortgagee. The Lessor's agreement set forth in this **Article 12.04** (Conditions of Financing for Approved Improvements Costs) to enter into a new lease with the Leasehold Mortgagee constitutes a separate agreement with the Lessor and the Leasehold Mortgagee. The Lessor agrees that the Leasehold Mortgagee shall be a third-party beneficiary to the terms of this Agreement, and that such third-party beneficiary status shall be unaffected by the rejection or disaffirmance of this Agreement in any bankruptcy proceeding by any party.

ARTICLE 13

Insurance

13.01 Insurance Required: In addition to such insurance as may be required by law, the Lessee shall maintain, without lapse or material change, prior to the commencement of any Work on this Project for the insurance listed in items A, B, C, D, and F and prior to the Commencement of Construction for the insurance listed in item E for Builders Risk and Property Insurance per **Article 5.03** (Submission of Certain Documents and Fees Prior to Commencement of Construction), and in all cases through the duration of the Term, the following insurance:

(A) Commercial General Liability Insurance on a comprehensive basis, including Contractual Liability, to cover the Lessee's Premises and Operations, in an amount not less than $5,000,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**

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

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

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

(E) Builders Risk and Property Insurance. The Lessee and/or its sublessee(s), at its (and/or their) sole cost and expense, shall keep the Improvements insured on an "All Risk" basis in an amount not less than 100% of the full replacement value of the Improvements against loss or damage (in excess of a reasonable per occurrence deductible amount, which shall be the responsibility of the Lessee) by fire, lightning, tornado, hurricane, windstorm, hail, flood, earthquake, explosion, riot, riot attending strike, civil commotion, vandalism and malicious mischief, sprinklers and sprinkler leakage, aircraft, vehicles and smoke, or any other casualty in an amount not less than 100% of the full replacement value of the Improvements to the extent such coverage is commercially available at commercially reasonable rates. The full replacement value of the Improvements shall be established as of the date each Improvement is constructed and a certificate of completion (or CO) for same is issued by the appropriate governing authority with jurisdiction over same and shall be re-established at intervals of not more than thirty-six (36) months thereafter, by the firm and professional property evaluators used by the County for establishing replacement values for County property. Any deficiency in the amount of the proceeds from such property insurance resulting from a failure by the Lessee to re-establish the full replacement value of the Improvements shall be the sole responsibility of the Lessee. Policy(ies) must clearly indicate that underground structures (if applicable) and materials being installed are covered.

(F) Business Interruption Insurance. The Lessee at its sole cost and expense shall maintain business interruption insurance at a minimum, in an amount sufficient to continue making land rental, and payments of taxes and insurance for the period of no less than one (1) year, during the rebuilding period as a result of damage to the Improvements.

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

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued

by the State of Florida Department of Financial Services and are members of the Florida Guaranty Fund.

13.02 Insurance Certificates Required: Upon County's notification and annually thereafter, the Lessee shall furnish or cause to be furnished certificates of insurance to the Department for approval. If the Lessee fails to submit the required insurance documents in the manner prescribed in this Agreement within fifteen (15) Business Days, the Lessee shall be in default of the contractual terms and conditions and award of the Lessee may be rescinded, unless such timeframe for submission has been extended by the County.

These certificates shall clearly indicate that the Lessee, or its Project Contractor as applicable, have obtained insurance of the types, amounts and classifications required by these provisions. No material change or cancellation of the insurance shall be effective without a 30-day prior written notice to and approval by the County Risk Management Division.

On said insurance certificates, unless specifically shown to be excluded thereon, commercial general liability coverage shall include contractual liability, and notification of cancellation shall include notification of material changes in the policies. The County reserves the right to require the Lessee to provide such reasonably amended insurance coverage as it deems necessary or desirable, upon issuance of notice in writing to the Lessee, which notice shall automatically amend this Agreement effective thirty (30) calendar days after such notice.

The mailing address of Miami-Dade County as the certificate holder must appear on the certificate of insurance as follows:

Miami-Dade County Aviation Department
Risk Management
4200 N.W. 36 Street
Miami, FL 33166

The Lessee shall assure that the Certificates of Insurance required in conjunction with this **Article** remain in full force for the Term of the Agreement, including any renewal or extension periods that may be exercised by the County. If the Certificate(s) of Insurance is scheduled to expire during the Term of the Agreement, the Lessee shall submit new or renewed Certificate(s) of Insurance to the County a minimum of ten (10) calendar days before such expiration. In the event that expired Certificates of Insurance are not replaced or renewed to cover the Agreement period, the County may suspend the Agreement until the new or renewed certificates are received by the County in the manner prescribed herein. If such suspension exceeds thirty (30) calendar days, the County may, at its sole discretion, terminate the Agreement for cause and the Lessee shall be responsible for all direct and indirect costs associated with such termination.

13.03 Compliance: Compliance with the requirements of this **Article 13** (Insurance) shall not relieve the Lessee of its liability under any other portion of this Agreement or any other agreement between the County and the Lessee.

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

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

ARTICLE 14

Default, Remedies and Termination

14.01 Payment Defaults: Failure of the Lessee to make all payments of rentals, fees and charges required to be paid herein when due shall constitute a default, and the County may, at its option terminate this Agreement after ninety (90) calendar days' notice in writing to the Lessee unless the default is cured within the notice period.

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

14.03 Other Defaults: The Lessor shall have the right, upon sixty (60) 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 60-day period, in the sole discretion of the Department, the Lessee has commenced substantial corrective steps within such 60-day period and diligently pursues same to completion:

(A) Failure of the Lessee to comply with any covenants of this Agreement, other than the covenants to pay rentals, fees and charges when due, and the covenants to provide required evidence of insurance coverage. This shall also include compliance with the commencing construction in **Article 2.1** (Commence Construction) and development schedule as indicated in **Article 2.07** (Development Schedule and Failure to Develop);

(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 1** (Definitions);

(D) Failure to construct Improvements in a timely manner as noted in **Article 2.07** (Development Schedule and Failure to Develop) and **Article 5.05** (County Extension to Complete Improvements);

(E) Failure of the Lessee to comply with the notification requirements or the franchise agreement being canceled or terminated as indicated in **Article 6.11** (Hotel Brand);

(F) The abandonment by Lessee of the Premises or discontinuance of operations pursuant to **Article 14.10** (Termination by Abandonment); or

(G) If a lien is filed against the fee simple interest of Lessor and not discharged, removed or bonded within fifteen (15) calendar days from the County's notice to Lessee.

14.04 County Step-in Rights: The County will have temporary and permanent step-in rights in the event of default, if such default is neither cured by Lessee or, pursuant to Section 12.04(D)(1) through (3) the Financier; notwithstanding, in the event of a threat to public health or safety or other emergency, or an event of default that is imminently likely to create an immediate and serious threat to the public health or safety of any person, as determined by the County in its sole discretion, the County may step in immediately for the limited purpose of eliminating such threat, without providing opportunity to cure to Lessee or Financier. Resolution of such threat by the County shall not excuse Lessee from any liability under this Agreement for causing or allowing such threat. The Lessee shall ensure that all of its contracts, including contracts with Project Contractors and Subcontractors, permit the County to exercise its rights under this Article and provide for assignment to the County as necessary to implement the County's step-in rights.

(A) County's Step-in Rights After Substantial Completion: If after Substantial Completion, the County reasonably considers that a breach by the Lessee of any obligation under this Agreement or an event (a) has resulted in a public health or safety emergency, or is imminently likely to create an immediate and serious threat to the health or safety of any person, any property, the environment or the long-term integrity of, or public confidence in, the Hotel or MIA and any related operations, or (b) is prejudicial to the ability to carry on MIA activities to a material degree, then the County, acting reasonably, may:

(1) if the County considers that there is sufficient time and that it is likely that the Lessee shall be willing and able to provide assistance, require the Lessee by notice to take such steps as are necessary to mitigate or rectify such state of affairs, and the Lessee shall use all reasonable efforts to comply with the County's requirements as soon as reasonably practicable; or

(2) if the County considers there is not sufficient time or that the Lessee is not likely to be willing and able to take the necessary steps, take such steps as the County considers appropriate (either itself or by engaging others) to mitigate or rectify such state of affairs and to ensure performance of the relevant Work to the standards required by this Agreement (or as close as possible to those standards as the circumstances permit). The County will carry out such steps as quickly as is practicable, and in such manner as will minimize interference with the Lessee's performance of its obligations under this Agreement.

(B) County's Rectification Rights: If the County gives notice to the Lessee per **Article 14.04(A)** (County's Step-In Rights After Substantial Completion) and the Lessee either (1) does not confirm, within five (5) Business Days of such notice, or such shorter period as is appropriate in the case of an emergency, that it is willing to take such steps as are required in such notice or present an alternative plan to the County to mitigate, rectify and protect against such circumstances; or (2) fails to take the steps as are referred to or required in such notice or alternate plan accepted by the County within such time as set forth in such notice or accepted alternate plan or within such time as the County, acting reasonably determines, then the County may take such steps as it considers necessary to mitigate, rectify or protect against such circumstances either itself or by engaging others to take any such steps. Such steps may include the partial or total suspension of the right and obligation of the Lessee to provide the relevant Work, but only for so long as the circumstances referred to in **Article 14.04(A)** (County's Step-In Rights After Substantial Completion) subsist.

(C) No Effect on Contract Services: The exercise by the County of any of its rights under this **Article 14.04** (County Step-in Rights) shall not reduce or affect in any way the Developer's responsibility hereunder to perform the Work.

14.05 Actions at Termination:

(A) The Lessee shall vacate, quit, surrender up and deliver the Premises to the Lessor on or before the termination date of this Agreement, whether by lapse of time or otherwise. If title of the Improvements on the Premises is in the name of the Lessee at the time of Termination, and if directed by the Lessor and prior to the completion of the Hotel portion of the Improvements, the Lessee shall demolish all above ground Improvements on the Premises and remove all debris at its costs. Lessee shall conduct any required demolition in accordance with the code and regulatory requirements in effect at the time. If not directed to demolish the Improvements, the Lessee shall surrender the Premises in the condition required under **Article 6** (Maintenance and Repair by Lessee) herein with all

repairs for which the Lessee is responsible shall be completed prior to surrender and shall execute appropriate documents confirming that title to such Improvements in Lessee's name has been transferred to Lessor. In no event shall Lessor be required to pay any compensation or reimbursement to Lessee for such transfer of title. On or before the termination date of this Agreement, the Lessee shall remove all of its personal property from the Premises; provided, however, that if immediate termination occurs under **Article 14.04** (Immediate Termination), Lessee shall be allowed up to five (5) calendar days from the receipt of notice of termination to remove such personal property.

(B) If the Lessor advises the Lessee that it has reason to believe that any hazardous substance or environmental contaminant has been released within the Premises or into the ground under the Premises, then the Lessee at its expense shall retain an approved environmental consultant to perform whatever environmental assessment may be required to determine the extent of such release. The Lessee shall comply with the recommendations and conclusions of such consultant regarding environmental clean-up efforts that may be required, and shall comply with any other clean-up requirements imposed on the Lessee by Federal, State or County laws, regulations or codes.

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

14.06 Lien Upon Personal Property: In the event of termination for default, the Lessor shall have a lien upon all personal property of the Lessee that is not pledged to a third party and located at Premises to secure the payment of any unpaid rentals, fees and charges accruing under the terms of this Agreement.

14.07 Right to Show Premises: At any time within six (6) months of the scheduled expiration date of this Agreement or any time after the Lessee has been given notice of termination or default, pursuant to **Article 14** (Default, Remedies and Termination) or **Article 2.09 (**Early Termination for Airport Purposes), the Lessor shall have the right to enter on the Premises for the purposes of showing the Premises to prospective tenants or users during regular business hours.

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

(A) The permanent abandonment of the Airport.

(B) The lawful assumption by the United States Government or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part of parts thereof, in such a manner as to substantially restrict the Lessee from operating there from for a period in excess of ninety (90) consecutive calendar days, provided that nothing contained herein shall be deemed to constitute a waiver by the Lessee of any right it may have against the United States for just compensation in the event of any such assumption.

(C) The issuance by any court of competent jurisdiction of any injunction in any way substantially preventing or restraining the use of the Airport, and the remaining in force of such injunction for a period in excess of ninety (90) calendar days. In the event of termination for such reason, Lessee's exclusive remedy shall be termination or reinstatement of this Agreement by the County, at its sole discretion, for a period of time equal to the number of days that the injunction was in effect in excess of said ninety (90) calendar days.

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

14.10 Termination by Abandonment: This Agreement may be immediately terminated by Lessor 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.

However, in the instances that such abandonment or discontinuance has been caused by strike, labor disturbance, acts of God, civil disturbance, casualty, Force Majeure Event or governmental order that prevents the Lessee's use of the Premises for the purposes authorized in **Article 3.02** (Use of Premises) hereof, and which the Lessor and Lessee

are diligently complying with this Lease, as applicable, to correct the situation in order to occupy the Premises, then this Agreement may be 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 that any part of the Hotel can be open for business and occupied safely or after one (1) year, whichever comes first.

Such termination shall not relieve the Lessee of its rental payment obligation for the remaining Term of the Agreement nor does it constitute a waiver by the Lessor of its rights to recover damages for rental payments for the remaining Term of the Agreement.

14.11 County Defaults: This Agreement shall be subject to termination upon sixty (60) calendar days' written notice by the Lessee in the event of a default by the County in the performance of any covenant or agreement herein required to be performed by the County and the failure of the County to remedy same within a reasonable period of time following receipt of written notice from the Lessee of such default which period of time to cure provided to the County shall be no less than sixty (60) calendar days of the date of the notice. The parties may negotiate an amendment to this Agreement for the Lessee to perform the work to cure a default by the County and receive reimbursement for the cost of the work, if any, and approval of any such amendment shall be at the sole and exclusive right of the Lessor.

14.12 County Remedies: No failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision. In addition to any termination right in this Agreement, the County has all other remedies available at law or equity, including monetary damages and injunctive relief.

ARTICLE 15

Special Conditions

15.01 Quality of Services: The Lessee shall furnish the services required and authorized, pursuant to **Article 3** (Use of Premises) hereof, on a good, prompt and efficient basis and on a fair, equal and not unjustly discriminatory basis to all users thereof. The Lessee shall operate and maintain the new Hotel in conformance with industry standards for an Upscale hotel.

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

15.03 County's Obligations: The Lessee, in recognition of the County's obligation, pursuant to Section 22 of Part V of the Federal Aviation Administration's standard grant assurances, to enforce the provisions of **Article 15.01** (Quality of Services) and **Article 15.02** (Nondiscriminatory Prices), agrees that the Department may, from time to time, promulgate standards, methods and procedures for and monitor and test the provision of services hereunder and may require the Lessee to provide copies of schedules of service charges and the bases for discounts, rebates and similar types of price reductions. Should the Department determine that the Lessee is not in compliance with the provisions of **Article 15.01** (Quality of Services) and **Article 15.02** (Nondiscriminatory Prices), the first such occurrence shall be considered a curable default, pursuant to **Article 14.03** (Other Defaults) hereof, and subsequent occurrence(s) shall be considered a material breach of this Agreement, entitling the County to the remedies provided in this Agreement or by law.

15.04 Compliance with FAA Requirements: To the extent the FAA has jurisdiction over the activities of Lessee, or to the extent the federal grant assurances or FAA regulations require Lessor to monitor the activities of the Lessee hereunder, the Lessee agrees to comply with such FAA or federal requirements or regulations.

ARTICLE 16

Equal Employment Opportunity, Nondiscrimination and Affirmative Action

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

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

(B) The period during which the airport sponsor or any transferee retains ownership or possession of the property.

16.01 Employment Discrimination: The Lessee shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of age, sex, race, color, religion, national origin, ancestry, sexual orientation or

disability. The Lessee shall comply with applicable provisions of the Americans with Disabilities Act, including, but not limited to, provisions pertaining to employment.

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

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

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

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

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

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

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

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

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

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

(F) Incorporation of Provisions: The Lessee will include the provisions of paragraphs one through six in every sublease and subcontract, including procurements of materials and leases of equipment, Required Contact Provisions Issued on January 29, 2016 Page 19 AIP Grants and Obligated Sponsors Airports (ARP) unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Lessee will take action with

respect to any sublease or subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Lessee becomes involved in, or is threatened with litigation by a sub-lessee, subcontractor, or supplier because of such direction, the Lessee may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Lessee may request the United States to enter into the litigation to protect the interests of the United States.

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

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

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

ARTICLE 17

Security and Special Provisions

17.01 Security: The Lessee acknowledges and accepts full responsibility for (i) the security and protection of the Premises, any Improvements thereon, its equipment and property on the Airport and (ii) all breaches of federal and Lessor security requirements by Lessee's employees or those persons for whom Lessee has responsibility under **Article 16.02** (Nondiscriminatory Access to Premises and Services), and (iii) control of access to the AOA through the Premises by persons and vehicles. The Lessee fully understands and acknowledges that any security measures deemed necessary by the Lessee for the protection of said Premises, equipment and property shall be the sole responsibility of the Lessee and shall involve no cost to the County. Lessee is responsible for compliance by its employees and all others for whom it is responsible with applicable security requirements relating to access, through Lessee's Premises or otherwise, to the AOA or any Security Identification Display Area ("SIDA"). All such security measures by the Lessee shall be in accordance with FAR 107, 49 CFR Part 1542 and the Airport Security Plan.

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17.02 Security Identification Display Areas (SIDA) Access - Identification Badges: The Lessee shall be responsible for (i) assuring that all of Lessee's employees, and all employees and persons of entities accessing the AOA/SIDA through the Premises on behalf of Lessee (collectively herein, the "SIDA Users"), have appropriate SIDA Identification Badges and comply with all federal and Lessor security requirements applicable to the Premises and SIDAs, (ii) immediately reporting to MDAD all lost or stolen ID badges of Lessee's employees and/or visitors' badges provided by Lessee, and (iii) immediately returning the ID badges of any of Lessee's employees that are transferred from the Airport or terminated from the employ of the Lessee or upon termination of this Agreement. Each employee must complete the SIDA training program conducted by the Department, before an ID badge is issued. The Lessee shall pay, or cause to be paid, to the Department any fines or penalties imposed on Lessor for a violation of the security requirements set forth herein, as well as such nondiscriminatory charges, as may be established from time to time, for lost or stolen ID badges and those not returned to the Department in accordance with this **Article**. The Department shall have the right to require the Lessee to conduct background investigations and to furnish certain data on such employees before the issuance of ID badges, which data may include the fingerprinting of employee applicants for the badges.

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

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

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

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

(A) That the Lessee has made a false certification in its execution of the Affidavit submitted or in its annual re-certification as required by the Ordinance;

(B) That the Lessee has violated its original or renewal certification by failing to carry out any of the specific requirements of the Ordinance, other than the annual re-certification; or

(C) That such a number of employees of the Lessee have been convicted of violations occurring in its workplace(s) as to indicate that the Lessee has failed to make a good faith effort to provide a drug-free workplace as required by the Ordinance.

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

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

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

17.09 AOA - Right to Search: The Lessee agrees that its vehicles, cargo, goods and other personal property are subject to being searched when attempting to enter or leave and while on the AOA. The Lessee further agrees that it shall not authorize any employee or agent to enter the AOA unless and until such employee or agent has executed a written consent-to-search form acceptable to the Department. Persons not executing such

consent-to-search form shall not be employed by the Lessee at the Airport, in any job requiring access to the AOA.

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

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

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

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

ARTICLE 18

Employees

18.01 Control of Employees: Lessee shall properly control the actions of its employees at all times that said employees are working at 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.

At the request of the County, the Lessee shall promptly remove from the Project any of its employee, or any other person, working at the Airport. The Lessee agrees that such removal of any employee or other person does not require the termination or demotion of the employee or person.

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

18.03 Verification of Employment Eligibility (E-Verify): By entering into this Agreement, the Lessee becomes obligated to comply with the provisions of Section 448.095, Florida Statute, titled "Verification of Employment Eligibility." This includes but is not limited to utilization of the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all newly hired employees by the Lessee effective, January 1, 2021, and requiring all Subcontractors to provide an affidavit attesting that the Subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply may lead to termination of this Agreement or if a Subcontractor knowingly violates the statute, the subcontract must be terminated immediately.

Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination, and the Lessee may be liable for any additional costs incurred by the County resulting from the termination of the Agreement. If this Agreement is terminated for a violation of the statute by the Lessee, the Lessee may not be awarded a public contract for a period of one year after the date of termination. Public and private employers must enroll in the E-Verify System (http://www.uscis.gov/e-verify) and retain the I-9 Forms for inspection.

ARTICLE 19

Civil Actions

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

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

19.03 Registered Office/Agent; Jurisdiction: Notwithstanding the provisions stated in **Article 19.02** (Notice of Commencement of Civil Action), and in addition thereto, the Lessee, if a corporation, shall designate a registered office and a registered agent, as

required by Section 48.091, Florida Statutes, such designations to be filed with the Florida Department of State in accordance with Section 607.0501, Florida Statutes. If the Lessee is a natural person, he and his personal representative hereby submit themselves to the jurisdiction of the Courts of this State for any cause of action based in whole or in part on an alleged breach of this Agreement.

ARTICLE 20

Trust Agreement

20.01 Incorporation of Trust Agreement by Reference: Notwithstanding any of the terms, provisions and conditions of this Agreement, it is understood and agreed by the parties hereto that, to the extent of any inconsistency with or ambiguity relating to the terms and conditions of this Agreement, and the level of rents, fees or charges required hereunder and their periodic modification or adjustment as may be required by the provisions of the Trust Agreement dated as of the 15th day of December, 2002 as by and among the County and the JP Morgan Chase Bank as Trustee and Wachovia Bank, National Association as Co-trustee ("the Trust Agreement"), shall prevail and govern at all times during the Term of this Agreement. Copies of the Trust Agreement are available for inspection in the offices of the Department during normal working hours.

20.02 Adjustment of Terms and Conditions: If, at any time during the Term of this Agreement, a Federal agency or court of competent jurisdiction shall determine that any of the terms and conditions of this Agreement, including the rentals, fees and charges required to be paid hereunder to the County by the Lessee or by other Lessees under other Agreements of the County for the lease or use of facilities used for similar purposes, are unjustly discriminatory, the County shall have the right to modify such terms and conditions and to increase or otherwise adjust the rentals, fees and charges required to be paid under this Agreement in such a manner as the County shall determine is necessary and reasonable so that the rentals, fees and charges payable by the Lessee and others shall not thereafter be unjustly discriminatory to any user of like facilities and shall not result in any violation of the Trust Agreement or in any deficiency in revenues necessary to comply with the covenants of the Trust Agreement. In the event the County has modified the terms and conditions of this Agreement, including any adjustment of the rentals, fees and charges required to be paid to the County pursuant to this provision, this Agreement shall be amended to incorporate such modification of the terms and conditions including the adjustment of rentals, fees and charges upon the issuance of written notice from the Department to the Lessee.

ARTICLE 21

Other Provisions

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

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

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

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

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

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

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

As to the County or Aviation Department:
Director
Miami-Dade County Aviation Department
Post Office Box 025504
Miami, Florida 33102-5504

As to the Lessee:

Parmco Airport Holdings LLC
c/o XXXXXX
XXXXX, Florida 331XX
Attention: XXXXXXX

with copies to:

Attention: XXXXXXXX

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

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

Deleted: FDR Miami Hotel LLC

Deleted: Fontainebleau Development LLC

Deleted: 19950 West Country Club Drive, 10th Floor Aventura

Deleted: 80

Deleted: Brett Mufson

Deleted: and

Deleted: FDR Miami Hotel LLC
c/o Related Companies 30 Hudson Yards¶
New York, New York 10001
Attention: Jordan Bargas¶

Deleted: Fontainebleau Development LLC¶
19950 West Country Club Drive, 10th Floor Aventura, Florida 33180¶

Deleted: Legal Department

Deleted: and¶
Related Companies 30 Hudson Yards¶
New York, New York 10001 Attention: General Counsel

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

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

21.11 No Waiver: There shall be no waiver of the right of either party to demand strict performance of any of the provisions, terms and covenants of this Agreement nor shall there be any waiver of any breach, default or non-performance hereof by either party, unless such waiver is explicitly made in writing by the other party. Any previous waiver or course of dealing shall not affect the right of either party to demand strict performance of the provisions, terms and covenants of this Agreement with respect to any subsequent event or occurrence of any subsequent breach, default or non-performance hereof by the other party.

21.12 Right to Regulate: Nothing in this Agreement shall be construed to waive or limit the governmental authority of the County, as a political subdivision of the State of Florida, to regulate the Lessee or its operations. Notwithstanding any provision of this Agreement, nothing herein shall bind or obligate the County, the Zoning Appeals Board, the Building and Zoning Department (as it may be renamed from time to time), the Planning Department (as it may be renamed from time to time), or any department, board or agency of the County to agree to any specific request of the Lessee that is related in any way to the regulatory or quasi-judicial power of the County; and the County shall be released and held harmless by the Lessee from any liability, responsibility, claims, consequential damages or other damages, or losses resulting from the denial or withholding of such requests, provided, however, that this provision shall not preclude any appeal from County action wherein the sole remedy sought is reversible of the County's action or injunctive relief; nor shall it preclude any action based on the County's bad faith, capricious behavior or arbitrary action.

21.13 Severability: If any provision of this Agreement or the application thereof to either party to this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions of this Agreement which can be given effect without the invalid provision, and to this end, the provisions of this Agreement are severable.

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

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

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

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

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

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

In the event of any delay resulting from such causes and provided the affected party has notified the other within a reasonable time period and exercised commercially reasonable

efforts, the time for performance under this Agreement (including the payment of monies) shall be extended for a period of time reasonably necessary to overcome the effect of such delay.

21.19 Destruction of Premises: In the event the Premises shall be destroyed or so damaged or injured by fire, windstorm, flood or other casualty (and in each such event the Lessee was not at fault in whole or in part) during the Term of this Agreement that the Premises or any portion thereof are rendered untenantable, the Lessee shall diligently make the necessary repairs, and 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 Premises is destroyed or damaged in their entirety, the Lessee shall be so notified in writing by the Department, and this Agreement shall be deemed terminated as of the date of the casualty, with the Lessee being liable only for payment of rentals on a pro rata basis as to whatever portion(s) of the Premises which were tenantable and used by the Lessee following the casualty.

(B) Partial Damage: If the damaged portion of the Premises is not rendered tenantable by the Lessee within a reasonable period of time, and the Lessee shall determine that: 1) the loss of the damaged portion of the Premises shall have a materially adverse impact on the ability of the Lessee to utilize the Premises for the purposes described in **Article 3** (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 not later than one (1) year from the giving of such notice, if the repairs are not completed within ninety (90) calendar days following such written notice of the intent to cancel, or if the repairs cannot be reasonably completed within such 90-day period. In the event of cancellation, the rent for the untenantable portion of the Premises shall be paid only to the date of such fire, windstorm, flood, or other casualty. If the Agreement is not canceled following any such casualty, the rent shall be abated as to the portion of the Premises rendered untenantable. If the casualty was caused in whole or in part by the Lessee, its officers, employees, agents, contractors or Trespassers, then the Lessee shall not have the right to terminate this Agreement and shall be responsible under other provisions of this Agreement for payment to the County of all damage to the Premises, plus the loss of rentals attributable to the damaged or destroyed premises.

21.20 Quiet Enjoyment: Subject to the terms of this Agreement, the County's right and obligation to make certain repairs, alterations, and additions under **Article 7** (Maintenance by County) and **Article 21.09** (Rights of County at Airport), which, for purposes of this clause, includes any and all demolition, in whole or in part, of buildings and runways, and roadway systems on or off the Airport, and the reservation of easement rights to the airspace under **Article 17.10** (Right of Flight), all of which provisions and any others in this Agreement, the Lessee acknowledges may cause disruption and disturbance to the Lessee, and upon the observance by the Lessee of all the terms,

provisions, covenants, and conditions imposed upon the Lessee hereunder, the Lessee shall peaceably and quietly hold and enjoy the Premises for the Term of this Agreement; provided, however, that the County shall not be liable for any violation of this clause or for any disturbance or disruption in or to the Lessee's business, for acts or omissions of tenants, users of the Airport, third parties or when any department or agency of the County is acting in its governmental capacity or by acts of God.

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

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

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

Miami-Dade County Inspector General Review: According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts.

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production

of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Agreement. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Lessee, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

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

21.24 Federal Aviation Administration (FAA) Provisions:

(A) Compliance with Nondiscrimination Requirements: During the performance of this Agreement, the Lessee, for itself, its assignees, and successors in interest agrees as follows:

(1) Compliance with Regulations: The Lessee (including its Project Contractors and Subcontractors) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.

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

(3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation

made by the Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Lessee of the Lessee's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

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

(5) Sanctions for Noncompliance: In the event of a Lessee's noncompliance with the Nondiscrimination provisions of this Agreement, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
   (a) Withholding payments to the Lessee under the Agreement until the Lessee complies; and/or
   (b) Cancelling, terminating, or suspending a contract, in whole or in part.

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

(7) During the performance of this Agreement, the Lessee, for itself, its assignees, and successors in interest agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:
   (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq*., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);

(b) 49 CFR part 21 (Non-discrimination in Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);

(c) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

(d) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;

(e) The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);

(f) Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

(g) The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

(h) Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;

(i) The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

(j) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

(k) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and

(l) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

(B) All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR Part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. The Lessee has full responsibility to monitor compliance to the referenced statute or regulation. The Lessee must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

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

21.25 Eminent Domain:

(A) Entire Taking: If all of the Premises are acquired by eminent domain or sale in lieu of condemnation (including, without limitations, any taking by the FAA or change to the FAA Regulations, or change in the Runway Protection Zones, Object Free Area, height limitation or use, any of which affect the Premises in their entirety), during the Term of this Agreement for any public or quasi-public purpose, under any statute or regulation, or by right of eminent domain, this Agreement shall terminate on the date that surrender of possession to the condemning authority is required by court order or other binding agreement in lieu of condemnation, and rent due under this Agreement shall be pro-rated as of the date of said termination, and Lessee shall be entitled to any claim against the condemning authority for which the Lessee may be entitled. Lessor shall not object to Lessee's presentation of evidence at any trial on the issue of full or just compensation, provided that such presentation does not affect Lessor's right to present Lessor's evidence. No compensation settlement of Lessee's Leasehold interest or sale in lieu of condemnation of Lessee's Leasehold interest shall be entered into by Lessor without Lessee's prior written consent. Lessee shall be entitled to recover, out of any condemnation award or proceeds of sale in lieu of condemnation, compensation for the value of Lessee's unexpired leasehold interest as agreed to by Lessor and Lessee, or absent such agreement, as determined in an apportionment proceeding, to the extent provided by law, including, but not limited to, any inverse condemnation claim. Nothing in this Agreement shall prohibit Lessee from asserting a separate claim for business or other damages, including, but not limited to, the loss of value of its trade fixtures, and moving costs to the extent allowed by law. Nothing herein shall affect Lessor's right to

receive any amounts that may be due Lessor from the condemning authority to the extent allowed by law.

(B) Partial Taking: If a portion of the Premises is acquired by eminent domain or sale in lieu of condemnation (including, without limitations, any taking by the FAA or change to the FAA Regulations, or change in the Runway Protection Zones, Object Free Area, height limitation or use, any of which affect the portion of the Premises) during the Term of this Agreement for any public or quasi-public purpose, under any statute or regulation, or by right of eminent domain, and if, in Lessee's reasonable discretion, the remainder of the Premises cannot be adequately restored, repaired or reconstructed so as to constitute a complete architectural unit of substantially the same usefulness, design, construction, and commercial feasibility, as immediately before such Taking, Lessee shall have the right, to be exercised by written notice no later than one hundred twenty (120) calendar days after surrender of possession to the condemning authority is required, to terminate this Agreement on a date to be specified in said notice, but Lessee shall be entitled to any claim against the condemning authority for which the Lessee may be entitled, including, but not limited to, any inverse condemnation claim. In the event of termination by Lessee under this paragraph, Lessee shall pay FMV Land Rent pro-rated through the date of termination and shall perform all of the obligations of Lessee hereunder to such date. Lessee shall also have the right to separately claim all damages including but not limited to business damages from the condemning authority to the extent allowed by law and no compensation settlement of Lessee's Leasehold interest or sale in lieu of condemnation of Lessee's Leasehold interest shall be entered into by Lessor without Lessee's prior written consent; provided, however, that nothing in this **Article** shall affect Lessor's right to receive any amounts that may be due Lessor from the condemning authority to the extent allowed by law.

If a portion of the Premises is acquired by eminent domain or sale in lieu of condemnation (including, without limitations, any taking by the FAA or change to the FAA Regulations, or change in the Runway Protection Zones, Object Free Area, height limitation or use) during the Term of this Agreement for any public or quasi-public purpose, under any statute, or by right of eminent domain, and this Agreement is not terminated as provided in the foregoing sub-paragraph, Premises Rent shall be reduced in proportion to the square footage of the Premises taken as of the date that surrender of possession is required, but Lessee shall be entitled to any claim against the condemning authority for which the Lessee may be entitled, including, but not limited to, any inverse condemnation claim. Lessor will not object to Lessee's presentation of evidence at any trial of the value of any leasehold interest taken and any damage to its remaining leasehold interest provided that such presentation does not affect Lessor's right to present Lessor's evidence. No compensation settlement of Lessee's Leasehold interest or sale in lieu of condemnation of Lessee's Leasehold interest shall be entered into by Lessor without Lessee's prior written consent. Lessee shall also have the right to separately claim all damages, including but not limited to business damages against the condemning authority as provided by law. Lessee shall be entitled to recover, out of any condemnation award or proceeds of a sale in lieu of partial condemnation, compensation for the value of Lessee's unexpired leasehold interest taken, as agreed to by Lessor and Lessee, or

absent such agreement, as determined in an apportionment proceeding to the extent provided by law and subject to the provisions herein. Nothing herein shall affect Lessor's right to receive any amounts that may be due Lessor from the condemning authority to the extent allowed by law.

(C) Temporary Taking: If the whole or any part of the Premises or of Lessee's interest under this Agreement is acquired by eminent domain or sale in lieu of condemnation (including, without limitations, any taking by the FAA or change to the FAA Regulations, or, change in the Runway Protection Zones, Object Free Area, height limitation or use), a temporary interest, this Agreement for any public or quasi-public purpose, under any statute or regulation, or by right of eminent domain, shall not automatically terminate by reason thereof, but Lessee shall be entitled to any claim against the condemning authority for which the lessee may be entitled, including, but not limited to, any inverse condemnation claim. Lessee shall not be required to pay rent for any portion of the premises which is temporarily not usable by Lessee, and such rent reduction shall be determined on a pro rata basis based upon the area that remains usable. Lessee shall perform all other obligations under this Agreement, except to the extent that Lessee may be prevented from so doing due to the temporary occupancy by the condemning authority. In the event of any such Temporary Taking, Lessee shall be entitled to claim all damages, including but not limited to, business damages and moving costs against the condemning authority as provided by law. No compensation settlement of Lessee's Leasehold interest or sale in lieu of condemnation of Lessee's Leasehold interest shall be entered into by Lessor without Lessee's prior written consent. Subject to this **Article**, Lessee shall be entitled to recover out of any condemnation award or proceeds of a sale in lieu of a temporary condemnation, any damage to its remaining leasehold interest, as agreed to by Lessor and Lessee, or absent such an agreement, as determined in an apportionment proceeding to the extent provided by law and subject to the provisions herein. Nothing herein shall affect Lessor's right to receive any amounts that may be due Lessor from the condemning authority to the extent allowed by law.

Deleted: <#>Miami-Dade County United States Soccer Federation 2026 World Cup:¶
The terms of this Agreement are subordinate to the terms of the Airport Agreement submitted by Miami-Dade County to the United States Soccer Federation on February 21, 2018. The resolution adopting the Airport Agreement and the subsequent replacement resolution can be found at the following links.¶
¶
http://www.miamidade.gov/govaction/matter.asp?matter=180129&file=true&fileAnalysis¶
=false&yearFolder=Y2018¶
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In carrying out its obligations under this Agreement, the Lessee shall not take or omit any action which is inconsistent with, or in derogation of, the County's obligations under the Airport Agreement. Where the Lessee's rights or obligations under this Agreement are in conflict with the County's obligations under the Airport Agreement, and upon notice by¶

21.26 Vendor Registration/Conflict of Interest:

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

1. ***Miami-Dade County Ownership Disclosure Affidavit***
   (Section 2-8.1 of the Code of Miami-Dade County)
2. ***Miami-Dade County Employment Disclosure Affidavit***
   (Section 2.8.1(d)(2) of the Code of Miami-Dade County)
3. ***Miami-Dade County Employment Drug-free Workplace Certification***
   (Section 2-8.1.2(b) of the Code of Miami-Dade County)
4. ***Miami-Dade County Disability and Nondiscrimination Affidavit***
   (Section 2-8.1.5 of the Code of Miami-Dade County*)*
5. ***Miami-Dade County Debarment Disclosure Affidavit***
   (Section 10.38 of the Code of Miami-Dade County)
6. ***Miami-Dade County Vendor Obligation to County Affidavit***
   (*Section 2-8.1 of the Code of Miami-Dade County)*
7. ***Miami-Dade County Code of Business Ethics Affidavit***
   (*Sections 2-8.1(i), 2-11.1(b)(1) through (6) and (9), and 2-11.1(c) of the Code of Miami-Dade County)*
8. ***Miami-Dade County Family Leave Affidavit***
   (Article V of Chapter 11 of the Code of Miami-Dade County)
9. ***Miami-Dade County Living Wage Affidavit***
   (Section 2-8.9 of the Code of Miami-Dade County)
10. ***Miami-Dade County Domestic Leave and Reporting Affidavit***
    (Article VIII, Section 11A-60 - 11A-67 of the Code of Miami-Dade County)
11. ***Miami-Dade County E-Verify Affidavit***
    (Executive Order 11-116)
12. ***Miami-Dade County Pay Parity Affidavit***
    (Resolution R-1072-17)
13. ***Miami-Dade County Suspected Workers' Compensation Fraud Affidavit***
    (Resolution R-919-18)
14. ***Subcontracting Practices***
    (Section 2-8.8 of the Code of Miami-Dade County)
15. ***Subcontractor/Supplier Listing***
    (Section 2-8.1 of the Code of Miami-Dade County)
16. ***Form W-9 and 147c Letter***
    (as required by the Internal Revenue Service)
17. ***FEIN Number or Social Security Number***

Deleted: the County to Lessee, the terms of this Agreement shall be deemed conformed to the County's obligations under the Airport Agreement. Where such conformance would cause a material change in this Agreement, Lessee shall have the right, upon written notice to the County within five (5) calendar days of receipt of notice of such a conflict, to terminate this Agreement for convenience; in such termination, the Lessee shall have no cause of action for money damages of any kind, including but not limited to direct damages, unamortized costs or debt, stored or ordered materials, indirect damages, lost profits, loss of opportunity, loss of goodwill, or otherwise. In the event that the Lessee does not elect to terminate this Agreement within the time specified herein, this Agreement shall be deemed to have been amended via consent of the parties to conform its terms to the requirements of the Airport Agreement, but only to the extent needed to avoid conflict with same.¶

In order to establish a file, the Lessee 's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Lessee's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:
Identification of individual account records

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

18. ***Office of the Inspector General***
(Section 2-1076 of the Code of Miami-Dade County)
19. **Small Business Enterprises**
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.1.1.1.1, 2-8.1.1.1.2 and 2-8.2.2 of the Code of Miami-Dade County and Title 49 of the Code of Federal Regulations.
20. ***Antitrust Laws***
By acceptance of any contract, the Lessee agrees to comply with all antitrust laws of the United States and the State of Florida.

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

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

21.29. Landlord's Rights as Sovereign: Notwithstanding any provision of this Lease and the Landlord's status as a county government thereunder:

(A) The Landlord retains all of its sovereign prerogatives and rights as a county under Florida laws (but not in regard to its status as Landlord and the performance of its contractual duties hereunder) and shall in no way be estopped from withholding or refusing to issue any approvals of applications and/or permits for building or zoning; from exercising its planning or regulatory duties and authority; and from requiring development under present or future Laws and Ordinances of whatever nature applicable to the design, construction and development of the Improvements provided for in this Lease; and

(B) The Landlord shall not by virtue of this Lease be obligated to grant the Lessee, any Sublessee, or Mortgagee, or any other person or entity associated with the Demised Property or the Project or any portions thereof, any approvals of applications for building, zoning, planning or development under present or future Laws and Ordinances of whatever nature applicable to the design, construction and development of the Improvements provided for in this Lease.

21.30 Florida Public Records Act: As it relates to this Lease, the Lessee and any of its subsidiaries, pursuant to Section 119.0701 of the Florida Statutes, shall:

(A) Keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the service; and

(B) Upon request of from the Landlord's custodian of public records identified herein, provide the Landlord with a copy of the requested records or allow the public with access to public records on the same terms and conditions that the Landlord would provide the records and at a cost that does not exceed the cost provided in the Florida Public Records Act, Miami-Dade County Administrative Order No. 4-48, or as otherwise provided by law; and

(C) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement's term and following completion of the work under this Agreement if the Lessee does not transfer the records to the Landlord; and

(D) Meet all requirements for retaining public records and transfer to the Landlord, at no cost to the Landlord, all public records created, received, maintained and/or directly related to the performance of this Lease that are in possession of the Lessee upon termination of this Lease. Upon termination of this Lease, the Lessee shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Landlord in a format that is compatible with the information technology systems of the Landlord.

For purposes of this article, the term “public records” shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the Landlord.

In the event the Lessee does not comply with the public records disclosure requirements set forth in Section 119.0701, Florida Statutes, and this article, the Landlord shall avail itself of the remedies set forth in this Lease. The Lessee’s obligations under this article shall survive the termination of this Agreement.

IF THE LESSEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LESSEE’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE LANDLORD’S CUSTODIAN OF PUBLIC RECORDS AT:

Miami-Dade County Aviation Department
4200 N.W. 36 Street
Miami, Florida 33166
Attention: Jorge Mihaic
Email: jmihaic@flymia.com

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

MIAMI-DADE COUNTY, FLORIDA

By: _____

Name:

Name: Daniella Levine Cava

Title:

Title: Mayor

Date:

Date: _____

Attest:

Attest: _ _ _ _ _ _ _ _ _ _ _
Clerk of the Board

Approved as to form and legal sufficiency
This day of ,20_

_____
Assistant County Attorney

Scope of Service
Select Service Hotel

- Generally consistent with plans attached unless otherwise approved by County.
- Select Service Hotel with not less than 231 keys consistent with footprint and location guidance provided by MDAD in RFP No. 01677 but in no case higher than 129 feet including all mechanical equipment.
- Upscale Hotel as defined by CoStar with STR Benchmark
- A minimum 5,000 square feet of meeting/multipurpose event air conditioned space
- A maximum of 12,000 square feet of dining and bar allocated space including kitchens. Inclusive of a rooftop bar and restaurant of not more than 5,500 square feet including kitchen, storage areas, and back of house.
- A swimming pool of not less than 1,620 square feet in size.
- Pedestrian access between the hotel and North Terminal via bridge to Dolphin Garage as approved by MDAD

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Project Schedule

Please see below a detailed Project Schedule identifying specific key tasks and duration for the Project completion which describes all phases and important milestones.

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Contract award	December 2026
50% Construction Drawings	September 2027
Commence early works including site control, environmental	December 2027 – May 2028
100% Construction Drawings	January 2028
GMP Execution	May 2028
Financial Close and Commence Construction	August 2028
Construction Period	August 2028–July 2030
Operations Transition Task Force and Budget is established	May 2030
Operating systems and IT is installed/tested	June 2030
Hiring and Training	April 2030
TCO, transition and Commencement of Revenue Services/Operations	May 2030
Operations and Maintenance Term	July 2030 - November 2076
Operations to end 30 days prior to term termination	November 2076
Handback	October - November 2076

Page 91: [1] Deleted **Paul Lambert** **10/1/26 10:26:00 AM**

MEMORANDUM

Substitute
Agenda Item No. 11(A)(2)

TO:	Honorable Chairman Oliver G. Gilbert, III and Members, Board of County Commissioners	**DATE:**	July 18, 2023
FROM:	Geri Bonzon-Keenan County Attorney	**SUBJECT:**	Resolution directing the County Mayor to enter into negotiations for construction of a new airport hotel with Parmco Airport Hospitality LLC; determining that an airport hotel is an airport facility pursuant to section 125.35, Florida Statutes; directing the County Mayor to submit any agreed lease and development agreement to this Board for approval; waiving certain provisions of Implementing Order 8-4

This substitute differs from the original resolution in that it requires the County Mayor, in conducting negotiations, to additionally ensure: (i) that prior to commencement of construction of the hotel a market study is conducted and findings of the study support the need for a second hotel; (ii) that the County retains control of the phasing of the construction of an additional hotel so as to minimize impacts to airport operations, and; (iii) that any hotel constructed on this additional site serves a different market segment than the hotel contemplated in RFP-01677 and does not offer unnecessarily duplicative amenities such as restaurants or meetings/conference space.

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Chairman Oliver G. Gilbert, III.

Geri Bonzon-Keenan
County Attorney

GBK/jp

MEMORANDUM
(Revised)

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

DATE: July 18, 2023

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Substitute
Agenda Item No. 11(A)(2)

Please note any items checked.

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

Approved _____ Mayor
Veto _____
Override _____

Substitute
Agenda Item No. 11(A)(2)
7-18-23

RESOLUTION NO. _____

RESOLUTION DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO ENTER INTO NEGOTIATIONS FOR CONSTRUCTION OF A NEW AIRPORT HOTEL WITH PARMCO AIRPORT HOSPITALITY LLC; DETERMINING THAT AN AIRPORT HOTEL IS AN AIRPORT FACILITY PURSUANT TO SECTION 125.35, FLORIDA STATUTES; DIRECTING THE COUNTY MAYOR TO SUBMIT ANY AGREED LEASE AND DEVELOPMENT AGREEMENT TO THIS BOARD OF COUNTY COMMISSIONERS FOR APPROVAL; WAIVING CERTAIN PROVISIONS OF IMPLEMENTING ORDER 8-4

WHEREAS, many major airports have multiple onsite hotels which are directly accessible from the airports' terminal areas; and

WHEREAS, travelers expect that major airports will have multiple onsite hotels, and make decisions as to which airports to connect through on the basis of amenities, such as hotels, offered by such airports; and

WHEREAS, the existing hotel at Miami International Airport (MIA) was constructed over 50 years ago, and its physical plant and layout are not consistent with the desires of today's travelers; and

WHEREAS, in Resolution No. R-831-08, the Board of County Commissioners directed the County Mayor to solicit expressions of interest pursuant to section 125.35, Florida Statutes, for firms willing to finance, construct, operate, and maintain a new hotel at MIA; and

WHEREAS, pursuant to Resolution No. R-521-20, this Board directed that the County Mayor issue an expedited procurement for construction of a new airport hotel, on a site which the County had previously programmed for a hotel; and

WHEREAS, that expedited procurement has taken nearly three years to complete; and

WHEREAS, with continued growth of MIA, an additional new hotel is necessary; and

WHEREAS, the MIA master plan identified a need for a second airport hotel, and specified a site for such additional hotel adjacent to Terminal E; and

WHEREAS, a procurement process for an additional hotel will likely take years to complete, pushing delivery of the facility many years into the future; and

WHEREAS, Parmco Airport Hospitality LLC (Parmco) currently has a team in place to finance, design, build, operate, and maintain an airport hotel; and

WHEREAS, negotiations with Parmco over a contract to finance, design, build, operate, and maintain an additional airport hotel can be accomplished substantially faster than a procurement process, resulting in MIA bringing multiple first class hotels on line in a short time frame, and thus providing substantial benefits to the users of the airport; and

WHEREAS, in the event MDAD cannot complete negotiations or such negotiations are no longer in the best interest of the County, MDAD shall initiate an expedited solicitation for an additional new hotel through another process following notice to this Board,

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

Section 1. This Board determines, consistent with prior Board determinations, that a hotel physically attached to MIA's terminal or parking structures is an airport facility pursuant to section 125.35, Florida Statutes.

Section 2. The County Mayor or County Mayor's designee is directed to enter into negotiations with Parmco Airport Hospitality LLC (Parmco), pursuant to which Parmco would finance, design, construct, operate, and maintain a hotel at MIA. Negotiations shall, to the extent possible given the differences in the site and MIA's evolving business needs and any market changes generated by any other hotel operation or construction at MIA, be consistent with the proposal submitted by Parmco in response to, and consistent with the requirements of, RFP-01677 >>and the County Mayor or County Mayor's designee shall additionally ensure: (i) that prior to commencement of construction of the hotel a market study is conducted and findings of the study support the need for a second hotel; (ii) that the County retains control of the phasing of the construction of an additional hotel so as to minimize impacts to airport operations, and; (iii) that any hotel constructed on this additional site serves a different market segment than the hotel contemplated in RFP-01677 and does not offer unnecessarily duplicative amenities such as restaurants or meetings/conference space.<<[1] If negotiations result in an agreed form of lease and development agreement, the County Mayor shall submit such agreement to the Board of County Commissioners for approval.

[1] The differences between the substitute and the original item are indicated as follows: Words stricken through and/or [[double bracketed]] shall be deleted, words underscored and/or >>double arrowed<< are added.

Section 3. As the site has no valid alternate county use, and as use of the property for other than airport purposes is constrained by federal regulations and the Miami International Airport Bond and Trust Agreement, the Board waives the provisions of Implementing Order 8-4 related to the initiating action, application, property circulation, and review of restrictions; any negotiated lease and development agreement shall otherwise comply with the provisions of that Implementing Order.

The Prime Sponsor of the foregoing resolution is Chairman Oliver G. Gilbert, III. It was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Oliver G. Gilbert, III, Chairman
Anthony Rodríguez, Vice Chairman

Marleine Bastien	Juan Carlos Bermudez
Kevin Marino Cabrera	Sen. René García
Roberto J. Gonzalez	Keon Hardemon
Danielle Cohen Higgins	Eileen Higgins
Kionne L. McGhee	Raquel A. Regalado
Micky Steinberg	

The Chairperson thereupon declared this resolution duly passed and adopted this 18th day of July, 2023. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

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

JUAN FERNANDEZ-BARQUIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

David M. Murray