Memorandum

MIAMI-DADE COUNTY

Date: March 13, 2008

ATC
Agenda Item No. 3(E)

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

From: George M. Burgess
County Manager

Subject: Request to Advertise, Request for Proposals Retail Concessions Program 2008 RFP No. MDAD-04-07

RECOMMENDATION

It is recommended that the Board approve the advertisement of the attached Request for Proposals (RFP) for the Retail Concessions Program 2008 at Miami International Airport (MIA). It is also recommended that the Board approve, pursuant to Miami-Dade County Code Section 2-8.5, a waiver of the application of Local Preference for Packages 3, 4 and 5 of the RFP. In lieu of Local Preference, the RFP provides for evaluation points for Local Businesses so as to increase local participation, thus achieving one of the goals of the concession program. A copy of the RFP is attached in substantially completed form.

SCOPE

Miami International Airport is located primarily within District 6.

FISCAL IMPACT/FUNDING SOURCE

This is a revenue-generating contract for the County. See "Payments to the County" on page 2.

TRACK RECORD/MONITOR

Not applicable as this is a Request to Advertise. The Miami-Dade Aviation Department (MDAD) Project Manager will be Dr. Patricia Ryan, Division Director for Commercial Operations.

BACKGROUND

Miami-Dade County, represented by the Miami-Dade Aviation Department, is seeking qualified firms to propose on the packages described in this Request for Proposals (RFP). The firms are being sought to finance, design and construct, lease, manage, operate and maintain quality, retail and food and beverage locations at Miami International Airport. The purpose of this non-exclusive RFP is to select concessionaires who can best fulfill the Department's objectives as delineated in this RFP.

Those goals are to:

- Enhance the image of MIA as a world-class airport;
- Enhance customer service and satisfaction by improving product choice, price choice, and customer service;
- Optimize sales and revenues;
- Optimize design and location of retail units;
- Present a local and regional identity to the traveling public;
- Provide national and international branded concepts;
- Increase local and Airport Concession Disadvantaged Business Enterprise (ACDBE) participation to the extent possible.

The Retail Concessions Program consists of five (5) packages. Package One has six (6) retail locations contained in the North Terminal slated for Gifts, High-End Jewelry, Men's Apparel, Fashion Accessories, News/Gifts, and Newstand. Package Two has six (6) retail locations in the North Terminal designated for Technology, News/Gifts, Newstand, Gifts (2), and women's Apparel. Packages Three and Four each consist of one (1) retail location each located in the North Terminal, slated as Sunglasses, and Watches, respectively. Package Five consists of one (1) food & beverage (Coffee Shop) location on the third floor of the South Terminal. The locations and amount of available square feet are subject to change due to Airport construction.

To address the Board's desire to seek a greater participation by local businesses in concession activities at MIA, MDAD inserted the local business designation as an evaluation criteria to provide an incentive to local business to participate. This step should also increase the possibilities of success in the solicitation process as points would be awarded at the outset of the solicitation process rather than in the event of a tie or near-tie as is the case of Local Preference.

The term "Local Business" shall mean a business, including but not limited to a sole proprietorship, partnership or corporation, whose majority (at least fifty-one percent [51%] owned) stockholders, partners, owners or local franchisee (meaning a franchise originating in Miami-Dade County and not an international, national or regional branded franchise) are residents of Miami-Dade County and whose principal place of business originated and is currently in the Primary Miami-Dade Statistical Area (Miami PMSA) at least one year prior to the advertisement of any solicitation for which a response may be constructed. Evidence of a legitimate business presence in Miami-Dade County shall be verified by a proposer's valid occupational license issued by Miami-Dade County and proof of ownership. A joint venture may be a local business, but only if all parts of that joint venture are local businesses. Additionally, it is intended that the local business proposer represent a sense of place of the Miami-Dade area and, as such, is reflected in both the store design and merchandising concept.

PROJECT: Retail Concessions Program 2008

PROJECT NO.: RFP No. MDAD-04-07

TERM OF AGREEMENT: A period of eight (8) years, with an option to extend at the County's sole discretion for one - two (2) year period.

COST ESTIMATE: N/A

PAYMENTS TO THE COUNTY: This project is revenue generating with payments to the County outlined below. All MAGs for all packages will begin on the earliest date of: i) 365 days from the effective date of the agreement, ii) beneficial occupancy, or iii) 120 days after the turnover date for retail and 180 days after the turnover date for food and beverage. For each year after the first year, the MAG will be adjusted by the Consumer Price Index (South Region, all items).

Package 1

A. **Minimum Annual Guarantee** - A minimum acceptable Minimum Annual Guarantee (MAG) of $458,350.

Package 2

B. **Minimum Annual Guarantee** - A minimum acceptable Minimum Annual Guarantee (MAG) of $436,656.

Package 3

C. **Minimum Annual Guarantee** - A minimum acceptable Minimum Annual Guarantee (MAG) of $47,488.

Package 4

D. **Minimum Annual Guarantee** - A minimum acceptable Minimum Annual Guarantee (MAG) of $37,567.

Package 5

E. **Minimum Annual Guarantee** - A minimum acceptable Minimum Annual Guarantee (MAG) of $46,298.

2. **Percentage Fee** – For each concept category, the Concessionaire shall pay the Department a fee expressed as a percentage of gross revenue or the Minimum Monthly Guarantee, whichever is greater.

MINIMUM QUALIFICATIONS EXCEED LEGAL REQUIREMENTS: N/A

FUNDING SOURCE: N/A. (See above – "Payments to the County")

REVIEW COMMITTEE DATE: N/A. Airport Concession Disadvantaged Business Enterprise (ACDBE) project.

CONTRACT MEASURES: ACDBE Goal of thirty percent (30%) of gross revenues for Packages 1 and 2

Voluntary ACDBE Participation on Packages 3, 4 and 5

USING AGENCY: Miami-Dade Aviation Department

APPROVED FOR LEGAL SUFFICIENCY: Yes

Assistant County Manager

MEMORANDUM

(Revised)

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

DATE: April 8, 2008

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

SUBJECT: Agenda Item No.

Please note any items checked.

_____ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised

_____ 6 weeks required between first reading and public hearing

_____ 4 weeks notification to municipal officials required prior to public hearing

_____ Decreases revenues or increases expenditures without balancing budget

_____ Budget required

_____ Statement of fiscal impact required

_____ Bid waiver requiring County Manager's written recommendation

_____ Ordinance creating a new board requires detailed County Manager's report for public hearing

_____ Housekeeping item (no policy decision required)

_____ No committee review

Approved _____ Mayor

Veto _____

Override _____

Agenda Item No.
4-8-08

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE ISSUANCE AND ADVERTISING OF A REQUEST FOR PROPOSALS (RFP MDAD 04-07) TO SELECT FIRMS TO FINANCE, DESIGN, DEVELOP, FURNISH, MAINTAIN AND OPERATE RETAIL CONCESSIONS AT MIAMI INTERNATIONAL

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby authorizes the Mayor, or his designee, to issue and advertise in local publications for responses to the Request for Proposals (RFP No. MDAD-04-07) in substantially the form attached hereto, so as to obtain qualified firms to finance, design, develop, furnish, maintain and operate various retail concession locations at Miami International Airport. The County Manager shall select from among those submitting responses those proposals which best fulfills the requirements and standards set forth in the Request for Proposals, and the selection process shall be undertaken as provided in the Request for Proposals. Upon such selection, the County Manager, or his designee, shall negotiate a contract with the selected proposer for submission to the County Commission for approval.

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

Bruno A. Barreiro, Chairman
Barbara J. Jordan, Vice-Chairwoman

Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 8th day of April, 2008. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

David M. Murray

REQUEST FOR PROPOSALS
FOR
RETAIL CONCESSIONS PROGRAM 2008
RFP No. MDAD-04-07

PRE-PROPOSAL CONFERENCE TO BE HELD ON

_____, 2008 at A.M.
(LOCAL TIME)

Location/Conference Room ___

ISSUING DEPARTMENT:
MIAMI-DADE AVIATION DEPARTMENT
CONTRACTS ADMINISTRATION DIVISION

Contracting Officer: Maryse Georges
Telephone: (305) 876-7939
Facsimile: (305) 876-8068
Email: mgeorges@miami-airport.com

PROPOSALS ARE DUE AT THE ADDRESS SHOWN BELOW
NO LATER THAN
_____, 2008
at 2:00PM(LOCAL TIME) ("PROPOSAL DUE DATE")
at

CLERK OF THE BOARD
STEPHEN P. CLARK CENTER
111 NW 1st STREET, 17TH FLOOR, SUITE 202
MIAMI, FLORIDA 33128-1983

PROPOSALS WILL BE OPENED PROMPTLY AT THE TIME AND PLACE SPECIFIED. PROPOSALS RECEIVED AFTER THE FIRST PROPOSAL HAS BEEN OPENED WILL NOT BE OPENED AND WILL NOT BE CONSIDERED. THE RESPONSIBILITY FOR SUBMITTING A PROPOSAL TO THE CLERK OF THE BOARD ON OR BEFORE THE STATED TIME AND DATE IS SOLELY AND STRICTLY THE RESPONSIBILITY OF THE PROPOSER. MIAMI-DADE COUNTY IS NOT RESPONSIBLE FOR DELAYS CAUSED BY ANY MAIL, PACKAGE OR COURIER SERVICE, INCLUDING THE U.S. MAIL, OR CAUSED BY ANY OTHER OCCURRENCE.

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Attachments to the RFP document:

Appendix A - Questionnaire and Minimum Qualifications Requirement Affidavit

Appendix B - Minimum Annual Guaranty Proposal Form (MAG Proposal Form)

Appendix C-1- Airport Concession Disadvantaged Business Enterprise Participation Plan/Provision

Appendix C-2- Voluntary Airport Concession Disadvantaged Business Enterprise

Appendix D - Acknowledgement of Addenda

Appendix E - Proposal Bond Guaranty

Appendix F - Affidavit of Miami-Dade County Lobbyist Registration for Oral Presentation

Appendix I - Local Business Preference- Available to Packages 1 and 2 only

Appendix J-1: Single Form Execution Affidavits

- Public Entity Crimes Affidavit
- Debarment Disclosure Affidavit
- Criminal Record Affidavit
- Disclosure of Ownership Affidavit
- Affirmative Action Plan/Procurement Policy Affidavit

Appendix J-2: Condition of Award Requirements

Single Form Execution Affidavits

- Disability Nondiscrimination
- Family Leave
- Domestic Leave
- Currently Due Fees and Taxes
- Drug Free Workplace
- Current in County Obligations
- Code of Business Ethics

Subcontracting Policies Statement
(No format, insert document)

Subcontractor/Supplier Listing

Proof of Authorization to do Business
(No format, insert document)

Appendix K - Not Used

Appendix L - Lobbying Rules

Appendix M - Not Used

Appendix N - Labor Peace Agreement (to be provided by the Proposer)

The following Appendices are for information purposes only and can be obtained by visiting our Website at: www.miami-airport.com/html/business opportunities.

Appendix G - Passenger Traffic by Concourse
Appendix H - J.F. Brown Summary of Enplaned Passenger Forecast

SECTION 6.0 FORM OF LEASE AND CONCESSION AGREEMENTS

EXHIBITS TO THE LEASE AND CONCESSION AGREEMENTS:

Exhibit A - Locations
Exhibit B - Surety Payment and Performance Bond
Exhibit C - Not Used
Exhibit D - Performance Bond for MAG Requirements

The following Exhibits can be obtained by visiting our Website at: www.miami-airport.com/html/business opportunities.

Exhibit E - Concessions Design Guidelines
Exhibit F - Tenant Airport Construction-Non-Reimbursable Procedures (TAC-N)
Tenant Airport Construction Reimbursable Procedures (TAC-R)
Exhibit G - Independent Auditor's Report
Exhibit H - *See Note Below
Exhibit I - Monthly Report of Gross Revenues
Exhibit J - TSA Prohibited Items List
Exhibit K - Commercial Operations Tenant Handbook
Exhibit L - Standards of Operation

* Note: Exhibit H - Executed Affidavits and Condition of Award Certificates.

GENERAL DEFINITIONS

The following words and expressions shall be construed as follows, except when it is clear from the context that another meaning is intended.
The term "**Addenda**" shall mean the written or graphic instruments issued prior to Proposal opening that clarify, correct or change this RFP document.

The terms **"Agreement"** shall mean this Lease and Concession Agreement including all exhibits and attachments thereto and a part thereof entered into by the County and the Concessionaire.

The term **"Airport"** shall mean Miami International Airport ("MIA").

The term **"Airport Concession Disadvantaged Business Enterprise" or "ACDBE"** shall have the meaning ascribed in **Section 4** entitled "Airport Concession Disadvantaged Business Enterprise".

The term **"ACDBELO**" shall mean Airport Concession Disadvantaged Business Enterprise Liaison Officer, Associate Aviation Director, Minority Affairs Division, Miami-Dade County Aviation Department.

The term **"Board**" shall mean Board of County Commissioners of Miami-Dade County.

The term **"Capital Improvement Program**" or "**CIP**" shall mean the Airport's construction program that will involve the refurbishment of terminal interiors, airline relocation, changes in access to the terminal and concourses, construction of new locations, and other improvements throughout the Airport.

The term **"Central Terminal"** shall mean the area of the terminal building and concourses, within the central part of the terminal area, landside or airside which is now known as Concourses E thru G.

The "**Clerk of the Board**" shall mean the office serving as ex-officio Clerk of the Board of County Commissioners office and responsible for maintaining the ordinance and resolution indices; receiving bids and requests for proposals; executing contracts, agreements and change orders; and advertising public hearings; among other roles.

The term "**Code**" shall mean the Code of Miami-Dade County, Florida.

The term **"Concessionaire"** shall mean the person, firm, or entity that enters into the Agreement with the County.

The term **"County"** shall mean Miami-Dade County, Florida, a political subdivision of the State of Florida.

The term **"Days"** shall mean calendar days, unless specifically stated as other.

The term **"Direct Lessee"** shall mean the Concessionaire that will not Sub-Lease the Location, but will operate the Location.

The term **"Department"** or "MDAD" shall mean the Miami-Dade Aviation Department.

The term **"Director"** shall mean the Director of the Miami-Dade Aviation Department or the Director's designee.

The term **"Gross Revenues"**, as used in this Agreement, shall mean all Sub-tenant minimum annual guaranteed rents and percentage fees, if any, paid or payable by the Master Concessionaire from the Sub-tenants and any consideration of determinable value paid or payable to the Master Concessionaire by any third party (for example, retail display allowances and other promotional incentives). However, the term Gross Revenues shall not include: (i) any and all pass-through charges such as Sub-tenant payments to the Master Concessionaire for any sums collected for federal, state, County and municipal taxes imposed by law upon the sale of merchandise or services, utilities, the Common Logistics Fee and contribution to the Marketing Program; (ii) any refund given to the customer because of a customer satisfaction issue which must be documented and auditable or (iii) promotional discount and coupon offers issued to customers as a result of a Department approved marketing plan. In connection with such Master Concessionaire's Gross revenues, Master Concessionaire hereby agrees to apply any security deposits received from its Sub-tenants to the payment of Sub-tenant minimum annual guaranteed rents and percentage fees, if any, due to non-payment by a Sub-tenant from time to time following applicable notice and cure periods provided in the Sub-Lease agreement.

The term **"Labor Peace Agreement"** shall refer to the agreement to be entered between Proposers and labor organization(s) pursuant to Section 3.7 of this RFP.

The term **"Lease Effective Date"** shall mean the tenth (10th) business day after the date of execution by the County Manager and attestation by the Clerk of the Board of the Lease and Concession Agreement.

The term **" Local Business",** applicable to Packages 3, 4 and 5 shall mean a business, including but not limited to a sole proprietorship, partnership or corporation, whose majority (at least fifty-one percent (51%) owned) stockholders, partners, owners or local franchisee (meaning a franchise originating in Miami Dade County and not an international, national or regional branded franchise) are residents of Miami-Dade County and whose principal

place of business originated and is currently in the Primary Miami-Dade Statistical Area (Miami PMSA) at least one year prior to the advertisement of any solicitation for which a response may be constructed. Evidence of a legitimate business presence in Miami-Dade County shall be verified by a Proposer's valid Occupational License issued by Miami-Dade County and proof of ownership. A joint venture may be a Local Business, but only if all parts of that Joint Venture are Local Businesses. Additionally, it is intended that the Local Business proposer represent a sense of place of the Miami-Dade area and, as such, is reflected in both the store design and merchandising concept.

The term **"Location"** shall mean the concession location as depicted on Exhibit A, "Locations".

The term **"Location Commencement Date"** shall mean the earlier of the date of Beneficial Occupancy or 120 Days after the Turnover Date for retail and 180 Days after the Turnover Date for food & beverage.

The term "**Master Concessionaire**" shall mean the Concessionaire who operates one or more Locations and sub-leases one or more of the Locations.

The term "**North Terminal**" shall mean the area of the terminal building and concourses, within the north part of the terminal area, landside or airside now known as Concourses A-D.

The term "**Proposal"** shall mean a Proposer's written response to this RFP.

The term **"Proposer"** shall mean the person, firm, entity or organization submitting a Proposal to this RFP.

The term **"Request for Proposal" or "RFP"** shall mean this RFP and all associated Addenda, Exhibits, Forms, Affidavits and Attachments.

The term **"South Terminal"** shall mean the area of the terminal building and concourses, within the south part of the terminal area, landside or airside which is now known as Concourse H, and a new J Concourse and connecting concession and public locations.

The term **"State"** shall mean the State of Florida.

The term **"Sub-Lease"** shall mean the contractual agreement between the Concessionaire and its Sub-tenant.

The term "**Sub-tenant**" shall mean any person, firm, entity or organization, entering into an agreement with Concessionaire for sale of retail products to the

public at the Airport at the Location depicted in Exhibit A, Locations.

The term **"TSA"** shall mean the United States Transportation Security Administration, and any successor agency, office or department thereto.

The term "**Turnover Date**" shall mean the date approved by the Department for the Concessionaire to commence construction of the Location.

Additional Terms are included in **Section 6** of this RFP in the Form of Agreement. It is incumbent on Proposers to carefully consult all terms as set forth in the Form of Agreement.

SECTION 1.0

INTRODUCTION/ BACKGROUND, SCOPE OF SERVICES, MINIMUM QUALIFICATION REQUIREMENTS, TERM AND PAYMENTS TO THE DEPARTMENT

1.1 INTRODUCTION/BACKGROUND:

Miami-Dade County, represented by the Miami-Dade County Aviation Department, is seeking qualified firms to propose on the packages described in this Request for Proposals (RFP), for the purpose of financing, designing and constructing, leasing, managing, operating and maintaining quality retail and food and beverage Locations at Miami International Airport. The purpose of this non-exclusive RFP is to select concessionaires who can best fulfill the Department's objectives as delineated in this RFP.

This RFP establishes potential opportunities for Master Concessionaires and Direct Lessees. Proposers may propose on any Package and any number of Packages. Awards will be made to the highest ranked responsive and responsible Proposer for each Package in accordance with the process established in this RFP. A Proposer may propose on multiple packages; however, a Proposer may NOT be awarded more than one package.

Package One has six (6) retail locations: (two (2) Gift Specialty Shops, two (2) Fashion Apparel & Accessories, two (2) News/Books contained in the North Terminal. Package Two has six (6) retail locations (Entertainment & Electronics, two (2) News/Books, two (2) Gift Specialty Shops, Fashion Apparel & Accessories, Gift Specialty Shops, contained in the North Terminal. Packages Three (Fashion Accessory) and Four (Jewelry) each consist of one (1) retail location each located in the North Terminal. Package Five consists of one food & beverage location (Walkaway) located on the third floor of the South Terminal. The Locations and amount of available square feet are subject to change at the discretion of the Director, including but not limited to changes due to Airport construction. The Exhibits depicting these Locations should not be considered a lease outline drawing. They are merely representative of the intended Location.

1.1.1 MIAMI INTERNATIONAL AIRPORT GENERAL DESCRIPTION

Aviation has been a hometown industry in Miami, having started more than 75 years ago. The first flight from Pan Am Field in 1928 was an international departure. Today, Miami International

Airport enjoys top rankings as the leading international freight airport in the USA and the nation's third leading gateway for international passenger traffic.

MIA strengths in international passengers and cargo activity stimulate a host of other companies, such as tourism, the cruise industry and international banking and commerce. More than 77% of all exports and 80% of all imports between the United States and the Latin American/Caribbean region flow through MIA.

MIA is the port of entry for 79% of all international traffic arriving by air to Florida. The Airport is the world's largest Latin American/Caribbean gateway, offering over 1,100 weekly departures with direct service to 62 destinations in the region. With 46% of total passenger traffic being international, MIA is among the top two airports in the U.S. with the highest international to domestic passenger ratios.

Miami-Dade County operates the world's leading cruise port, and more than 80% of all cruise passengers begin or end their cruise with flights to/from the Airport. In addition, Miami is the leading international financial center in the southeastern United States. The Airport stimulates much of that activity as well, through the financing of international trade facilitated through our Airport. During 2005, trade originating and clearing at MIA amounted to 881,563 tons, valued at $27.6 billion. This activity represents only 56% of the actual total of 1.58 million tons of international freight, as the remaining 44% was shipped through MIA in-transit to third-country destinations.

Following are "Facts at a Glance" information regarding the Miami-Dade Aviation Department, as of April 2007:

Miami-Dade Airports:

- Miami International Airport -MIA
- Opa-locka Executive Airport - OPF
- Kendall-Tamiami Executive Airport - TMB
- Homestead General Aviation Airport - X51
- Dade-Collier Training and Transition Airport - TNT

Economic Impact:
The Airport's annual impact on local tourism, cruise, international banking, trade & commerce is $19.1 billion. The Airport and related aviation industries contribute 242,387 jobs directly and indirectly to the South Florida economy. That equates to one out of 4.3 jobs.

MIA Rankings for 2006:
U.S. Airport Rankings

1st in the U.S.	-	International Freight
3rd in the U.S.	-	International Passengers
4th in the U.S.	-	Total Freight
4th in the U.S.	-	Total Cargo (Freight + Mail)
15th in the U.S.	-	Total Passengers
20st in the U.S.	-	Total Number of Operations

World Airport Rankings

11th in the world	-	Total Freight
10th in the world	-	International Freight
11th in the world	-	Total Cargo (Freight + Mail)
27th in the world	-	Total Number of Operations
27th in the world	-	Total Passengers
31st in the world	-	International Passengers

Miami International Airport (Year 2006 Figures)

Land area:	3,230 acres
Runways:	
9-27:	13,000 feet
8R-26L:	10,500 feet
8L-26R:	8,600 feet
12/30:	9,355 feet

Personnel:
Aviation Dept. and Other: 38,273

Hotel:
Miami International Airport Hotel has 260 rooms.

Flight Operations: (2006)

Domestic	210,821
International	167,660
General Aviation	4,668
Military	1,328
Total:	384,477

Passengers: (2006)

Domestic	17.8 million
International	14.7 million
Total:	32.5 million

Weekday Daily Average:	87,692 passengers
Weekend Daily Average:	98,336 passengers

Weekly Average: 637,023 passengers

Freight: (2006)

International	1,677,384	U.S. Tons
Domestic	298,380	U.S. Tons
Total:	1,975,764	U.S. Tons

Carriers: (04/07)

U.S.	50	Scheduled	72
International	47	Charter	25
Total	97		97

Number of Destinations: (1st Q'08)

	Non-Stop	One Stop
Domestic	51	14
International	71	8
Total	122	22

Number of Ticketing Positions: 451*

Number of gates: 101* Common

*changes according to construction

Parking: Two long-term parking garages – Dolphin and Flamingo – and two short-term lots provide approximately 7,885 spaces, including those reserved for persons with disabilities. There is also a high-vehicle lot adjacent to the Dolphin Garage.

Airport Improvements: The Airport's $6.2 billion Capital Improvement Program is well under way, encompassing all aspects of Airport operations, from the terminal and roadways to the cargo facilities and the airfield.

New Runway: One of the major projects of the CIP was the construction of MIA's Fourth Runway. Operational in September 2003, the new 8,600-foot runway has increased MIA's airfield capacity by 25%, extending the ability of the Airport to sustain growth, while decreasing the cost of delays to airlines and passengers.

Terminal: MIA's passenger terminal has grown from 3.5 million square feet in 1995 to 4.7 million square feet. Further development of the North and South Terminals will add 2.7 million square feet for a total of 7.4 million square feet upon completion of Phase One of the CIP, with 100 international gates and 30 domestic gates for a total of 130 gates. The

Terminal will have 556 ticket counters and 120 self-service check-in devices.

Cargo: MIA's cargo facility development program that began in 1992 has been completed, providing the Airport with over 2.7 million square feet in seventeen new cargo buildings. Apron space has grown to over 3.8 million square feet, capable of handling 17 B747s or 38 DC 10F's.

Roadway Improvements

Central Boulevard: To accommodate forecasted growth, improvement programs include: widening of Central Boulevard, new service roads, wider bridges and improved access to parking facilities.

25th Street Viaduct: N.W. 25th Street is the primary connector to the Florida Intrastate and Federal Highway System for ground transportation of air cargo. MDAD has partnered with FDOT and has allocated funding for a project to widen the existing roadway to six lanes and construct an elevated viaduct/roadway between MIA, over SR 826, and out to N.W. 82nd Avenue.

Concession Information: Part of the Airport CIP will include the refurbishment of Terminal interiors and construction of new locations. There are approximately 124 retail/food and beverage locations at MIA as of October 2007. With the buildout of new concessions, MIA will more than double the number of locations to 250.

The Airport is divided into three terminals: North (currently Terminals A-D), Central Terminals (E, F and G) and South Terminals (H and under construction J).

The **North Terminal** will have approximately 60-65% of the passenger traffic and hosts American Airlines and its One World partners. The North Terminal will become a linear Terminal running from A - D Concourse.

The North Terminal currently has 44,000 square feet of existing concession space. There are three duty free stores, seven news/gifts, three specialty retail stores, one sundries store and twenty-one food and beverage locations.

The North Terminal is in the process of being built out with new food/beverage and retail concessions. Food/beverage locations have been added or renovated in the past two years (Starbucks was added in the Atrium of Concourse A, and a Miami Subs was renovated into a Jose Cuervo Tequilaria). A new Café Versailles has opened at the end of A and a new Islander Grille and Bar is planned across from the new Café. The Concourse A area of North Terminal has currently ceased operations to allow expedited construction of the expanded North Terminal facilities.

The **Central Terminal** is located between the North and South Terminals in the center of the landside area and is now known as Terminals/Concourses E, F and G. Approximately 5-10% of the passenger traffic is expected to flow through the Central Terminal. The majority of the retail space is located on the pre-security portion of the Airport Terminal.

Existing concessions include five duty free stores, seven news/gifts stores, seven specialty retail stores and thirty-seven food and beverage locations totaling 73,000 square feet.

There is a food court in the Central Terminal with recently changed concepts including Starbucks, California Pizza Kitchen, Great American Bagel, Burger King and Café Bacardi. Additional concepts throughout the landside include Chili's, Café' Versailles, Sbarros, Au Bon Pain, and Cozolli's. Concourse concessions include Chili's to Go, Guava-Java, and Burger King.

The **South Terminal** was built to accommodate the Star Alliance and Skyteam Alliance which include United Airlines, U.S. Airways, Delta Airlines and their code share and marketing Alliance partners. Approximately 20-25% of all passenger traffic is expected to flow through the South Terminal with 21 airlines planned to occupy the Terminal.

The existing South Terminal Concourse and Terminal area currently has two existing news/gifts stores, and six food and beverage locations totaling 7,700 square feet. Food and beverage offerings include Café Versailles, Starbucks, Cinnabon, Au Bon Pain and Hurricane Reef bar.

The South Terminal opened on August 29, 2007. This terminal will have approximately 40,000 square feet of locations to be built out with in the next year.

A new Concession Hall in the South Terminal joins Concourse H and Concourse J. New Concessions are planned for the Concourse J and the Concession Hall, which is beyond security with limited additional concessions before security. Some locations have been deferred until the passenger traffic builds up enough to create demand for additional locations.

Twelve food & beverage concessions total 8,600 square feet of food and beverage concessions. Concessions include Nathan's Famous, Nestle's Toll House, ILLY, Bongos (Bar), Haagen Dazs (yogurt/pastry), Dan Marino's (café/bar), McDonalds, Gilbert's foodbar (Latin) Beanery, Islander (Caribbean) and Famous Famigilia Pizzeria (Italian). The first floor has a Coffee Beanery and Nestle's Toll House. The third level will

host a currency exchange and a coffee shop.

There will be four new duty and tax free concessions totaling 8,700 square feet. These locations will be built out by Duty Free Americas.

There will be ten locations totaling approximately 12,100 square feet of news/gifts, newsstands and books.

1.1.2 CONCESSION GOALS AND OBJECTIVES

The Department has established concession goals and objectives to better meet or exceed the demands of today and tomorrow's traveling public.

The Department's concession goals and objectives for the Airport are to:

- Enhance the image of the Airport as a world-class airport.
- Enhance customer service and satisfaction by improving product choice, price choice, and customer service.
- Optimize sales and revenues.
- Optimize design and location of retail units.
- Present a local and regional identity to the traveling public.
- Provide national and international branded concepts.
- Increase local and Airport Concession Disadvantaged Business Enterprise (ACDBE) participation to the extent possible.

These goals will provide balance between maximizing revenues and providing a high level of customer service consistently delivered to the Airport community, which consists of the traveling public and patrons, the Airport employees, service providers, and residents of South Florida.

1.2 SCOPE OF SERVICES:

The Concessionaire hereby agrees that it will finance, develop, design and construct, lease, manage, operate and maintain the Locations depicted in **Exhibit A**, "Locations", which have been awarded to the Concessionaire, for the purpose of establishing high quality, state of the art, retail concessions as approved by the Department. Its responsibilities are further defined but not limited to the following:

A. Financing:

1. Be capable of financing the design, construction and build out of the Locations depicted on **Exhibit A, "Locations**" which have been awarded to the Concessionaire.

2. Develop a financial plan indicating the source of funding for capital investment and continued maintenance and operation of the Locations.

B. Developing:

1. Design a location and layout for each of the concept categories in concert with the appropriate MIA Concession Design Guidelines.

2. Ensure that the proposed concessions in part represent a sense of place of the Miami-Dade area, and include some local participation. The Proposer shall specify how the design will convey or reflect the character of Miami-Dade County, its residents, and/or Miami-International Airport.

C. Design and Construction Coordination:

Design and Construction Coordination requirements are detailed in **Article 4 "Improvements to the Locations",** in **Section 6** of the Form of Lease and Concession Agreements.

D. Leasing (This Section applies only to the Master Concessionaire):

The Master Concessionaire shall be responsible for subleasing as follows:

1. Coordinate its leasing process with the Department, obtaining approval of each Sub-Lease agreement prior to subleasing.
2. Develop, subject to review and approval by the Department, a standard Sub-tenant Lease Agreement, including Exhibits, if subleasing is conducted, in accordance with **Article 19, "Sub-Leases",** in **Section 6** of the Form of Lease and Concession Agreements no later than thirty (30) Days from the Lease Effective Date of the Lease and Concession Agreement. Sub-Lease agreements shall not extend beyond the expiration date or termination date of the Lease and Concession Agreement, shall contain comparable terms and conditions as may be applicable to those contained in the Lease and Concession Agreement and are to be provided to the Department no longer than 90 days from the effective date of this agreement.
3. Perform background checks and investigate all prospective Sub-tenants, including partners, joint ventures, and other key participants. Prepare and make available to the Department, if requested, background check summaries.
4. Negotiate Sub-Leases with potential Sub-tenants to include, but not be limited to:

1) Negotiating financial terms with potential Sub-tenants in accordance with the Department's approved key business terms and baseline pro-forma.
2) Preparing term sheets of potential sub-tenant deals, outlining all business terms for the Department's approval.
3) List of use and products for each concept.

E. Managing

The Concessionaire shall:

1. Design a concession program fulfilling the concept category and submit a merchandising plan initially and for annual review until expiration of the Agreement identifying the product categories for each Location. The store layout plan will be reviewed no less than annually and the store layout will be updated as necessary throughout the Agreement.
2. Manage the Locations in a way that maximizes the highest and best use and financial return to the Department.
3. Monitor and enforce compliance with the terms and conditions of the Lease and Concession Agreement and any Sub-Lease agreements, including but not limited to, use clauses, customer service, insurance, pricing, capital expenditures, quality of merchandise, hours of operation, detailed reporting of sales, payment of fees, rent, and signage.
4. Function as operations liaison between the Department, governmental agencies, Sub-tenants and others.
5. Maintain permanent records for each Location leased.
6. Maintain computerized records on a commercially available property management software program acceptable to the Department. Programs and all data collected should be available to the Department on-line (digital and electronic).
7. Establish and maintain for the Department a potential Sub-tenant database, including correspondence with potential Sub-tenants.
8. Develop, maintain and make available, if requested, all files, including those of any Sub-tenants, to include copies of licenses, permits, insurance certificates, and letters of credit.
9. Provide from time to time, as requested by the Department, annual financial statements demonstrating its and its Sub-tenant's financial capacity to perform its obligations under the terms of the Agreement.

F. Operating

The Concessionaire shall:

1. Provide quality control audits and reports, including maintenance of the street pricing requirements covering compliance with contract requirements, cleanliness of the Location, timeliness of service, quality of the product.
2. Generate monthly reports to the Department, including sales by unit, concept and Location.
3. Develop annual revenue projections by month by its store or Sub-tenant, by Location, concession category, and product category to be updated on a regular basis.
4. Generate and provide the Department monthly airport revenue reports, and such other financial and management reports as are usual and customary in sophisticated airport concession management programs. Prepare other reports and analyses as may be requested periodically by the Department, including number of transactions per hour, average sales per transaction, and sales per product category.
5. Provide on-site staff to perform daily functions as required by the Scope of Services and the Standards of Operations identified in this Lease and Concession Agreement, subject to acceptance by the Department.
6. Ensure compliance or cause Sub-tenants, if applicable, to comply with the Department and other governmental agency ID Badging requirements.
7. Implement any new policies, and procedures, and operational directives as issued from time to time by the Department.
8. Ensure payment is submitted with the Monthly Report of Gross Revenues to the Department.
9. Respond to customer/passenger complaints on a timely basis. Ensure customer service program compliance. The Concessionaire and/or its Sub-tenants, if applicable, will submit its/their customer service-training program within thirty (30) days of the Lease Effective Date of the Agreement, for the Department's review and approval.
10. Coordinate and implement regular employee customer service training programs, to include employees from both the Concessionaire and its Sub-tenants, if applicable.
11. Participate and shall cause any Sub-tenant to participate in an airport-wide customer service program implemented by the Department.

G. Maintaining

The Concessionaire shall:

1. Maintain or cause to maintain the Locations pursuant to Department standards, which may be promulgated from time to time.
2. Coordinate and maintain general oversight of deliveries of goods and products for the concession operations from any designated on or off-Airport storage area.
3. Shall take such corrective action as necessitated to maintain Locations in acceptable condition as required by the Department.

H. ACDBE Plan

1. Maximize ACDBE by meeting or exceeding the ACDBE goal under this Lease and Concession Agreement. No ACDBE goals are established for Direct Lessees; however, ACDBE participation will will be considered if submitted and qualified.
2. Develop, implement, manage, and monitor a program to identify and include Local/Small/ACDBE businesses in the concession programs.
3. Describe the extent and type of ACDBE subleasing in the Program.
4. Submit an ACDBE business opportunities outreach program for concession opportunities, subject to the Department's approval.

I. LOCAL BUSINESS DESIGNATION (This Section applies only to Packages 3, 4, and 5)

1. Local Business shall mean a business, including, but not limited to a sole proprietorship, partnership or corporation, whose majority (at least fifity-one percent (51%) owned) stockholders, partners, owners or local franchisees (meaning a franchise originating in Miami-Dade County and not an international, national or regional branded franchise) are residents of Miami-Dade County and whjose principal place of business originated and is currently in the Primary Miami-DadeStatistical Area (Miami PMSA) at least one year prior to advertisementof any solicitation for which a response may be constructed. Evidence of a legitimate business presence in Miami-Dade County shall be verified by a Proposer's valid Occupational License issued by Miami-Dade County and proof of ownership. A joint venture may be a Local Business, but only if all parts of that Joint Venture are local businesses.

2. It is intended that the Local Business proposer represent a sense of place of the Miami-Dade area by reflecting such in the store design or merchandise concept.
3. It is intended that the Local Business proposer utilize a local management team in the conduct of its business.

1.3 MINIMUM QUALIFICATIONS

A. PROPOSER'S QUALIFICATIONS:

1. Packages One (1) and Two (2) - Proposers must demonstrate three (3) years experience within the last five (5) years in each of the following capabilities: financing, developing, designing and construction, leasing, managing, operating and maintaining the Locations in an airport, transportation center, retail shopping center or marketplace generating at least an aggregate of $2,000,000 in annual Gross Revenues for such retail locations and experience in successfully managing sub-tenants. In addition to the above stated requirements, Proposers who wish to operate Locations within the package on which they are proposing must demonstrate three (3) years of experience in the last five (5) years in operating locations similar to those locations which they plan to operate for Packages One (1) and Two (2).

2. Packages Three (3) and Four (4) - Proposers must demonstrate three (3) years experience within the last five (5) years in each of the following capabilities: financing, designing and construction, managing, operating and maintaining retail locations in an airport, transportation center, retail shopping center or marketplace generating at least an aggregate of $300,000 in annual Gross Revenues for each retail location.

3. Package Five (5) - Proposers must demonstrate three (3) years experience within the last five (5) years in each of the following capabilities: financing, designing and construction, managing, operating and maintaining food & beverage locations in an airport, transportation center, retail shopping center or marketplace generating at least an aggregate of $500,000 in annual Gross Revenues for each food and beverage location.

4. If the Proposer is a Joint Venture, then at least one of the Joint Venture Partners must satisfy all of the foregoing Minimum

Qualifications Requirements.

5. Must be authorized to do business in the State of Florida.

B. SUB-TENANTS, INCLUDING ACDBE, MINIMUM QUALIFICATIONS:

1. Three (3) years experience within the past five (5) years in the managing or operating and maintaining one or more retail locations in an airport, transportation center, retail shopping center or marketplace generating a minimum of $300,000 in Gross Revenues per year per location.
2. Must be authorized to do business in the State of Florida.

1.4 TERM

The term of the Agreement shall be eight (8) years. The County reserves the right to extend the Agreement for up to one (1) additional two (2) year period at the County's sole discretion, on the same terms and conditions contained herein. Notwithstanding the preceding, the County reserves the right to terminate this Agreement as described herein.

1.5 PAYMENTS TO THE DEPARTMENT

Payments shall be as specified in the Agreement.

SECTION 2.0

RFP SUBMITTAL PROCESS

2.1 RFP AVAILABILITY

Copies of this solicitation package can be obtained through the MDAD, Contracts Administration Division, in person or via courier at 4200 NW 36th Street, Building 5A, 4th Floor, Miami, FL 33122, or through a mail request to P.O. Box 025504, Miami, FL 33102-5504. The cost for this solicitation is $50.00 (fifty dollars).

Proposers who obtain copies of this solicitation from sources other than MDAD's Contracts Administration Division risk the potential of not receiving addenda, since their names will not be included on the list of firms participating in the process for this particular solicitation. Such

Proposers are solely responsible for those risks and the County bears no liability. **(See Sub-Section 2.4).**

2.2 PROPOSAL SUBMITTAL

An original and nine (9) copies (a total of 10) of the complete Proposal (Technical Proposal and Minimum Annual Guarantee Proposal) must be received by the due date as specified in the advertisement for this RFP ("Proposal Due Date"), as may be amended by Addendum. The original and all copies must be bound, with the **Technical Proposal packaged in a separate envelope from the Minimum Annual Guarantee Proposal** and submitted in an envelope or container stating on the outside the Proposer's name, address, telephone number and RFP number, RFP title, and Proposal Due Date to:

Clerk of the Board
Stephen P. Clark Center
111 NW 1st Street, 17th Floor, Suite 202
Miami, FL 33128-1983

Both the Technical (Quality) Proposal and the Minimum Annual Guarantee Proposal must be signed by an officer of the Proposer who is legally authorized to enter into a contractual relationship in the name of the Proposer. In the absence of a corporate seal, the documents must be notarized by a Notary Public. The submittal of a proposal by a Proposer will be considered by MDAD as constituting an offer by the Proposer to perform the services outlined in this RFP, at the price submitted and in accordance with the terms and conditions herein, until the Board of County Commissioners awards the Agreement, if the Proposer is the Successful Proposer. The Proposer also agrees to honor and comply with the terms of the executed agreement, if the Proposer is the Successful Proposer.

Hand-carried proposals may be delivered to the above address **ONLY** between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, excluding holidays observed by the County. Proposers are responsible for informing any commercial delivery service, if used, of all delivery requirements and for ensuring that the required address information appears on the outer wrapper or envelope used by such service.

2.3 PROPOSAL FORMAT

A. INSTRUCTIONS TO THE PROPOSERS

The Proposer should carefully follow the format and instructions outlined below, observing format requirements where indicated. All materials (except for plans and schematics) are to be submitted on 8

½" X 11" pages, neatly typed on one side only, with normal margins and spacing. All documents and information must be fully completed and signed as required. Proposals that do not include the required documents may be deemed non-responsive and may not be considered for contract award.

ADDITIONAL INSTRUCTIONS:

A Proposer may propose on more than one (1) Package. If a Proposer proposes on more than one (1) Package, the Proposer shall follow these additional instructions:

- The Proposer shall provide a list of all Packages that the Proposer is proposing on, identifying each Package by number and whether the Proposer is proposing as a Master Concessionaire or a Direct Lessee, for each Package,

- The first Package for which Proposer shall propose shall include a response to all items as stated above.

- For each additional package beyond the first package, the Proposer shall supply responses, clearly marked with the applicable Package Number to the following items only: **Sub-Sections 2.3.B.1.h).1, h).2), 2.3.B.i.1, and i).2), i.)3), and 2.3.B.1.k.**

- Additionally, the Proposer shall submit a separate, sealed and clearly marked **Appendix B** (MAG Proposal Form) for each and every Package for which the Proposer wishes to compete.

No individual Location Proposals may be submitted for Packages One (1), or Two (2). Proposals submitted for individual concepts within the Packages and/or individual Locations and not for each complete package of Locations as defined herein shall be deemed non-responsive and will not be considered. Note: Proposers may propose on all Packages, but will only be awarded one package as further specified in this RFP. The concession goal is to include a mix of local, national and international brands must be addressed and a balance achieved. Proposals will be evaluated on local participation through involvement of local brands, recruitment and hiring of local employees, local theme, local management and locally known brands.

B. CONTENTS OF PROPOSAL

The Proposal must consist of two (2) separate parts: (A) Technical

Proposal, and (B) Price Proposal Form as follows:

TECHNICAL PROPOSAL (Part A)

A Technical Proposal shall be written in sufficient detail to permit the County to conduct a meaningful evaluation of the submittal. No price information is to be included with the Technical Proposal. A Technical Proposal must include the following information:

a) Table of Contents

The table of contents should outline, in sequential order, the major areas of the Technical Proposal. All pages of the Technical Proposal, including the enclosures, must be clearly and consecutively numbered and correspond to the table of contents.

b) Questionnaire and Minimum Qualification Requirements Form
The "Questionnaire and Minimum Qualification Requirements Form" (see Appendix A) is to be completed and signed by an authorized officer of the Proposer submitting the Proposal.

c) Executive Summary

The executive summary shall briefly and concisely describe the basic services offered by the Proposer; the Proposer's ability to perform the work requested in this RFP; the background, experience and qualifications of the Proposer and the Subcontractors/Subconsultants; the qualifications of the Proposer's personnel to be assigned to this project; and, any other information called for by this RFP, which the Proposer deems relevant. The executive summary should be no longer than four (4) pages.

d) Proof of Minimum Qualifications

The Proposer shall verify its ability to satisfy all of the minimum qualification requirements (see Appendix A "Questionnaire and Minimum Qualification Requirements Form"). A Proposer who does not meet the minimum qualification requirements may not be considered for award.

e) Technical Information

1) The Proposer shall describe its specific policies, plans, procedures or techniques to be used in providing services (see Section 1.2, "Scope of Services"). The Proposer shall also describe its approach to project organization and management, and the responsibilities of Proposer's management and personnel that will perform work pursuant

to this project.

2) The Proposer shall provide an organizational chart including titles for all personnel to be assigned to this project. The chart must clearly identify the Proposer's key personnel. Key personnel include all partners, managers, seniors, and other professional staff that will perform services on this project.

3) The Proposer shall describe their key personnel's experience, qualifications, functions to be performed and other vital information including relevant experience on previous similar projects. The Proposer shall also provide their resumes with job descriptions and other detailed qualification information.

   Note: After proposal submission, the Proposer has a continuing obligation to advise the Department of any changes, intended or otherwise, to the key personnel identified in its Proposal.

f) Proposer's Experience, Past Performance, Litigation, Convictions, Indictments, or Investigations, Affiliations, and References

1.) Experience and Qualifications:

Proposer shall explain in detail the number of years and extent of Proposer's industry experience, with special emphasis upon prior experience with the development and management or operation of such locations at airports, transportation centers, retail shopping centers, or marketplaces. Proposer must also provide details on the pertinent experience of persons who will be directly involved in the development and management and operations of the Location.

Proposer shall provide:

a) Names and addresses of all locations for Proposer's experience in airports, transportation centers, retail shopping centers, or marketplaces three (3) years experience within the last five (5) years. Provide the facility name, location, square footage, type of operation, annual Gross Revenue, annual airport or property owner rent, percentage rent, and years of operation, and any other details of the rent structure should be included.

b) Specific Project Experience: For each comparable contract, the Proposer should identify: (i) the client, (ii) a description of

the work performed, (iii) the total dollar value of the contract, (iv) the contract duration, (v) the client contact person and telephone number for reference, (vi) a statement or notation of whether Proposer(s) is/was the primary consultant / contractor or subcontractor / subconsultant, and (vii) the results of the project. The Proposer shall also list and describe any projects performed for government clients or similar sized private entities, and any work performed for the County.

c) Highlights of the merchandising concept for each Location set forth in **Exhibit A** "Locations".

d) A detailed corporate history of development, management or operations experience.

e) Examples of marketing programs to be undertaken to promote sales and customer service in the Location, including samples of advertisements, promotional materials, flyers, coupons, etc.

f) Information on quality monitoring programs that Proposer has implemented at other venues. This shall include both descriptive information and sample evaluation forms from quality audits, performance standard evaluations, or other similar programs.

g) Other information that supports Proposer's development/management/operations experience as it pertains to the Proposal.

2.) Additional Experience: The Proposer shall describe any other experiences or information related to the Services described in Section 1.2, Scope of Services. (e.g. software/hardware information, training, etc.).

3.) Past Performance: List all contracts which the Proposer has performed for Miami-Dade County. The County will review all contracts the Proposer has performed for the County in accordance with Section 2-8.1(g) of the Code, which requires that "a Bidder's or Proposer's past performance on County contracts be considered in the selection of consultants and contractors for future County contracts." The Proposer must list and describe all work performed or being performed for Miami-Dade County, include the name of the County department which administers or administered the contract(s); the contact person(s) on the contract(s) and their contact telephone number(s); the dates covering the term of the contract(s); the dollar value of the

contract(s), whether or not the County contract was audited by the County and the results therefrom, and the name, address, telephone number, responsibilities and employment status of the management team assigned to any County contract within the last three (3) years.

4.) Litigation: The Proposer shall describe any prior or pending litigation, in which (i) the Proposer, (ii) any member of a joint venture, (iii) Subcontractors, (iv) any of those entities' subsidiaries, affiliates or parent companies, or (v) any of those entities' employees is or has been involved within the last ten (10) years which arise out of their employment. If so, give details.

5.) Convictions, Indictments, or Investigations: Has the organization of the Proposer or any of its directors, officers, partners or supervisory personnel including those of any Joint Venture ever been party to any criminal action relating directly or indirectly to the general conduct of the business of the Proposer herein? Identify any criminal convictions or civil judgments for the last the (10) years, and pending criminal indictments or governmental/regulatory investigations. Information must include: (i) nature of the offense; (ii) sentence, fines, restitution or probation imposed; (iii) jurisdiction of occurrence; (iv) indicting or investigative authority; and (v) status of indictment or investigation.

6.) Affiliations: Please state whether the Proposer, any Principal of Proposer, any family, member of any Principal, or any person or entity with which such person has a business relationship, has or had within the last ten (10) years (a) directly or indirectly a business relationship with Miami-Dade County (including Miami-Dade Aviation), (b) directly or indirectly receives or received revenues from Miami-Dade County (including Miami-Dade Aviation) or (c) directly or indirectly receives or received revenue from the result of conducting business on County property or pursuant to any contract with the County. Please describe such relationship.

Please also state whether the Respondent, any Principal of Respondent or any of their family members has or had with the last ten (10) years, a direct or indirect business relationship with any elected or appointed County official or an affiliate or with any County employee or any affiliate, and fully describe such business relationship.

7.) References: The Proposer shall provide customer references for similar projects, in scope and magnitude preferably in an airport environment, which the Proposer has either ongoing or

completed within the last three (3) years.

g) Financial Capacity to Perform

This section should include the documentation requested below for the proposing company and individual companies comprising a team or joint venture that are signatories to the guaranteed payment of the Minimum Annual Guarantee. It should note financial relationship and responsibilities with regard to subsidiary or related companies.

All Proposers must provide information on the percentage of equity of any partnerships formed and an estimate of working capital and reserves. Equity shares should be specified on the form and on additional sheets, if necessary. Proposers should specify the source of funds (cash, bank loan, etc.) for the start-up costs.

1) Capital Investment:

Proposer shall submit a financial plan, which will indicate the source of funding to be used for capital improvements, and the amount of working capital the Proposer determines will be required to maintain operations. Additional information will include, but not be limited to, estimated costs for improvements with projected expenses for leasehold improvements and/or furniture, fixtures and equipment.

2) References:

The Proposer must list three (3) business references related to its business operations during the past three (3) years. Proposer shall provide for each reference a contact name, title, phone number, fax number, email address.

3) Financial Background Information:

In order to understand the financial capabilities of your company, the Department requires that the following historical financial information and that of any joint venture or affiliated entities be included:

i) Audited or reviewed balance sheet and income statements for the last two fiscal years prepared in accordance with generally accepted accounting principals (GAAP), reflecting current financial conditions; if there are no audited or reviewed financial statements available, then provide the last two (2)

federal income tax returns filed with the Internal Revenue Service (IRS).

ii) An interim balance sheet and income statement for any period of time in excess of six months of the financial statements submitted as part of (i) above, reflecting any significant financial events occurring subsequent to the closing date; if no significant events occurred, please state the fact.

4) Requested Information From Subsidiaries:

The Proposer must state whether this company operates as a subsidiary of another company. If so, include the appropriate financial information as requested above for both the parent and subsidiary. State whether the parent company guarantees the Minimum Annual Guarantee and Agreement for the subsidiary company. If so, provide a letter from the appropriate agent of the parent company verifying the parent company's intent to guarantee the Minimum Annual Guarantee and Agreement.

h) Developing, Designing and Construction

1) Proposers shall submit (FOR EACH PACKAGE, SPECIFICALLY LISTING THE PACKAGE NUMBER) a narrative description and drawings or photographs of the proposed Capital Improvements, and the dominant design theme in sufficient detail to facilitate evaluation of the quality and design of the proposed improvements. The Proposer shall specify how the design will convey or reflect the character of Miami-Dade County, its residents, and/or Miami-International Airport.

2) The Proposer is required to submit (FOR EACH PACKAGE, SPECIFICALLY LISTING THE PACKAGE NUMBER), as part of its Proposal, a Design and Construction Schedule detailing its plan for improvements, fixtures and/or signage installation throughout the Airport using a timeline for the concept and indicating anticipated buildout time.

3) The Proposer must also provide its procedures for coordinating design and construction, including but not limited to, field inspection and tenant assistance.

4) Proposer should discuss its experience in concession program expansion planning or similar experience

elsewhere, demonstrating experience in airport operations. Identify its in-house architectural capabilities or any architectural design teams to be used, specifying prior experience. Photographs may be included.

i) Managing, Operating and Maintaining

1) Provide Proposer's Management Plan (FOR EACH PACKAGE, SPECIFICALLY LIST THE PACKAGE NUMBER) including managing, operating and/or maintaining the Location for which it is proposing, considering the requirements in the Scope of Services (**Sub-Section 1.3**, in this RFP.). Describe the management concepts and operation strategies. Indicate years of experience in property management, including the centers managed both presently and in recent years. Provide sales, sales per enplanement, if applicable, square footage managed, and number of units managed. Identify the elements from past experience that may be applicable to working at this Airport.

2) Staffing Plan (FOR EACH PACKAGE, SPECIFICALLY LISTING THE PACKAGE NUMBER): Provide the following details relating to the Proposer's staffing to meet its management, and operations obligations:

(a) Organizational chart specific to MIA operations, also noting decision-making responsibilities. Resumes of key staff members should be provided.
(b) Describe the proposed staffing requirements with a summary of the duties for management/supervisory positions in detail.
(c) Staffing level and schedule to illustrate coverage of operating hours.
(d) Specifically point out any activities that will be performed off-site (i.e., at a corporate headquarters or regional office) or by a third-party provider.

3) Sales and Revenue/Financial Projections (FOR EACH PACKAGE, SPECIFICALLY LISTING THE PACKAGE NUMBER): Proposers should provide a realistic estimate of the expected annual Gross Revenues to be derived from the proposed operations. Major assumptions used in developing the sales projections should also be clearly stated.

4) Describe Proposer's labor and training practices: Provide the following information regarding the labor and training practices which will be used at MIA regarding Proposer's own organization, as well as similar information for any proposed Sub-tenants with whom Proposer already has agreements in principle or commitment letters:

a) Provide employee handbook, if any.
b) Briefly describe recruiting techniques and sources of management and non-management labor.
c) Briefly describe any motivation programs or incentives Proposer has in place for its employees and discuss if they will be extended to the Sub-tenant's employees if applicable.

5) Customer Service Philosophy and Programs - the Proposer shall provide:

a)Customer service-training program or any training or education programs that the Proposer will offer,
b) A description of the goals and objectives with regard to customer service,
c) The proposed customer service survey program, frequency of use, data analysis methodology, and sample summary reports, and finally a proposed customer service plan.
d) Speed of service standards.
e) Customer service policies and quality assurance procedures.
f) Customer guarantees, exchange or refund policies.
g) Customer complaint/comment policies (how they will be received, how they will be addressed, etc.)
h) List credit cards that will be accepted.
i) List retail shipping and gift-wrap services that will be made available.
j) List any other services that will be provided.

6) Property Management Plan: Describe Proposer's opinion as to the day to day property management approach and how Proposer intends to implement it in this program, as well as the following:

a) Sales reporting program
b) Sub-tenant coordination, if applicable
c) Sub-tenant assistance, if applicable
d) Sub-tenant administration and compliance/

enforcement plan, if applicable

e) Procedures to evaluate unit productivity and to upgrade or replace under-performing location(s).

7) Submit the proposed facility maintenance plan indicating the method and frequency by which Proposer intends to maintain the Location and the administrative support space in a first class manner.

a) Describe Proposer's policy for maintenance and repairs and replacement of equipment, displays, fixtures and carpeting in both the Proposer's Location and Sub-tenant Location.

b) Provide a plan to handle concession servicing including delivery, storage, trash removal, and recycling.

8) Provide other relevant information, including local management information that supports Proposer's proposal on providing services as required herein.

9) Include local management wherever possible.

Note: After Proposal submission, but prior to the award of any contract issued as a result of this RFP, the Proposer has a continuing obligation to advise the Department of any changes, intended or otherwise, to the Key Personnel identified in its Proposal.

j) Leasing/Subleasing Plan (For Master Concessionaires Only)

Concept Plan: Provide a description of the proposed concept plan, demonstrating an understanding of local, national and international retailing concepts and how and why those concepts will be integrated into the plan. Using **Exhibit A** "Locations", identify the proposed concept. For the proposed concept, the Proposer must include, at minimum, a letter of interest.

Any change in the Location, concept or tenant proposed in the response to this RFP must be approved in writing by the Department. The Sub-tenant occupying the Location submitted in response to this RFP shall be given notice of the proposed change in writing, with a copy to the Department, and an opportunity to respond in writing to the Department and have an opportunity to be

heard by the Department. Locally known brands should be included wherever appropriate.

k) ACDBE PARTICIPATION

(FOR EACH PACKAGE, specifically listing the Package Number, and as further detailed below):

(1) ACDBE Plan – Packages One (1) and Two (2) – **Section 4** "Airport Concession Disadvantaged Business Enterprise" requirements and **Appendix C** "Airport Concession Disadvantaged Business Enterprise Participation Plan/Provision" as stated below:

The Proposer shall demonstrate a commitment in the participation of the County's ACDBE program, including a commitment to maximize the participation of certified ACDBE's in providing retail concession services.

Proposer shall submit evidence that there shall be at least:

Thirty percent (30%) Airport Concession Disadvantaged Business Enterprise (ACDBE) participation, as defined in **Section 4** "Airport Concession Disadvantaged Business Enterprises" requirements and **Appendix C** – "Airport Concession Disadvantaged Business Enterprise Participation Plan/Provision". The Proposer must include information that will clearly detail the minimum amount of operational time that the certified ACDBE will spend on site in the operation and participation of retail concession services.

Submit for evaluation the proposed ACDBE Participation Plan emphasizing concession opportunities.

If proposing as a joint venture, the proposal must specify the following:

When an ACDBE performs as a participant in a Joint Venture, count a portion of the Gross Revenues equal to the distinct clearly defined portion of the work of the concession that the ACDBE performs with its own forces toward ACDBE goals. The work should be detailed separately from the work performed by the non-ACDBE JV partner.

Each certified ACDBE partner must share in the ownership, control, management, administrative responsibilities, risks and profits of the JV in direct proportion to its stated level of JV participation.

Each certified ACDBE JV partner must perform work that is commensurate with the scope of services of the Lease and Concession Agreement.

The Proposer must follow the instructions for the ACDBE participation provisions described in **Section 4** "Airport Concession Disadvantaged Business Enterprise" and the instructions detailed in **Appendix C** "Airport Concession Disadvantaged Business Enterprise Participation Plan/Provision" and complete, sign and submit with the Proposal any required form(s), as may be applicable, as part of the Technical Proposal.

ACDBE Participation – Packages Three (3) through Five (5) - There have been no ACDBE goals established for these Packages. The Proposer shall provide information and appropriate substantiating documentation and commitment statements concerning any ACDBE Participation it wishes to incorporate into its Proposal. If the Proposer elects to include such ACDBE participation, the Proposer shall provide information and appropriate substantiating documentation and commitment statements concerning any ACDBE Participation it wishes to incorporate into its Proposal as specified in **Appendix C** of this RFP. Although not required, a Proposer may receive technical points for such participation as further set forth in **Part B, Sub-Section 4.0** of this RFP.

l) Subcontractors/Subconsultants Performing Services

The Proposer shall also include a list of the names and addresses of all major first tier Subcontractors/Subconsultants, and describe the extent of work to be performed by each one. Include resumes for the Subcontractors/Subconsultants' key personnel.

m) Submission of Required Documentation

The Proposer must complete, sign as required, and submit the following documents as part of its Proposal, which have been included as attachments to this RFP:

- Appendix A - Questionnaire and Minimum Qualifications Requirements Affidavit
- Appendix B- Minimum Annual Guaranty Proposal Form (MAG Proposal Form)
- Appendix C-1- Airport Concession Disadvantaged Business Enterprise Participation Plan/Provision
-

- Appendix C-2- Voluntary Airport Concession Disadvantaged Business Enterprise
- Appendix D - Acknowledgment of Addenda
- Appendix E - Proposal Bond Guaranty
- Appendix F - Affidavit of Miami-Dade County Lobbyist Registration for Oral Presentation
- Appendix I - Local Business Preference
- Appendix J-1: Single Form Execution Affidavits
  - Public Entity Crimes Affidavit
  - Debarment Disclosure Affidavit
  - Criminal Record Affidavit
  - Disclosure of Ownership Affidavit
  - Affirmative Action Plan/Procurement Policy Affidavit
- Appendix J-2: Condition of Award Requirements

  Single Form Execution Affidavits
  - Disability Nondiscrimination
  - Family Leave
  - Domestic Leave
  - Currently Due Fees and Taxes
  - Drug Free Workplace
  - Current in County Obligations
  - Code of Business Ethics

  Subcontracting Policies Statement (No format, insert document)
  Subcontractor/Supplier Listing
  Proof of Authorization to do Business (No format, insert document)
- Appendix N - Labor Peace Agreement (to be provided by the Proposer)

2. MINIMUM ANNUAL GUARANTY PROPOSAL FORM (SEPARATE FORM FOR EACH PACKAGE)- (Part B)

The MAG Proposal Form, **Appendix B**, submitted by the Proposer will establish the financial elements of this RFP and is considered by the County as constituting an offer by the Proposer, as stated above. The Proposer must submit the MAG Proposal Form, in a separate sealed envelope (separate from the Technical Proposal) clearly marked on the sealed envelope or package "MAG

PROPOSAL FORM", together with the Proposer's name, RFP Number, and RFP title. The Proposer may submit the separate sealed MAG Proposal Form(s) inside the same container or package together with the separate Technical Proposal. The MAG Proposal Form shall be submitted as mentioned above on **Appendix B** "MAG Proposal Form", and in the manner stated on **Appendix B** "MAG Proposal Form". Proposers who do not submit pricing in accordance with **Appendix B** "MAG Proposal Form" may be found non-responsive.

The MAG Proposal Form must contain all information required on the MAG Proposal Form including as follows:

1) Package Number.
2) Minimum Annual Guaranty amount proposed (which is inclusive of the Location rent).
3) Breakdown of the MAG – as requested on Page 2 of **Appendix B** "MAG Proposal Form".

Note: The MAG Proposal Form shall consist of one (1) original and nine (9) copies. Any telegraphic or facsimile of the MAG Proposal Form will not be considered.

The MAG Proposal Form must either be typed or completely legible in blue ink. The Proposer's authorized representative shall sign the form in blue ink. In addition, any corrections made to the MAG Proposal Form shall be initialed and dated by the Proposer's authorized representative in blue ink. The use of pencil or erasable ink will result in the rejection of the Proposal. Failure to sign the MAG Proposal Form may render the Proposal non-responsive.

Proposers cannot qualify, place conditions or additional terms with the MAG Proposal Form; Proposers who place qualifications, conditions or additional terms with the MAG Proposal Form may be found non responsive.

2.4 ADDITIONAL INFORMATION/ADDENDA

Requests for additional information or clarifications must be submitted in writing via facsimile number (305) 876-8068 and/or email to the designated Contracting Officer herein, located at MDAD, Building 5A, 4200 N.W. 36th Street, 4th Floor, Miami, Florida 33122, in accordance with Section 2.7, "Cone of Silence," at least fourteen (14) calendar days prior to

the originally established due date for Proposals. The facsimile cover sheet must contain the RFP number and title, the Proposer's name, address, telephone and facsimile number, and the Proposer's contact person.

MDAD will issue responses to inquiries, and any other corrections or amendments it deems necessary, in written addenda prior to the deadline for Proposals. The Proposer should not rely on any representations, statements or explanations other than those made in this RFP or in any written addendum to this RFP. Where there appears to be a conflict between this RFP and any addenda issued, the last addendum issued shall prevail.

It is a Proposer's responsibility to ensure receipt of all addenda. The Proposer should verify with the Contracting Officer, prior to submitting a Proposal, that all addenda have been received. The Proposer is required to acknowledge the number of addenda **(see Appendix D, Acknowledgement of Addenda)** received as part of their Proposal.

2.5 RESPONSIBILITY OF PROPOSER

It is the sole responsibility of the Proposer to become thoroughly familiar with this RFP requirements and all terms and conditions of the Agreement affecting the performance of this RFP. Pleas of ignorance by the Proposer of conditions that exist, or that may exist, will not be accepted as a basis for varying the requirements of the Department, or the compensation to be paid to the Successful Proposer, if any.

It shall be the responsibility of the Proposer to examine the entire RFP document and Agreement, and to become fully informed of the conditions to be encountered from the Agreement to be performed.

2.6 PROJECT BRIEFING

A project briefing has been scheduled for the date, time and place specified in the advertisement for this RFP. The purpose of this project briefing is to review the scope of services and response requirements, and to afford Proposers an opportunity to seek clarifications prior to the due date for Proposals. The Proposer is encouraged to submit any questions they may have, in writing, to the Contracting Officer in advance of the project briefing. Responses to questions shall in accordance to Section 2.4 of this RFP.

2.7 CONE OF SILENCE/CONTRACTING OFFICER

CONE OF SILENCE: Pursuant to Section 2-11.1(t) of the County Code and Administrative Order 3-27 ("Cone of Silence Provisions"), as amended, a "Cone of Silence" is imposed upon RFPs, RFQs, or bids after advertisement and terminates at the time the County Manager issues a written recommendation to the Board of County Commissioners. The Cone of Silence prohibits communication regarding RFPs, RFQs, or bids between: A) potential vendors, service providers, bidders, lobbyists or consultants and the County's professional staff including, but not limited to, the County Manager and the County Manager's staff; B) a potential vendor, service provider, bidder, lobbyist, or consultant and the Mayor, County Commissioners or their respective staffs; C) the Mayor, County Commissioners or their respective staffs and any member of the County's professional staff including, but not limited to, the County Manager and the County Manager's staff; D) a potential vendor, service provider, bidder, lobbyist, or consultant and any member of the selection committee assigned to this solicitation; E) the Mayor, County Commissioners or their respective staffs and member of the selection committee assigned to this solicitation; F) any member of the County's professional staff and any member of the selection committee therefor.

Section 2.11.1(t) of the County Code and Administrative Order 3-27, as amended, permits oral communications regarding a particular RFP, RFQ or bid for solicitation of goods or services between any person and the procurement officer responsible for administering the procurement process for such RFP, RFQ, or bid, provided that the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document.

The Cone of Silence Provisions do not apply to oral communications at pre-proposal conferences, oral presentations before selection committees, contract negotiations during any duly noticed public meetings, public presentations made to the Board of County Commissioners during any duly noticed public meeting, or communications in writing at any time unless specifically prohibited by the applicable RFP, RFQ, or bid document. Proposers must file a copy of any written communications with the Clerk of the Board, which shall be made available to any person upon request. Written communications may be submitted via e-mail to the Clerk of the Board at CLERKBCC@MIAMIDADE.GOV. The Contracting Officer shall respond in writing and file a copy with the Clerk of the Board, which shall be made available to any person upon request.

In addition to any other penalties provided by law, violation of the Cone of

Silence Provisions by any proposer, respondent or bidder shall render any RFP award, RFQ award, or bid award voidable. Any person having personal knowledge of a violation of the Cone of Silence provisions shall report such violation to the State Attorney and/ or may file a complaint with the Ethics Commission. Proposers should reference the actual Cone of Silence Provisions for further clarification.

All Proposers will be notified in writing when the County Manager makes an award recommendation to the Board of County Commissioners.

The Contracting Officer for this RFP is:

Name:	**Maryse Georges**
Title:	**Aviation Procurement Contract Officer**
Name of Agency:	**MDAD – Contracts Administration Division**
Physical Address:	**4200 NW 36th St. Bldg. 5A, 4th Floor, Miami, FL 33122**
Mailing Address:	**P.O. Box 025504, Miami, FL 33102-5504**
Telephone:	**(305) 876-7939**
Facsimile:	**(305) 876-8068**
Email:	**mgeorges@miami-airport.com**

2.8. PROPOSAL GUARANTY

Proposers submitting a proposal for Packages One (1) and Two (2) are required to provide a Proposal Guaranty of $25,000.00 Per Package, with its Proposal. Proposers submitting a proposal for Packages Three (3), Four (4), and Five (5) are required to provide a Proposal Guaranty of $2,500.00 per Package, with its Proposal.

The Proposal Guaranty must be in the form of a cashier's check or certified check from any national or state bank, made payable to Miami-Dade County, Florida or a Proposal Bond Guaranty prepared on the attached form, "Proposal Bond Guaranty", **Appendix E**, duly executed by the Proposer as principal and having a Surety thereon meeting the requirements set forth in this RFP document. The County will hold proceeds of the proposal guarantee check without interest to the Proposer. Failure to include the specified Proposal Guaranty shall render the Proposal non-responsive.

Proceeds of checks submitted, as guaranty, will be returned to all unsuccessful Proposers after execution of any Agreement issued as a result of this RFP. Proposal Bond Guarantees will not be returned to any Proposer(s) but will be discharged as provided therein. The proceeds of the Successful Proposer's guaranty will be returned after the County and the Concessionaire have executed an Agreement.

In the event the Successful Proposer fails to provide the required payments, security, and evidence of insurance within thirty (30) calendar days after notice of award, or fails to begin operation as required by the Agreement, the Proposal Guaranty will be forfeited to the County as penalties and award rescinded.

2.9 MODIFIED PROPOSALS

Any modification to the Proposal by the Proposer shall be submitted to the Clerk of the Board prior to the Proposal Due Date. The Proposer shall submit, in a sealed envelope, the modified Proposal forms and a letter, on company letterhead and signed by a representative of the Proposer, stating that the modified Proposal supersedes the previously submitted Proposal. No modifications of a Proposal shall be accepted after the Proposal Due Date. The Evaluation/Selection Committee will only consider the latest version of the Proposal.

2.10 WITHDRAWAL OF PROPOSAL

A Proposal shall be irrevocable until contract award, unless the Proposal is withdrawn. A Proposal may only be withdrawn in writing and must be addressed to the Clerk of the Board prior to the Proposal Due Date.

2.11 LATE PROPOSALS, LATE MODIFICATIONS AND LATE WITHDRAWALS

Proposals received after the Proposal Due Date are late and will not be opened or considered. Modifications received after the Proposal Due Date are also late and will not be considered. Proposals will be opened promptly on the Proposal Due Date. The responsibility for submitting a Proposal to the Clerk of the Board on or before the Proposal Due Date is solely and strictly the responsibility of the Proposer. The County is not responsible for delays caused by any form of delivery utilized by the Proposer, including U.S. mail, package, courier service, or by any other occurrence.

2.12 RFP POSTPONEMENT/REJECTION/CANCELLATION

MDAD may, at its sole and absolute discretion, reject any and all, or parts of any and all Proposals; re-advertise this RFP; postpone or cancel, at any time, this RFP process; or waive any irregularities in this RFP or in the Proposals received as a result of this RFP.

2.13 COSTS INCURRED BY PROPOSERS

All expenses involved with the preparation and submission of a Proposal to the County, or any work performed in connection therewith, shall be borne by the Proposer. No payment will be made for any responses

received or for any other effort required of or made by the Proposer prior to the date set for commencement of work as defined by the Agreement approved by the Board.

SECTION 3.0

PROVISIONS OF LAW AFFECTING SOLICITATION

3.1 PROVISIONS OF LAW REGARDING AFFIDAVITS TO BE SUBMITTED WITH PROPOSAL AND CONDITION OF AWARD REQUIREMENTS:

A. AFFIDAVITS TO BE SUBMITTED WITH PROPOSAL:

The Affidavits described below are part of a single execution affidavit:

1. Public Entity Crimes Affidavit

Pursuant to Paragraph 2(a) of Section 287.133, Florida Statutes, "Any person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list."

2. Debarment Disclosure Affidavit

Section 10-38 of the Code of Miami-Dade County ("the Code") relates to the debarment of any individual or other legal entity from County work. The Debarment Disclosure Affidavit requires the Proposer to affirm, under oath, that neither the Proposer, its officers, principals, directors, shareholders owning or controlling more than ten percent (10%) or more of the stock, partners, affiliates, as defined in the Code, nor its Subcontractors/Subconsultants, have been debarred by the County. Any individual or entity that has been debarred by the County is prohibited from entering into any contract with the County during the period for which they have been debarred. Debarment may also constitute grounds for termination of any existing County contract. It is the Proposer's responsibility to ascertain this

information before submitting the Proposal.

3. Criminal Record Affidavit

Pursuant to Section 2-8.6 of the Code, the Proposer must disclose, at the time the Proposal is submitted, if the Proposer or any of its officers, directors, or executives have been convicted of a felony during the past (10) years. Failure to disclose such conviction may result in the debarment of the Proposer who knowingly fails to make the required disclosure or to falsify information.

Following contract award, if a principal of the contracting entity is convicted of a felony, the County may terminate the contract.

4. Disclosure of Ownership Affidavit

Pursuant to Section 2-8.1(d)(1) of the Code, the Proposer shall disclose under oath their full legal name and business address. The Proposer shall also disclose the full legal name and business address of all individuals (other than Subcontractors / Subconsultants, materialmen, suppliers, laborers, or lenders) that has, or will have any interest (legal, equitable, beneficial or otherwise) in the contract transaction. If the contract is with a corporation, the full legal address shall be provided for the officer, director, and stockholder who holds directly or indirectly five percent (5%) or more of the corporation's stock. If the contract is with a partnership or joint venture, the full legal address shall be provided for each partner. If the contract or business transaction is with a trust, the full legal name and address shall be provided for each trustee and each beneficiary of the trust. Post Office addresses are not acceptable.

In addition, pursuant to Section 2-8.1(d)(2) of the Code, the Proposer shall disclose the composition of its workforce, as to race, national origin and gender, as well as the existence of a collective bargaining agreement with employees. The Proposer must also disclose whether they provide paid health care benefits for its employees.

5. Affirmative Action Plan/Procurement Policy Affidavit

Pursuant to Section 2-8.1.5 of the Code, all firms with annual Gross Revenues in excess of $5 million seeking to contract with Miami-Dade County shall, as a condition of award, have a written Affirmative Action Plan and Procurement Policy on file with the County's Department of Business Development (DBD). The Proposer shall submit with its Proposal the Affirmative Action Plan/Procurement Policy Affidavit, indicating one of the following: (i) that the firm's Gross Revenues are in excess of $5 million and the firm has a current Affirmative Action Plan/Procurement Policy on

file with DBD; or, (ii) that the firm's Gross Revenues are in excess of $5 million and the firm will file an Affirmative Action Plan/Procurement Policy with DBD for approval; or, (iii) the firm's Board of Directors are representative of the population make-up of the nation and is exempt from this requirement; or, (iv) the firm's annual Gross Revenues do not exceed $5 million and therefore Section 2-8.1.5 of the Code is not applicable.

B. CONDITION OF AWARD REQUIREMENTS

1. The affidavits described below are part of a single execution affidavit that should be submitted with the Proposal. If a Proposer does not submit said condition of award affidavits with its Proposal, the Proposer should state in its Proposal when such affidavits will be provided, which shall be no later than with the execution of the Agreement.

a) Disability Nondiscrimination

Pursuant to County Resolution No. R-182-00, amending Resolution No. R-385-95, the Proposer shall, as a condition of award, provide written certification that the firm is not in violation of the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, the Federal Transit Act, the Fair Housing Act, nor any other laws prohibiting discrimination on the basis of disability. Any post-award violation of these Acts may result in the contract being declared void. If any certifying Proposer or their affiliate is found in violation of the Acts, the County will conduct no further business with such attesting firm. Any violation of this Resolution may result in debarment.

b) Family Leave

Pursuant to County Resolution No. R-183-00, the Proposer shall, as a condition of award, provide written certification that the firm provides family leave to their employees as required by the County's family leave policy. Failure to comply with the requirements of this Resolution may result in debarment.

c) Domestic Leave

Pursuant to County Resolution No. R-185-00, the Proposer shall, as a condition of award, provide written certification that the firm is in compliance with the County's domestic leave policy. Failure to comply with the requirements of this Resolution, may result in the contract being declared void, the contract being terminated, and/or the firm being debarred. The obligation to provide domestic leave to their employees shall be a contractual obligation.

d) Currently Due Fees and Taxes

Pursuant to Section 2-8.1(c) of the Code, the Proposer shall, as a condition of award, verify that all delinquent and currently due fees or taxes - including but not limited to real and property taxes, utility taxes and occupational licenses - collected in the normal course by the County Tax Collector, as well as County issued parking tickets for vehicles registered in the name of the Proposer, have been paid. Failure to comply with this requirement may result in debarment.

e) Drug Free Workplace

Pursuant to Section 2-8.1.2(b) of the Code, no person or entity shall be awarded or receive a County contract for public improvements unless such person or entity certifies that it will provide a drug free workplace. Failure to comply with this requirement may result in debarment for those persons or entities that knowingly violate this policy or falsify information.

f) Current in County Obligations

Pursuant to Section 2-8.1(h) of the Code, no individual or entity shall be allowed to receive any additional County contracts, if it is in arrears in any payment under a contract, promissory note or other loan document with the County, or any of its agencies or instrumentalities, including the Public Health Trust, either directly or indirectly through a firm, corporation, partnership or joint venture in which the individual or entity has a controlling financial interest as that term is defined in Section 2-11.1(b)(8) of the Code, until either the arrearage has been paid in full or the County has agreed in writing to a payment schedule. Any contract or transaction entered into in violation of Section 2-8.1(h) of the Code shall be voidable. Failure to meet the terms and conditions of any obligation or repayment schedule with the County shall constitute a default of the subject contract and may be cause for suspension, termination and debarment, in accordance with the terms of the contract and the debarment procedures of the County.

g) Code of Business Ethics

Pursuant to Section 2-8.1(i) of the Code, each person or entity that seeks to do business with the County shall adopt a Code of Business Ethics ("Ethics Code") and shall, prior to the execution of any contract between the Proposer and the County, submit an affidavit stating that it has adopted an Ethics Code that

complies with the requirements of Section 2-8.1(i) of the Code. If the Proposer fails to submit the required affidavit, it shall be ineligible for contract award.

2. Subcontracting documents not part of single execution affidavit:

a) Subcontracting Policies

Pursuant to Section 2-8.8(4) of the Code, the Proposer on County contracts, wherein subcontractors/subconsultants may be used, shall, prior to contract award, provide a detailed statement of their policies and procedures for awarding subcontracts which:

1) notifies the broadest number of local subcontractors/ subconsultants of the opportunity to be awarded a subcontract;

2) invites local subcontractors/subconsultants to submit bids in a practical, expedient way;

3) provides local subcontractors/subconsultants access to information necessary to prepare and formulate a subcontracting bid;

4) allows local subcontractors/subconsultants to meet with appropriate personnel of the Proposer to discuss the Proposer's requirements; and

5) awards subcontracts based on full and complete consideration of all submitted proposals and in accordance with the Proposer's stated objectives.

The Proposer who fails to provide the required statement shall be precluded from receiving the contract.

b) Listing of Subcontractors/Subconsultants and Suppliers

Section 10-34 of the Code requires that on County or Public Health Trust contracts, which involve the expenditure of $100,000 or more, that the entity contracting with the County shall, as a condition of award, provide a listing which identifies all first tier subcontractors/subconsultants who will perform any part of the contract work, describes the portion of the work such subcontractor/subconsultant will perform, identifies all suppliers who will supply materials for the contract work directly to the Proposer, and describes the materials to be so supplied.

A Proposer who is awarded the contract shall not change or substitute first tier subcontractors/subconsultants, direct suppliers, the portions of the work to be performed, or the materials to be supplied from those identified in the listing provided, except upon written approval by the County.

THE FORM CONTAINED IN APPENDIX J, OR A COMPARABLE LISTING MEETING THE REQUIREMENTS OF SECTION 10-34 OF THE CODE, MUST BE COMPLETED AND SUBMITTED EVEN THOUGH THE PROPOSER MAY NOT UTILIZE SUBCONSULTANTS OR SUPPLIERS FOR THIS PROPOSAL. THE PROPOSER SHOULD ENTER THE WORD "NONE" UNDER THE APPROPRIATE HEADING(S) ON THE ATTACHED FORM, APPENDIX J, IN THOSE INSTANCES WHERE NO SUBCONSULTANTS AND/OR SUPPLIERS WILL BE USED ON THIS PROPOSAL.

3. Proof of Authorization to do Business

   Pursuant to Florida Statutes Section 607.0128 F.S, Proposer must attach a copy of the Certificate of Status or Authorization, and certificate evidencing compliance with the Florida Fictitious Name Statute per Florida Statutes Section 865.09, (if applicable.)

3.2 LOBBYIST REGISTRATION FOR ORAL PRESENTATION

In accordance with Section 2-11.1(s) of the Code of Miami-Dade County, the attached "Affidavit of Miami-Dade County Lobbyist Registration for Oral Presentation" **(See Appendix F)** must be completed, notarized and included with the proposal submission. Lobbyists specifically include the principal, as well as any employee whose normal scope of employment includes lobbying activities.

Any person who appears as a representative for an individual or firm for an oral presentation before a County certification, evaluation, selection, technical review or similar committee shall list on this affidavit all individuals who may make a presentation. The affidavit shall be filed with the Clerk of the Board at the time the response is submitted. The individual or firm must submit a revised affidavit for any additional team members with the Clerk of the Board at least two (2) days prior to the oral presentation. Any person not listed on the revised affidavit or who is not a registered lobbyist will not be permitted to participate in the oral presentation.

NOTE: Other than for the Oral Presentation, Proposers who wish to address the Board of County Commissioners, or a County board or Committee concerning any actions, decisions or recommendations of

County personnel regarding this RFP must also register with the Clerk of the Board (Form BCCFORM2DOC) and pay all applicable fees.

In accordance with 2-11.1 (s) of the Miami-Dade County Code, prior to conducting any lobbying, all principals must file a form with the Clerk of the Board of County Commissioners, signed by the principal or the principal's representative, providing that the lobbyist is authorized to represent the principal. Failure of a principal to file the form required by the preceding sentence may be considered in the evaluation of this Proposal as evidence that a Proposer is not a responsible Proposer.

The County's Ethics Commission has also adopted rules delineating the responsibilities of lobbyists and County personnel in implementing the requirements of the lobbying section of the Conflict of Interest and Code of Ethics Ordinance (**see Appendix L**). The Proposer shall comply with these requirements.

3.3 INDEPENDENT PRIVATE SECTOR INSPECTOR GENERAL REVIEW

Pursuant to County Administrative Order No. 3-20 and in connection with any award issued as a result of this RFP, the County has the right to retain the services of an IPSIG, whenever the County deems it appropriate. Upon written notice from the County, the Successful Proposer shall make available to the IPSIG retained by the County all requested records and documentation pertaining to this Proposal or any subsequent award for inspection and copying. The County will be responsible for the payment of these IPSIG services and under no circumstance shall the Proposer's MAG for this Proposal be inclusive of any charges relating to these IPSIG services. The terms of this provision herein apply to the Proposer, its officers, agents, employees and Subcontractors/Subconsultants. Nothing contained in this provision shall impair any independent right of the County to conduct, audit or investigate the operations, activities and performance of the Proposer in connection with this RFP or any Contract issued as a result of this RFP. The terms of this provision are neither intended nor shall the Proposer or any third party construe them to impose any liability on the County.

3.4 MIAMI-DADE COUNTY INSPECTOR GENERAL REVIEW

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, 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, except as otherwise provided below. The cost of the audit of any contract issued as a result of this RFP shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in

the total contract amount.

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

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

3.5 CONFLICT OF INTEREST AND CODE OF ETHICS

Pursuant to Section 2.11.1 of the Code, no County employee or his or her immediate family shall be prevented from entering into any contract, individually or through a firm, corporation, partnership or business entity, in which the employee or any member of his or her immediate family has a controlling financial interest with the County, or any person or agency acting for the County, as long as (1) entering into the contract would not interfere with the full and faithful discharge by the employee of his or her duties to the County, (2) the employee has not participated in determining the subject contract requirements or awarding the contract, and (3) the employee's job responsibilities and job description will not require him or her to be involved with the contract in any way, including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination or forbearance. However, this limited exclusion shall not be construed to authorize an employee or his or her immediate family member to enter into a contract with the County or any person or agency acting for the County, if the employee works in the County department that will enforce, oversee or administer the subject contract.

Any affected County employee shall seek a conflict of interest opinion from the County Commission on Ethics and Public Trust ("the Ethics Commission") prior to submittal of a bid, response, or application, of any type, to contract with the County by the employee or his or her immediate family. A request for a conflict of interest opinion shall be made in writing and shall set forth and include all pertinent facts and relevant documents.

For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

If the affected employee or his or her immediate family member chooses to respond to a solicitation to contract with the County, such employee shall file with the Clerk of the Board a statement, in a form satisfactory to the Clerk of the Board, disclosing the employee's interest or the interest of his or her immediate family in the proposed contract and the nature of the intended contract at the same time as or before submitting a bid, response, or application of any type to contract with the County. Along with the disclosure form, the affected employee shall file with the Clerk of the Board a copy of his or her request for an Ethics Commission opinion and an opinion or waiver from the Board. Also, a copy of the request for a conflict of interest opinion from the Ethics Commission and any opinion or waiver must be submitted with the response to the solicitation to contract with the County.

3.6 TELEPHONE LOGS

Pursuant to Section 11A-43(4) of the Code, each Proposer must maintain telephone logs of all telephone calls to and from subcontractors/ sub-consultants and suppliers. These logs shall contain the name of the subcontractor/subconsultant or supplier, the time and date of the call, the names of the persons contacted, a description of the work to be subcontracted or of the material to be furnished, and the dollar amount of the quotation. Telephone logs shall be made available to County personnel.

3.7 LABOR PEACE REQUIREMENT

Pursuant to Resolution No. R-148-07, the Proposer shall provide, as Appendix N to their proposal, a signed copy of the Labor Peace Agreement for their employees as part of their proposal to assure that no labor dispute or unrest will disrupt their operations at Miami International Airport (MIA). Furthermore, the County has the right, in the event of a labor disruption, to suspend it's obligations under the contract while the labor disruption is ongoing and to use alternative means to provide the service that is affected by the labor disruption. In the event a Proposer is unable to reach an agreement with a labor organization regarding the terms of a Labor Peace Agreement, the dispute between the Proposer and the labor organization shall be resolved by expedited binding arbitration in which the decision shall be rendered within ten (10) days of the request for arbitration but no later than five (5) days prior to the date the proposal is due. The Proposer and the labor organization shall equally share the costs of arbitration. The Proposer shall ensure that all sub-tenants also sign a Labor Peace Agreement. A Proposer who fails to submit executed agreement(s) will render that Proposer's proposal non-responsive.

3.8 PROPRIETARY/ CONFIDENTIAL INFORMATION

Proposers are hereby notified that all information submitted as part of, or in support of their Proposal will be available for public inspection after opening of Proposals, in compliance with Chapter 119 of the Florida Statutes. The Proposer shall not submit any information in response to this solicitation, which the Proposer considers to be a trade secret, proprietary or confidential. The submission of any information to the County in connection with this solicitation shall be deemed a waiver of any trade secret or other protection, which would otherwise be available to Proposer. In the event that the Proposer submits information to the County in violation of this restriction, either inadvertently or intentionally, and clearly identifies that information in the Proposal as protected or confidential, the County shall endeavor to redact or return that information to the Proposer as practicable, and if appropriate, evaluate the balance of the Proposal. The redaction or return of information pursuant to this clause may render a Proposal non-responsive.

3.09 ORDINANCES, RESOLUTIONS AND/OR ADMINISTRATIVE ORDERS

To request a copy of any ordinance, resolution and/or administrative order cited in this solicitation, the Proposer must contact the Clerk of the Board at (305) 375-5126.

3.10 RULES, REGULATIONS AND LICENSING REQUIREMENTS

The Proposer shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, especially those applicable to conflicts of interest and collusion. The Proposer is presumed to be familiar with all federal, state and local laws, ordinances, codes, rules, regulations, operational directives and other Department procedures that may in any way affect the goods or services offered. The Proposer shall also comply with Executive Order No. 11246 entitled "Equal Employment Opportunity" and as amended by Executive Order No. 11375, as supplemented by the Department of Labor Regulations (41 CFR, Part 60), the Americans with Disabilities Act of 1990 and implementing regulations, the Rehabilitation Act of 1973, as amended, Chapter 553 of Florida Statutes and any and all other local, state and federal directives, ordinances, rules, orders, and laws relating to people with disabilities.

3.11 NONEXCLUSIVITY

This RFP is nonexclusive in character and in no way prevents the County from entering into an Agreement with any other parties for the sale or offering of competitive services, products or items by others in other

locations at the Airport during the term of the Agreement.

SECTION 4.0

AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISES (ACDBE)

4.1 ACDBE REQUIREMENTS PARTICIPATION

It is the policy of the County that ACDBE's shall have the maximum practical opportunity to participate in the performance of County agreements. As used in the Bid Documents, the term "Airport Concession Disadvantaged Business Enterprises (ACDBE)" means a small business concern, which (a) is at least fifty-one percent (51%) owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least fifty-one percent (51%) of the stock which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it as set forth in 49 CFR Part 23, Code of Federal Regulations.

Airport Concession Disadvantaged Business Enterprises Plan/Provisions for Packages 1 and 2:

The County has established an ACDBE concession specific goal for package 1 of 30% and for Package 2 of 30% percent of Gross Revenues. The ACDBE overall goal can be achieved either through the Proposer being an ACDBE itself, a partnership or joint venture, or subcontracting a percentage of Gross Revenues.

The Airport Concession Disadvantaged Business Enterprise (ACDBE) Plan must be submitted with the Proposal in accordance with **Appendix C, Section II** and its supporting documents. The Successful Proposer will be required to submit to the Department's Minority Affairs Division, Monthly Utilization Reports (MUR) reflecting ACDBE revenue and operational expenses, commencing 90 days after beneficial occupancy and monthly thereafter, on or before the 10th of every month.

Voluntary Airport Concession Disadvantaged Business Enterprises Plan/Provisions for Packages 3, 4, and 5:

ACDBE participation is voluntary, but not required for this RFP, and Appendix C; however, technical points may be awarded for such ACDBE participation. If a Proposer elect to select ACDBE Participation, the Proposer must abide by the ACDBE Provisions. The ACDBE overall goal can be achieved either through the Proposer being an ACDBE itself, a partnership or joint venture, or subcontracting a percentage of gross revenues.

4.2 COUNTING ACDBE PARTICIPATION TOWARD CONTRACT GOALS:

1. When an ACDBE participates in a contract, only the value of the work actually performed by the ACDBE toward the ACDBE goal will be counted.
2. When an ACDBE performs as a participant in a joint venture a portion of the total dollar value of the contract **during the complete contract term,** equal to the clearly defined portion of the work of the contract that the ACDBE performs will be counted toward ACDBE goals as outlined in **Appendix C.**
3. Expenditures to an ACDBE contractor toward ACDBE goals will be counted only if the ACDBE is performing a commercially useful function as defined below:

   (a) An ACDBE performs a commercially useful function when it is responsible for execution of specific quantifiable work of the contract and is carrying out its responsibilities by actually performing, or managing, or supervising the specific identified work.

   MDAD will determine whether an ACDBE is performing a commercially useful function by evaluating the specific duties outlined in the Joint Venture Agreement; the subcontract agreement or other agreements in accordance with industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and other relevant factors.

   (b) An ACDBE <u>does not</u> perform a commercially useful function if its role is limited to that of an extra participant in a financial or other transaction, contract, or project through which funds are passed in order to obtain the appearance of ACDBE participation.

   (c) If an ACDBE does not perform or exercise responsibility for at least their percentage of its participation or if the ACDBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that the ACDBE is not

performing a commercially useful function.

(d) When an ACDBE is presumed not to be performing a commercially useful function as provided in paragraph (c) of this section, the ACDBE may present evidence to rebut this presumption. MDAD will determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

4. MDAD's decision on commercially useful function matters are final.

4.3 ACDBE PARTICIPATION ACHIEVED THROUGH JOINT VENTURE("JV") PARTNERING:

Proposers may decide to satisfy a part of the ACDBE goal by Joint Venturing with an ACDBE. The ACDBE partner must meet the eligibility standards set forth in 49 CFR Part 23. A **"joint venture" or ("JV")** shall mean and may be referred to as an "association" of two or more businesses acting as a concessionaire and performing or providing services on a contract, in which each joint venture or association partner combines property, capital, efforts, skill, and/or knowledge. The Joint Venture agreement must specify the following:

(1) Each ACDBE joint venture ("JV") partner must be responsible for a clearly defined portion of the work to be performed. The work should be detailed separately from the work performed by the non-ACDBE JV partner.

The work should be submitted as part of this solicitation and annually thereafter to the Aviation Department's Minority Affairs Division. The work to be performed by the ACDBE joint venture partner should be store specific with regards to tasks and location.

The ACDBE Joint Venture partner will be required to spend the minimum amount of aggregate time on-site, focused on the operation of the concession. Such "minimum amount of aggregate time" is defined as ten hours per week.

(2) Each joint venture partner must submit a notarized Monthly Utilization Report and a notarized Monthly Report of ACDBE Joint Venture Activity providing details of how the performance objectives were achieved and providing documentation of that achievement on the form. This information should include, but not limited to:

a. Details of training sessions, including class rosters and lesson plans.

b. Deliverables and work products.

c. Time sheets of partner employees used to fulfill objectives. Time sheets must accurately reflect hours worked and compensation earned.

d. Proof that employees of partner actually work for them (payroll, payroll tax returns and the like).

(3) Each ACBDE partner must share in the ownership, control, management, and administrative responsibilities, risks and profits of the JV in direct proportion to its stated level of JV participation.

(4) Each ACDBE JV partner must perform work that is commensurate with the Lease Agreement.

As described below, each Proposer must submit, as part of its Proposal, a plan for the achievement of the ACDBE goal, including Schedule of Participation and the Letter of Intent from ACDBEs who are Certified or have applied for Certification to the Miami-Dade County Department of Business Development as required by Airport Concession Disadvantaged Business Enterprise Participation Plan (ACDBE).

Without limiting the requirements of the Agreement, the County will have the right to review and approve all agreements utilized for the achievement of these goals. Such agreements must be submitted with the Proposal.

4.4 CERTIFICATION-AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE):

In order to participate as an ACDBE on this contract, an ACDBE must be certified or have applied for certification to the Miami-Dade County, Department of Small Business Development (SBD) or Florida Uniform Certification Program (FLUCP) at the time of Proposal submittal, but the ACDBE firm must be fully certified on or before the award date.

Application for certification as an ACDBE may be obtained by contacting the Miami-Dade County, Department of Small Business Development (SBD) located at 111 N.W. 1st Street, Stephen P. Clark Center, 19th Floor, Miami Florida 33128-1974 or by telephone at (305) 375-3111 or facsimile at (305) 375-3160, or visit their website at www.co.miami-dade.fl.us/SBA/.

The ACDBE Certification List is maintained and published at least every other week by the Miami-Dade County, Department of Small Business Development (SBD) and contains the names and addresses of currently certified Airport Concession Disadvantaged Business Enterprise (ACDBE's) certified by the agency.

The FLUCP (Florida Unified Certification Program) Directory is available at **http://www.bipincwebapps.com/biznetflorida/.** The Directory lists the firm's name, address, phone number, date of the most recent certification, certifying agency and type of work the firm has been certified to perform. The FLUCP updates the data every 24 hours and revises the Directory regularly. The address for Florida UCP is:

Florida Department of Transportation,
Equal Opportunity Office
605 Suwannee Street, MS 65
Tallahassee, Florida 32399-0450
Tel: (850) 414-4747 Fax: (850) 414-4879

4.5 AFFIRMATIVE ACTION AND AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PROGRAMS

The Successful Proposer acknowledges that the provisions of 14 CFR Part 152, Affirmative Action Employment Programs, and 49 CFR Part 23, Airport Concession Disadvantaged Business Enterprise Programs, are applicable to the activities of the Successful Proposer under the terms of the Agreement, unless exempted by said regulations, and hereby agrees to 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 Airport Concession Disadvantaged Business Enterprise and/or Employment Affirmative Action participation goals, the keeping of certain records of good faith compliance efforts, which would be subject to review by the various agencies, the submission of various reports and, if directed by the Department, the contracting of specified percentages of goods and services contracts to Airport Concession Disadvantaged Business Enterprises. In the event it has been determined, in accordance with applicable regulations, that the Successful Proposer has defaulted in the requirement to comply with the provisions of this section and fails to comply with the sanctions and/or remedies then prescribed, the County shall have the right, upon written notice to the Concessionaire, to terminate this Agreement, pursuant to Default language referenced in the Agreement.

The Successful Proposer shall include the following nondiscrimination language in concession related contracts with MDAD:

> *"This agreement is subject to the requirements of the US Department of Transportation's Regulations 49 CFR Part 23. The concessionaire or contractor*

agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23."

"The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements."

The Successful Proposer agrees to include the above statements in any subsequent lease and concession agreements.

4.6 ACDBE MENTORING, ASSISTANCE AND TRAINING PROGRAM

Consistent with the goal of providing ACDBE's with hands-on participation and the responsibility for a clearly defined portion of the Airport Concession operations, subject to **Section 4** "Airport Concession Disadvantaged Business Enterprises" hereof, each ACDBE shall have the duty and responsibility to operate certain areas of the concession(s) following a mentoring period, if needed, which shall include but not be limited to the following specific duties and responsibilities:

A. Shop Store Operations

(1) Passenger profile analysis
(2) Cash handling/sales audit
(3) Enhancing sales
(4) Selling to the customer
(5) Staffing to meet customer levels
(6) Opening and closing procedures

B. Personnel

(1) Employment practices
(2) Compliance with wage and hour laws
(3) Compliance with County and Airport requirements
(4) Designing compensation and benefits plans
(5) Management and staff training to enhance product knowledge and customer service
(6) Warehousing packaging and sales reporting of merchandise

C. Shop Design and Display

(1) Retail layout

(2) Merchandising techniques
(3) Visual display techniques

D. Loss Prevention

(1) External and internal theft
(2) Shop security

E. Books, Records and Reports

(1) The books of account and supporting records of the joint venture(s) and the sub-concessionaire(s) shall be maintained at the principal office and shall be open for inspection by the MDAD or the ACDBE sub-concessionaire(s) or Joint Venture(s), upon reasonable prior written notice, during business hours.

(2) The books of account, for both financial and tax reporting purposes shall be maintained on the accrual method of accounting. The Successful Proposer shall provide to the sub-concessionaire(s) or joint venture(s), within an agreed upon time after the end of each month during the term of this agreement, an unaudited operating (*i.e.*, income) statement for the preceding month and for the year-to-date.

(3) Reports of the ACDBE Mentoring Program shall be submitted to the Department's Minority Affairs and Business Management Divisions, outlining the specific areas of training (i.e., components covered, total number of hours of training, training material covered, etc.).

4.7 AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN:

The Successful Proposer shall contract with those firm(s) as are listed on the Successful Proposer's ACDBE Participation Plan in the Proposal documents and approved by the Department, and shall thereafter neither (i) terminate such ACDBE firm(s), nor (ii) reduce the scope of the work to be performed, nor (iii) decrease the percentage of participation, nor (iv) decrease the dollar amount of participation by the ACDBE firm(s) without the prior written authorization of the Department.

The County shall monitor the compliance of the Successful Proposer with the requirements of this provision during the term of this agreement.

The County shall have access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records, records of expenditures, contracts between the Successful Proposer and the ACDBE Participant, and other records pertaining to

ACDBE Participation.

If at any time the County has reason to believe that the Successful Proposer is in violation of this provision, the County may, in addition to pursuing any other available legal remedy, impose sanctions which may include, but are not limited to, the termination or cancellation of the agreement in whole or in part, unless the Successful Proposer demonstrates, within a reasonable time, its compliance with the terms of this provision. No such sanction shall be imposed by the County upon the Successful Proposer except pursuant to a hearing conducted by the MDAD Compliance Monitor and/or Director.

SECTION 5.0

EVALUATION PROCESS

5.1 EVALUATION/SELECTION PROCESS OVERVIEW

Following the opening of the Proposals, the Proposals will be evaluated by an Evaluation/Selection Committee appointed by the County Manager. It is the responsibility of the Evaluation/Selection Committee to ensure that a Proposal submittal complies with all of the requirements of this RFP and assess it accordingly.

5.2 REVIEW OF PROPOSALS FOR RESPONSIVENESS AND RESPONSIBLENESS

Each Proposal will be reviewed to determine if the Proposal is compliant with the submission requirements outlined in this RFP. A responsive Proposal is one which follows the requirements of this RFP, includes all documentation, is submitted in the format outlined in this RFP, is of timely submission, and has the appropriate signatures as required on each document. Failure to comply with these requirements may result in a Proposal being deemed non-responsive by the Office of the County Attorney.

The Evaluation/Selection Committee shall determine if the Proposal is responsible. In making these determinations, the Evaluation/Selection Committee shall have the right to investigate the management, operational experience, financial stability, reputation and business judgment of any Proposer and their management, including the conducting of investigations of the officers, directors, principal, stockholders, other principals, if any, of the business entity of the Proposer, its affiliates and

parent company and the proposed management, and to review and investigate all contracts the Proposer has performed for the County or others. The Proposer agrees to provide upon request any additional information that may be required by the Committee or the Department. In addition, the Evaluation/Selection Committee reserves the right to inspect the Location at which the Proposer conducts its business and provides services.

5.3 EVALUATION PROCESS

It is the obligation of the Proposer to provide all information necessary for MDAD's evaluation according to the criteria listed in this RFP document and/or any addenda that may be issued. Evaluation criteria have been established based upon the goals and objectives as provided in this RFP. Based on the Evaluation/Selection Committee's evaluation of the written Technical Proposal and oral presentations, if required, the Committee shall, if there is more than one responsive and responsible Proposer rate and rank the responsive and responsible firms on their Technical Proposal based on the criteria listed below. If there is only one (1) responsive and responsible Proposer, the Committee may, following MAG proposal evaluation, recommend to award or negotiate an Agreement, or to reject the sole or remaining Proposal. The technical criteria listed below may not be of equal value or decision weight nor are they necessarily ranked in order of importance. A Proposer for a particular package may receive the maximum points or a portion of this score depending on the merit of its Proposal, as judged by the Evaluation/Selection Committee member in accordance with the criteria below.

The Packages will be evaluated in sequential order starting with Package One (1), (see also Sub-Section 5.6)

Each Proposer for a particular package will be evaluated on the basis of information provided in the written Proposal submittal using the following criteria. The technical proposal criteria are itemized with their respective weights for a maximum total of eight hundred fifty (850) points per each voting Evaluation/Selection member, for each package. The written Proposal may be verified or clarified by the oral presentation, if any.

5.4 EVALUATION CRITERIA FOR MASTER CONCESSIONAIRE (PACKAGES 1 AND 2)

TECHNICAL PROPOSAL EVALUATION

CRITERIA	MAXIMUM PTS
1) Financial Capacity to Perform/Financing	75
2) Experience and Qualifications	150
3) Developing, Designing and Constructing (including, but not limited to the following:) - Merchandising, Design and Layout Plan - Facilities Design & Construction Coordination	250
4) Managing, Operating and Maintaining (including, but not limited to the following:) - Facility Maintenance Plan - Operations - Management Plan - Local management	225
5) ACDBE Participation	100
6) Leasing/Subleasing Plan	50
Total Technical Proposal Maximum Points	**850**

MAG EVALUATION

1) MAG Proposal Maximum Points	150
Total Evaluation Points	**1000**

After the Evaluation/Selection Committee completes the evaluation of the Technical Proposal, the sealed Minimum Annual Guarantee envelopes will be opened in the presence of the Evaluation/Selection Committee. The Minimum Annual Guarantee Proposal submission will be assigned a maximum of 150 points per voting Evaluation/Selection Committee member, per package.

The MAG Proposal Forms will be evaluated in the following manner:

1. The responsive/responsible proposal with the highest MAG will be given the full weight of one hundred fifty (150) points assigned to the MAG criterion.

2. Every other responsive/responsible proposal will be given points proportionately in relation to the highest responsive/responsible MAG. This point total will be calculated by dividing the MAG of the proposal being evaluated by the highest responsive/responsible MAG with the result being multiplied by the maximum weight for MAG (150 points) to arrive at a MAG Proposal score of less than the full score for the MAG criterion.

   Example: Proposer proposed MAG
   Highest proposed MAG x 150 (Total Points for MAG) = MAG Score

The MAG Proposal points will be added to the technical score for each voting Evaluation/Selection Committee member to develop the total score for each Proposal.

5.5 EVALUATION CRITERIA FOR DIRECT LESSEES (PACKAGES 3, 4, and 5.

Each Proposer for a particular package will be evaluated on the basis of information provided in the written Proposal submittal using the following criteria. The technical proposal criteria are itemized with their respective weights for a maximum total of eight hundred fifty (850) points per each voting Evaluation/Selection member per package. The written Proposal may be verified or clarified by the oral presentation, if any.

TECHNICAL PROPOSAL EVALUATION

CRITERIA	MAXIMUM PTS
1) Financial Capacity to Perform/Financing	125
2) Experience and Qualifications	190

3) Developing, Designing and Constructing (including, but not limited to the following:) - Merchandising, Design and Layout Plan - Facilities Design & Construction Coordination - Local Theme	190
4) Managing, Operating and Maintaining (including, but not limited to the following:) - Facility Maintenance Plan - Operations - Management Plan - Local management	175
5) ACDBE Participation (Voluntary)	50
6) Local Business	120
Total Technical Proposal Maximum Points	**850**

MAG EVALUATION

1) MAG Proposal Maximum Points	150
Total Evaluation Points	**1000**

After the Evaluation/Selection Committee completes the evaluation of the Technical Proposal, the sealed Minimum Annual Guarantee envelopes will be opened in the presence of the Evaluation/Selection Committee. The Minimum Annual Guarantee Proposal submission will be assigned a maximum of 150 points per voting Evaluation/Selection Committee member, per package.

The price MAG Proposal Forms will be evaluated in the following manner:

1. The responsive/responsible proposal with the highest MAG will be given the full weight of one hundred fifty (150) points assigned to the MAG criterion.

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2. Every other responsive/responsible proposal will be given points proportionately in relation to the highest responsive/responsible MAG. This point total will be calculated by dividing the MAG of the proposal being evaluated by the highest responsive/responsible MAG with the result being multiplied by the maximum weight for price (150 points) to arrive at a MAG Proposal score of less than the full score for the MAG criterion.

Example: $\frac{\text{Proposer proposed MAG}}{\text{Highest proposed MAG}} \times 150 \text{ (Total Points for MAG)} = \text{MAG Score}$

The MAG proposal points will be added to the technical score for each voting Evaluation/Selection Committee member to develop the total score for each Proposal.

5.6 OVERALL RANKING

After the MAG evaluation, the Evaluation/Selection Committee will then determine the overall ranking for each package by adding the aggregate Minimum Annual Guarantee evaluation score with the aggregate Technical evaluation score and all other applicable additional points specified in this RFP, if any, to determine the overall ranking. The Proposer with the highest points will be ranked first. A Proposer will not be recommended for award for more than one Package.

In the event the overall ranking is calculated and a tie occurs between the highest rated Proposers, then the first tiebreaker will be consideration of local preference. If after the application of Section 2-8.5 of the Code (Local Preference), is applied and a tie still exists, then the Evaluation/Selection Committee shall be reconvened to allocate a maximum of five (5) points per voting Evaluation/Selection Committee member present at the oral presentations, for the construction design presented in the Proposals. Local Preference shall not apply if it results in a Local ACDBE gaining an advantage over a Non-Local ACDBE, a violation of Federal Regulations.

In the event that a Proposer has the highest overall score in multiple packages, the Committee shall recommend award to the Proposer of the Package which will result taking into account differences in the MAG between the Proposers with the highest cumulative MAG to MDAD for all

awarded Packages under this RFP.

5.7 NEGOTIATIONS

The County may award the Lease and Concession Agreement for each Package on the basis of initial offers received, without discussion or negotiation. Therefore, each initial offer should contain the Proposer's best terms from a monetary and technical standpoint.

However, if it is determined that negotiations are necessary **or are required as a result of the application of Local Preference (see RFP Sub-Section 5.9)**, upon appointment and authorization by the County Manager, the Negotiation Committee will proceed to negotiate with the recommended Proposer.

The County reserves the right to enter into contract negotiations with the recommended Proposer. If the County and the recommended Proposer cannot negotiate a successful contract, the Negotiation Committee may terminate said negotiations and begin negotiations with the next ranked responsive and responsible Proposer. This process may continue until an agreement is executed or the County may reject all Proposals received. No Proposer shall have any rights against the County arising from such negotiations or termination thereof.

5.8 CONTRACT AWARD

The Successful Proposer shall execute the attached Agreement within ten (10) calendar days after the County presents such Agreement to the Successful Proposer. This will occur prior to the filing of the contract award recommendation with the Clerk of the Board.

The contract award, if any, shall be made to the Proposer whose Proposal shall be deemed by the Board to be in the best interest of the County. The Board's decision of whether to make the award and which Proposal is in the best interest of the County shall be final.

Failure to provide required insurance and bonds, and to execute other required documents prior to award of any Agreement, or failure of the recommended Proposer to execute the Agreement as required above, may constitute a repudiation of the Proposer's Proposal and result in forfeiture of any deposits and bonds provided pursuant to this RFP.

5.9 LOCAL PREFERENCE (AVAILABLE TO PACKAGES 1 AND 2 ONLY)

Pursuant to Section 2-8.5 of the Code of Miami-Dade, the Local Preference provisions include the following:

1. Local business means the vendor has a valid occupational license issued by Miami-Dade County at least one (1) year prior to bid or proposal submission to do business within Miami-Dade County that authorizes the business to provide the goods, services or construction to be purchased, and a physical business address located within the limits of Miami-Dade County from which the vendor operates or performs business. Post Office Boxes are not verifiable and shall not be used for the purpose of establishing said physical address. In addition to the foregoing, a vendor shall not be considered a "local business" unless it contributes to the economic development and well-being of Miami-Dade County in a verifiable and measurable way. This may include, but not be limited to the retention and expansion of employment opportunities and the support and increase to the County's tax base. Vendors shall affirm in writing their compliance with the foregoing at the time of submitting their bid or proposal to be eligible for consideration as a "local business" under this section. A vendor who misrepresents the Local Preference status of its firm in a proposal or bid submitted to the County will lose the privilege to claim local preference status for a period of up to one (1) year. The County Manager, in his discretion, may also recommend that the firm be referred for debarment in accordance with Section 2-8.4.1 of the Code of Miami-Dade County.

2. Request for proposals, qualifications or other submittals and competitive negotiation and selection. If, following the completion of final rankings (technical and MAG combined, if applicable) by the selection committee, a non-local business is the highest ranked Proposer, and the ranking of a local Proposer is within 5% of the ranking obtained by the non-local Proposer, then the highest ranked local Proposer shall have the opportunity to proceed to negotiations with the County under the applicable sections of the Code. Local Preference shall not apply if it results in a Local ACDBE gaining an advantage over a Non-Local ACDBE, a violation of Federal Regulations.

3. If a tie occurs between two (2) or more local businesses, then contract award on the basis of best and final bids, or the opportunity to proceed to negotiations, shall be made to such local business having the greatest number of its employees that are Miami-Dade County residents.

4. The application of Local Preference to a particular purchase or contract for which the Board of County Commissioners is the awarding authority may be waived upon approval of the Board of County Commissioners. The application of Local Preference to a particular purchase or contract for which the County Manager is the awarding authority may be waived upon written recommendation of the Director of Procurement Management or successor and approval of the County Manager.

5. The preferences established herein in no way prohibit the right of the Board of County Commissioners to compare quality of materials proposed for purchase and compare qualifications, character, responsibility and fitness of all persons, firms or corporations submitting bids or proposals. Further, the preferences established herein in no way prohibit the right of the County Commission from giving any other preference permitted by law instead of the preferences granted herein.

6. In the event Broward, Palm Beach or Monroe County extend preferences to local businesses, Miami-Dade County may enter into an interlocal agreement with such County wherein the preferences of this section may be extended and made available to vendors that have a valid occupational license issued by Broward, Palm Beach or Monroe County to do business in that County that authorizes the vendor to provide the goods, services or construction to be purchased, and a physical business address located within the limits of that County. Post Office Boxes are not verifiable and shall not be used for the purpose of establishing said physical address. In addition to the foregoing, a vendor shall not be considered a "local business" unless it contributes to the economic development and well-being of Broward, Palm Beach or Monroe County, whichever is applicable, in a verifiable and measurable way. This may include, but not be limited to, the retention and expansion of employment opportunities and the support and increase to that County's tax base. Vendors shall affirm in writing their compliance with the foregoing at the time of submitting their bid or proposal to be eligible for consideration as a "local business" under this section. In no event shall the amount of the preference accorded Broward, Palm Beach or Monroe County firms exceed the amount of preference that such County extends to Miami-Dade County firms competing for its contracts. **Note: An interlocal agreement has been entered into with Broward County.**

7. The Proposer should complete, sign and submit the attached form, **Appendix I**, "Local Business Preference" with the Proposal, in order to be considered for Local Preference.

5.10 RIGHTS OF PROTEST

A recommendation for contract award or rejection of award may be protested by a bidder or proposer in accordance with the procedures contained in Sections 2-8.3 and 2-8.4 of the Code, and as established in A.O. No. 3-21.

As a condition of initiating any protest, the protester shall present to the Clerk of the Board a non-refundable filing fee payable to the Clerk of the Board in accordance with the schedule provided below.

Award Amount	Filing Fee
$ 25,001- $100,000	$ 500
$100,001- $500,000	$1,000
$500,001- $5 million	$3,000
over $5 million	$5,000

Any question, issue, objection or disagreement concerning, generated by, or arising from the published requirements, terms, conditions or processes contained or described in the solicitation document shall be deemed waived by the protester and shall be rejected as a basis for protest unless it was brought by that bidder or proposer to the attention, in writing, of the procurement agent, buyer, contracting officer or other contact person in the County department that issued the solicitation document, at least two (2) working days (not less than forty-eight (48) hours) prior to the hour of bid opening or proposals submission.

A protest hereunder may not challenge the relative weight of the evaluation criteria or the formula specified for assigning points therefore contained in bid, request for proposals or request for qualifications specifications which have been approved by the Commission.

Award Recommendations Over $100,000

Award recommendations for contracts and purchases involving the expenditure of over $100,000 will be in writing, signed by the issuing department to each competing bidder or proposer announcing the proposed award, and a copy shall be deposited with the Clerk of the Board on the same day it is mailed. The bidder or proposer must file a written intent to protest with the Clerk of the Board and shall mail it to all participants in the competitive process and to the County Attorney's Office within three (3) working days of the filing of the Manager's recommendation with the Clerk. Within three (3) working days after the filing of a written intent to protest, the protester shall then file with the Clerk of the Board all pertinent documents, stating with particularity the specific facts and grounds on which the protest is based and shall include supporting evidence, as well as the corresponding filing fee, and shall mail copies to all participants in the competitive process and to the Office of the County Attorney. Other facts, grounds, documentation or evidence not contained in the protester's submission to the Clerk of the Board at the time of filing the protest shall not be permitted in the consideration of the protest, except for such additional evidence as is allowed during the course of the protest proceedings. A hearing examiner shall be appointed to hear the protest and submit a written report and recommendation to the County Manager within twenty (20) working days of the filing of the protest (maximum 25 working days if hearing examiner consents to an extension

request). Failure to timely file the written protest shall constitute a waiver of the right to protest the award recommendation.

SECTION 6
FORM OF LEASE AND CONCESSION AGREEMENTS

Attached are two forms of Lease and Concession Agreement. One is for the Master Concessionaire and one is for the Concessionaire (Direct Lessee).

It is incumbent upon the Proposer to carefully consult the prepared forms that comprise **Section 6**.

APPENDIX A

QUESTIONNAIRE AND MINIMUM QUALIFICATIONS REQUIREMENTS AFFIDAVIT

APPENDIX A
QUESTIONNAIRE AND MINIMUM QUALIFICATIONS REQUIREMENTS AFFIDAVIT
(To be completed by Proposer)

Proposer is a Master Concessionaire_____; a Direct Lessee _____;

Package No. _____

(Proposer shall clearly state on above line the package Number for which the proposer is presenting this Appendix A. Proposer shall submit an Appendix A for each Package separately.)

All information requested in this Questionnaire Form must be furnished and submitted by Proposer. Statements must be complete, accurate, in the form requested, and must be signed before a notary public. Omission, inaccuracy or misstatement may be cause for rejection.

1) Name and address of Proposer exactly as it is to appears in the Proposal:

_____
_____
_____

2) Official contact or representative of Proposer for purpose of this Proposal:

Name _____

Title _____

Address _____

Phone # _____ Fax # _____

Email address_____

3) Proposer, if selected, intends to carry on the business as:
( ) Individual ( ) Partnership ( ) Joint Venture

( ) Corporation ( ) New Entity ( ) Other

( ) If "Other" attach explanation.

( ) If "Corporation", is Proposer a subsidiary? Yes ____ No ____

If yes, Name and Address of parent corporation

_____

4) **If a Partnership**, answer the following:

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APPENDIX A
QUESTIONNAIRE AND MINIMUM QUALIFICATIONS REQUIREMENTS AFFIDAVIT
(To be completed by Proposer)

a. Name, address, and share of each partner or member of Partnership:

Name	Address	Share
_____	_____	_____
_____	_____	_____
_____	_____	_____

b. Date of Organization _____

c. General or Limited Partnership (If applicable) _____

d. Where Recorded _____

e. Registered in Florida _____ (County) If so, when _____ (State) (Date)

f. Attach copy of (1) Partnership Agreement and (2) Certificate evidencing compliance with the Florida Fictitious Name Statute, if applicable.

5) **If a Corporation**, answer the following:

a. When incorporated _____

b. In what state _____

c. If foreign, date of registration with Florida Secretary of State

d. Name, address, experience in the business and amount of stock held by the following officers:

President: _____

Vice President: _____

Secretary: _____

Treasurer: _____

Other: _____

e. Name, address and shares of stock held by each Member of the Board of Directors:

Chairman _____

Member _____

APPENDIX A
QUESTIONNAIRE AND MINIMUM QUALIFICATIONS REQUIREMENTS AFFIDAVIT
(To be completed by Proposer)

Member _____

Member _____

Member _____

Name, address and shares of stock held by other principal Stockholders: (A Principal Stockholder is defined as a stockholder who holds 10% or more of the outstanding stock of the corporation).

Total capitalization $ _____.
Amount of capital stock subscribed $ _____.
Amount paid in $ _____.

f. Attach copy (1) of corporate charter, (2) proof of registration with Florida Secretary of State, and (3) certificate evidencing compliance with the Florida Fictitious Name Statute, if applicable.

6) **If Joint Venture**, complete the following:

a. The Joint Venture Proposer, _____,
Consists of the following entities:

(i) _____, a _____corporation,
(Corporate Name) (State of Incorporation)
authorized to do business in the State of Florida. The officers of the joint venturer are:

President: _____

Vice President: _____

Secretary: _____

Treasurer: _____

(ii) _____, a _____ corporation,
(Corporate Name) (State of Incorporation)
authorized to do business in the State of Florida. The officers of the joint venturer:

President: _____

Vice President: _____

Secretary: _____

APPENDIX A
QUESTIONNAIRE AND MINIMUM QUALIFICATIONS REQUIREMENTS AFFIDAVIT
(To be completed by Proposer)

Treasurer: _____

b. The Managing or the General Partner of the Joint Venture, or other appropriate person legally authorized to bind the Joint Venture is:

_____, who is the _____
(Name) (Title)

_____, of _____
(Name of joint venturer)

The Joint Venture, of whatever composition, must attach a copy of the Joint Venture Agreement.

Each corporate member of the Joint Venture must attach: (1) copy of corporate charter, (2) proof of registration with Florida Secretary of State, and (3) certificate evidencing compliance with the Florida Fictitious Name Statute, if applicable.

7) **If New Entity (including newly formed Joint Ventures)**, complete the following:

a. The New Entity, _____,

Consists of the following entities:

(i) _____, a _____corporation,
(Corporate Name) (State of Incorporation)
authorized to do business in the State of Florida. The officers of the new entity are:

President: _____

Vice President: _____

Secretary: _____

Treasurer: _____

(ii) _____, a _____ corporation,
(Corporate Name) (State of Incorporation)
authorized to do business in the State of Florida. The officers of the new entity:

President: _____

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APPENDIX A
QUESTIONNAIRE AND MINIMUM QUALIFICATIONS REQUIREMENTS AFFIDAVIT
(To be completed by Proposer)

Vice President: _____

Secretary: _____

Treasurer: _____

b. The Managing or the Principal Member of the New Entity, or other appropriate person legally authorized to bind the New Entity is:

_____, who is the _____
(Name) (Title)

_____, of _____
(Name of new entity principal)

The New Entity, of whatever composition, must attach a copy of the newly formed entity's Agreement.

Each corporate member of the New Entity must attach: (1) copy of corporate charter, (2) proof of registration with Florida Secretary of State, and (3) certificate evidencing compliance with the Florida Fictitious Name Statute, if applicable.

8) Please provide the names and addresses of each of Proposer's officers, directors, shareholders, affiliates (as defined below), or other persons expected to make significant contributions to the business of Proposer (collectively referred to as "Principal" or Principals"). Describe accurately and completely there respective relationships with Proposer, including (without limitation) their ownership interests and their anticipated role in the management and operations of Proposer.

9) Please state whether any of the following events have occurred in the last ten (10) years with respect to Proposer or any Principal of Proposer. If any answer is yes, fully explain:

(a) A petition under the federal bankruptcy laws or state insolvency laws was filled by or against, or a receiver, fiscal agent or similar officer was appointed by a court for, the business or property of such person, or any partnership in which he or she was a general partner at or within two years before the time of such filing, or any corporation or business association in which he or she was an executive officer at or within two years before the time of such filing;

(b) Such person was convicted in a criminal proceeding or is a named subject of a pending criminal proceeding (excluding traffic violations or other minor violations):

(c) Such person was a subject of any order, judgment, or decree not subsequently reversed, suspended or vacated by any court of competent jurisdiction,

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APPENDIX A
QUESTIONNAIRE AND MINIMUM QUALIFICATIONS REQUIREMENTS AFFIDAVIT
(To be completed by Proposer)

permanently or temporarily enjoining such person from, engaging in any type of business practice, or otherwise eliminating a type of business practice; and

(d) Such person has been the subject of any criminal or civil proceeding pertaining to concessions operations at any airport, or pertaining to any aspect of the aviation industry; if so, please fully explain.

10) Please state whether the Proposer, any Principal of Proposer, any family, member of any Principal, or any person or entity with which such person has a business relationship, has or had within the last fifteen (15) years (i) directly or indirectly a business relationship with the Miami-Dade County (including Airport), (ii) directly or indirectly receives or received revenues from Miami-Dade County (including Airport) or (iii) directly or indirectly receives or received revenue from the result of conducting business on County property or pursuant to any contract with the County. Please describe any such relationship.

11) Please state whether Proposer, any Principal of Proposer or any of their family members has or had within the last fifteen (15) years, a direct or indirect business relationship with any elected or appointed County official or an affiliate or with any County employee or any affiliate, and fully describe such business relationship.

12) The Proposer understands that the information contained in this Qualifications Form and Exhibits is to be relied upon by the County in its considerations for awarding the Lease and Concession Agreement and such information is expressly warranted by the Proposer to be true and correct. The undersigned Proposer agrees to furnish upon request any additional information, prior to award of the Lease and Concession Agreement, as may be required by the County under the Proposal Documents.

The Proposer understands that the County has the right to verify the information submitted and to seek any additional information relating to the qualifications of the Proposer. The discovery of any misrepresentation, which, in the sole opinion of the County, materially affects the qualifications of the Proposer to perform under the Lease and Concession Agreement, shall be cause for the County to reject the Proposal of the Proposer and, if discovered after the award of the Lease and Concession Agreement, to cancel same without liability by the County to Concessionaire.

In executing this Proposal, the Proposer certifies it understands that Dade County reserves the right to reject any or all Proposers, to waive irregularities, and to re-advertise.

The undersigned hereby vouches for the truth and accuracy of all statements, answers and representations made in this questionnaire, including all supplementary statements hereto) attached. (Individual, co-partner, joint venturer, authorized officer of a corporation).

For purposes of this questionnaire "affiliate" means any person or entity which directly or indirectly or is controlled by, or is under common control with, a person. "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise.

(13) Minimum Qualifications: Proposers shall supply evidence that they meet the minimum qualifications established for this RFP as follows:

1. Proposer's Qualifications:

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APPENDIX A
QUESTIONNAIRE AND MINIMUM QUALIFICATIONS REQUIREMENTS AFFIDAVIT
(To be completed by Proposer)

a. Packages One (1) and Two (2) - Proposers must demonstrate three (3) years experience within the last five (5) years in each of the following capabilities: financing, developing, designing and construction, leasing, managing, operating and maintaining the Locations in an airport, transportation center, retail shopping center or marketplace generating at least an aggregate of $2,000,000 in annual Gross Revenues for such retail locations and experience in successfully managing sub-tenants. In addition to the above stated requirements, Proposers who wish to operate Locations within the package on which they are proposing must demonstrate three (3) years of experience in the last five (5) years in operating locations similar to those locations which they plan to operate for Packages One (1) and Two (2).

b. Packages Three (3) and Four (4) - Proposers must demonstrate three (3) years experience within the last five (5) years in each of the following capabilities: financing, designing and construction, managing, operating, and maintaining retail locations in an airport, transportation center, retail shopping center or marketplace generating at least an aggregate of $300,000 in annual gross sales for such retail locations.

c. Package Five (5) - Proposers must demonstrate three (3) years experience within the last five (5) years in each of the following capabilities: financing, designing and construction, managing, operating, and maintaining food & beverage locations in an airport, transportation center, retail shopping center or marketplace generating at least an aggregate of $500,000 in annual gross sales for such food & beverage locations.

If the Proposer is a Joint Venture, then at least one of the Joint Venture Partners must satisfy all of the foregoing Minimum Qualifications Requirements.

Proposers must be authorized to do business in the State of Florida.

2. Sub-Tenant's Minimum Qualifications:

a. Three (3) years experience within the past five (5) years in the managing or operating and maintaining one or more retail locations in an airport, transportation center, retail shopping center or marketplace generating a minimum of $300,000 in gross sales per year per location.

b. Must be authorized to do business in the State of Florida.

APPENDIX A
QUESTIONNAIRE AND MINIMUM QUALIFICATIONS REQUIREMENTS AFFIDAVIT
(To be completed by Proposer)

PREVIOUS CONTRACT EXPERIENCE

Complete the boxes below for contracts you have held, for provision of services similar to those proposed, that started within the last five years. Contracts cited will serve as references for this RFP.

Contract Name			
Contract Amount		Time Period	
Type of Service			
Service Included (Check all that apply)	□ Financing □ Developing □ Designing □ Construction □ Leasing □ Managing □ Operating □ Maintaining Locations		
Gross Revenue			
Reference Name and Telephone number			
Reason Contract Ended			

Contract Name			
Contract Amount		Time Period	
Type of Service			
Service Included (Check all that apply)	□ Financing □ Developing □ Designing □ Construction □ Leasing □ Managing □ Operating □ Maintaining Locations		
Gross Revenue			
Reference Name and Telephone number			
Reason Contract Ended			

APPENDIX A
QUESTIONNAIRE AND MINIMUM QUALIFICATIONS REQUIREMENTS AFFIDAVIT

(To be completed by Proposer)

Contract Name			
Contract Amount		Time Period	
Type of Service			
Service Included (Check all that apply)	☐ Financing ☐ Developing ☐ Designing ☐ Construction ☐ Leasing ☐ Managing ☐ Operating ☐ Maintaining Locations		
Gross Revenue			
Reference Name and Telephone number			
Reason Contract Ended			

Contract Name			
Contract Amount		Time Period	
Type of Service			
Service Included (Check all that apply)	☐ Financing ☐ Developing ☐ Designing ☐ Construction ☐ Leasing ☐ Managing ☐ Operating ☐ Maintaining Locations		
Gross Revenue			
Reference Name and Telephone number			
Reason Contract Ended			

APPENDIX A
QUESTIONNAIRE AND MINIMUM QUALIFICATIONS REQUIREMENTS AFFIDAVIT

(To be completed by Proposer)

Contract Name			
Contract Amount		Time Period	
Type of Service			
Service Included (Check all that apply)	□ Financing □ Developing □ Designing □ Construction □ Leasing □ Managing □ Operating □ Maintaining		
Gross Revenue	Locations		
Funding Source			
Reference Name and Telephone number			
Reason Contract Ended			

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APPENDIX A
QUESTIONNAIRE AND MINIMUM QUALIFICATIONS REQUIREMENTS AFFIDAVIT
(To be completed by Proposer)

PROPOSER
(If individual, partnership or joint venture):

Name: _____

By: _____
Signature

_____
Print Name

Title: _____

PROPOSER (If Corporation):

Name: _____

By: _____
President

_____
Print Name

Attest: _____
Secretary

_____
Print Name

Witnesses to above signature:

_____
Signature

_____
Print Name

_____
Signature

_____
Print Name

(CORP. SEAL)

Dated _____

Sworn to and subscribed before me
This ____ day of _____, 200_

_____
Notary Public

My commission Expires on:

_____

(NOTARY SEAL)

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APPENDIX B

MINIMUM ANNUAL GUARANTEE PROPOSAL FORM
(MAG PROPOSAL FORM)

MINIMUM ANNUAL GUARANTEE PROPOSAL FORM

Package No. _____

(Proposer shall clearly state on above line the Package Number for which the Proposer is presenting this Appendix B. Proposer shall submit an Appendix B for each package separately.)

Proposer is a Master Concessionaire_____; a Direct Lessee _____;

Print Name of Proposer: _____

Print Name of Authorized Representative: _____

Signature of Authorized Representative of Proposer: _____

Date: _____

The financial component for the Retail Concession Program is based on the proposed Minimum Annual Guarantee ("MAG"). As consideration for the privilege to engage in business at Miami International Airport, Concessionaire shall pay the MAG to the Department, which is inclusive of Location rent.

The MAG shall be in U.S. funds, prorated and payable in twelve equal monthly payments on or before the first day of each month, ("Minimum Monthly Guarantee") in advance, without billing or demand, plus applicable state taxes as may be required by law.

Rent is the set amount of $66.14 per square foot annually for the lease of the Locations in Exhibit A, Locations. Effective upon Beneficial Occupancy or 120 calendar days from the Turnover Date of each Location, Concessionaire shall pay the prorated MAG.

The Minimum Annual Guarantee shall be recalculated at the anniversary of the Effective Date. An appropriate adjustment will be made to reflect the change in the Consumer Price Index ("CPI") for all urban consumers ("CPI-U") in the U.S. Cities average: All items, for the published, preceding twelve-month period.

MAG $_____
In numbers

MAG: $_____
In words

(In case of conflict between words and figures, the words will govern; provided, however, that if the words are obviously incorrect, the County shall have the right to accept the Price Proposal based on the figures. Additionally, the County shall have the right to correct obvious arithmetic errors.)

Proposers cannot qualify, place conditions or additional terms on this Price MAG Proposal. Any Proposers who qualify or place conditions or additional terms with this price proposal may be found non responsive.

FOR PACKAGE ONE (1) ONLY

The Proposer shall provide a further breakdown of the rent portion of the MAG as follows:

1) Unit # C.40.A Location Rent __715_____ Sq. Ft.* x $66.14 = _____

2) Unit # C.42.A Location Rent _____ Sq. Ft.* x $66.14 = _____

3) Unit # C.46.A Location Rent _____ Sq. Ft.* x $66.14 = _____

4) Unit # C.50.A Location Rent _____ Sq. Ft.* x $66.14 = _____

5) Unit # D.21.A Location Rent _____ Sq. Ft.* x $66.14 = _____

6) Unit # B.81.A Location Rent _____ Sq. Ft.* x $66.14 = _____

Proposers – do not include any Support Spaces/Storage as covered under Article 1, Sub-Articles 1.04 and 1.05 of the Lease & Concession Agreement which, if necessary, will be handled separately.

FOR PACKAGE TWO (2) ONLY

The Proposer shall provide a further breakdown of the rent portion of the MAG as follows:

1) Unit # C.24.A Location Rent _____ / Sq. Ft.* x $66.14 = _____

2) Unit # C.32.A Location Rent _____ / Sq. Ft.* x $66.14 = _____

3) Unit # C.41.A Location Rent _____ / Sq. Ft.* x $66.14 = _____

4) Unit # C.44.A Location Rent _____ / Sq. Ft.* x $66.14 = _____

5) Unit # C.55.A Location Rent _____ x $66.14 = _____

6) Unit # C.40.B Location Rent _____ / Sq. Ft.* x $66.14 = _____

Sq. Ft.*

Proposers – do not include any Support Spaces/Storage as covered under Article 1, Sub-Articles 1.04 and 1.05 of the Lease & Concession Agreement which, if necessary, will be handled separately.

FOR PACKAGE THREE (3) ONLY

The Proposer shall provide a further breakdown of the rent portion of the MAG as follows:

1) Unit # C.22.A Location Rent _____ / Sq. Ft.* x $66.14 = _____

Proposers – do not include any Support Spaces/Storage as covered under Article 1, Sub-Articles 1.04and 1.05 of the Lease & Concession Agreement which, if necessary, will be handled separately.

FOR PACKAGE FOUR (4) ONLY

1. Unit # C.23.A Location Rent _____ / Sq. Ft.* x $66.14 = _____

Proposers – do not include any Support Spaces/Storage as covered under Article 1, Sub-Articles 1.04 and 1.05 of the Lease & Concession Agreement which, if necessary, will be handled separately.

FOR PACKAGE FIVE (5) ONLY

1. Unit # H3-FB02 Location Rent _____ / Sq. Ft.* x $66.14 = _____

Proposers – do not include any Support Spaces/Storage as covered under Article 1, Sub-Articles 1.04 and 1.05 of the Lease & Concession Agreement which, if necessary, will be handled separately.

PROPOSER
(If individual, partnership or joint venture):

Name: _____

By: _____
Signature

_____
Print Name

Title: _____

PROPOSER (If Corporation):

Name: _____

By: _____
President

_____
Print Name

Attest: _____
Secretary

_____
Print Name

Witnesses to above signature:

_____
Signature

_____
Print Name

_____
Signature

_____
Print Name

(CORP. SEAL)

Dated _____

Sworn to and subscribed before me this ____ day of _____, 200_

_____
Notary Public

My commission Expires on:

_____

(NOTARY SEAL)

APPENDIX C-1

AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN/PROVISION

APPENDIX C
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN/PROVISION

I. DEFINITION:

Airport Concession Disadvantaged Business Enterprise (ACDBE): *means a concession that is a for-profit small business concern –*

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Small business concern: *means a for- profit business that does not exceed the size standards of 49 CFR Part 23 Section 23.33 for airport concession.*

Socially and economically disadvantaged individual: *means any individual who is a citizen (or lawfully admitted permanent resident) of the United States who is –*

(1) Any individual determined by Miami-Dade County to be a socially and economically disadvantaged individual on a case-by-case basis.
(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
(iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, The U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
(v) "Subcontinent Asian Americas," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
(vi) Women;
(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

APPENDIX C
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN/PROVISION

II. ACDBE PARTICIPATION PLAN

The ACDBE participation plan required to be submitted with the proposal by each Bidder/Proposer must contain at least the following:

1) ACDBE Utilization Form (ACDBE APPENDIX 1); Schedule of Participation (ACDBE APPENDIX 2) and Letter of Intent (ACDBE APPENDIX 3) by the Bidder/Proposer of the percentage of participation by an ACDBE Firm the Bidder/Proposer intends to have in this Agreement and how the Bidder/Proposer intends to achieve such stated participation.

2) Below is the documentation which will be required as part of the Bidder/Proposer's ACDBE Participation Plan for any one or combination of the following:

   (a) If Bidder/Proposer intends to meet the ACDBE goal as an ACDBE itself the Bidder/Proposer shall submit:

   1) ACDBE Utilization Form (ACDBE APPENDIX 1);
   2) A Schedule of Participation (ACDBE APPENDIX 2);
   3) Letter of Intent (ACDBE APPENDIX 3);
   4) ACDBE Certification or applied for ACDBE Certification to the Miami-Dade County, Department of Small Business Development (SBD) (Phone: (305) 375-3111) or the Florida Unified Certification Program (FLUCP) at (850) 414-4747 or their website address http://www.bipincwebapps.com/biznetflorida/;
   5) Explanation of participation by the ACDBE Firm in management and day-to-day operation; and,
   6) Financial participation by the ACDBE Firm Proposer in gross revenues from this agreement.

   (b) If Bidder/Proposer intends to meet the ACDBE goal as a partnership or joint venture, the Bidder/Proposer must submit:

   1) ACDBE Utilization Form (ACDBE APPENDIX 1);
   2) A Schedule of Participation (ACDBE APPENDIX 2);
   3) Letter of Intent (ACDBE APPENDIX 3);
   4) Partnership or joint venture agreement;
   5) An explanation of participation by the ACDBE participant in the management and day-to-day operations;
   6) Financial participation by the ACDBE Firm to meet the ACDBE participation in gross revenues;
   7) ACDBE Certification or applied for ACDBE Certification to the Miami-Dade County, Department of Small Business Development (SBD) Phone: (305) 375-3111 or the Florida Unified Certification Program (FLUCP) at (850) 414-4747 or their website address http://www.bipincwebapps.com/biznetflorida/; of the ACDBE joint venturer or partner; and,
   8) Experience of ACDBE joint venturer or partner must be listed on the experience sheet. (ACDBE APPENDIX 4)

   (c) If the Bidder/Proposer intends to meet the ACDBE goal through subcontracting, the Bidder/Proposer must submit:

   1) ACDBE Utilization Form (ACDBE APPENDIX 1);
   2) A Schedule of Participation (ACDBE APPENDIX 2);
   3) Letter of Intent (ACDBE APPENDIX 3);

4) A listing of those activities which the Proposer intends to subcontract and the estimated percentage of gross revenues such subcontracted services will represent of the gross revenues from all activities under the agreement that will be subcontracted;
5) ACDBE Certification or applied for ACDBE Certification to the Miami-Dade County Department of Small Business Development (SBD) or the Florida Unified Certification Program (FLUCP) at (850) 414-4747 or their website address http://www.bipincwebapps.com/biznetflorida/; of such ACDBE firms; and,
6) Experience of ACDBE subcontractors must be listed on the experience sheet. (ACDBE APPENDIX 4)

MDAD may request any other information as may be required to determine the listed ACDBE Firm's Qualifications. Agreements between a Bidder/Proposer and an ACDBE Firm in which the ACDBE firm promises not to provide quotations to other bidder/proposers is prohibited. The listing of an ACDBE Firm by a Bidder/Proposer as part of its Airport Concession Disadvantaged Business Enterprise Participation Plan shall constitute a representation by the Bidder/Proposer that such ACDBE Firm is Qualified and available, and a commitment by Bidder/Proposer that if it is awarded this agreement, it will utilize such ACDBE firms listed for the portion of the contract and at the percentage of gross revenues set forth in its submission, subject to the terms of these Provisions.

III. GOOD FAITH EFFORTS:

The Bidder/Proposer shall make good faith efforts to achieve the established ACDBE participation goal. In the event that the Bidder/Proposer's ACDBE Participation Plan does not meet the established ACDBE participation goal, the Bidder/Proposer must submit with his proposal documentation to demonstrate all good faith efforts extended by the Bidder/Proposer in attempting to meet the stated ACDBE participation goal. The good faith efforts documentation is required to be submitted with the proposal and shall include, but not be limited to:

a. A detailed statement of the efforts made to contact and negotiate with ACDBE Firms, including (i) the names, addresses and telephone numbers of ACDBE Firms who were contacted, (ii) a description of the information provided to ACDBE Firms regarding the proposal or portions of the work to be performed, and (iii) a detailed statement of the reasons why additional prospective agreements with ACDBE Firms, if needed to meet the stated goal, were not reached.

b. A detailed statement of the efforts made to select portions of the work proposed to be performed by ACDBE Firms in order to increase the likelihood of achieving the stated goal.

c. For each ACDBE Firm contacted but which the Bidder/Proposer considered to be not qualified, a detailed statement of the reasons for the Bidder/Proposer's conclusions.

d. Attendance at pre-proposal meetings, if any, scheduled by the Bidder/Proposer to inform ACDBEs of participation opportunities under a given solicitation.

e. Advertisement in general circulation media, trade association publications, and minority focus media for at least twenty (20) days before bidder/proposals are due. If the interval between MDAD advertising and proposal due date is so short that (20) days are not available,

f. Efforts made to assist the ACDBE firms contacted that needed assistance in obtaining bonding or insurance required by the Bidder/Proposer or MDAD.

g. Written notification to ACDBEs that their interest in the contract is solicited.

Failure of the Bidder/Proposer to submit the evidence of ACDBE Participation and the good faith efforts if necessary, as set forth above, may render the proposal non-responsible.

IV. INVESTIGATION AND RECOMMENDATION BY ACDBELO

In the event that the Bidder/Proposer has not met the stated ACDBE participation goal established for this agreement, the Airport Concession Disadvantaged Business Enterprise Liaison Officer (ACDBELO), the Associate Aviation Director, MDAD, may require that the Bidder/Proposer meet with the ACDBELO at Miami-Dade County Aviation Department, Minority Affairs Division, Building 5A, 3rd Floor, Miami, Florida 33102-5504, or such other place as the ACDBELO may designate. The purpose of this meeting shall be for the ACDBELO to determine, if necessary, whether the effort of the Bidder/Proposer to meet the stated goals is sufficient. At this meeting, the Bidder/Proposer shall have an opportunity to present information pertinent to its compliance with the applicable requirements.

The ACDBELO may require the Bidder/Proposer to produce such additional information, as the ACDBELO deems appropriate.

No later than (15) days after initial meeting with the Bidder/Proposer, the ACDBELO shall make a written recommendation to the Deputy Aviation Director or his designee, which shall include a statement of the facts and reasons upon which the recommendation is based.

Administrative Reconsideration

a) Within 5 days of being informed by MDAD that its Bid/Proposal is not in compliance and not responsible, because it has not documented sufficient good faith efforts, a Bidder/Proposer may request administrative reconsideration. Bidder/Proposer should make this request in writing to the Contracting Officer: Aviation Director or his designee, Miami-Dade Aviation Department P.O. Box 025504, Miami, Florida 33102-5504, telephone number (305) 876-7077. The reconsideration official will not have played any role in the original determination that the Bidder/Proposer did not document sufficient good faith efforts.

b) As part of this reconsideration, the Bidder/Proposer will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Proposer will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.

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c) MDAD will send the Bidder/Proposer a written decision on reconsideration, explaining the basis for finding that Bidder/Proposer did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

V. SUBSTITUTION OF ACDBE FIRMS FOR THOSE LISTED ON THE AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN/PROVISION PRIOR TO CONTRACT AWARD

A Bidder/Proposer may not change information required by these Provisions from that provided in its Disadvantaged Business Enterprise Participation Plan unless authorized to do so by the Director, or his designee, in writing.

Such written authorization may be given upon a receipt of written request from the Proposer outlining the reason the request for change is being submitted specific details of the requested change and impact of the requested change on the ACDBE Participation as originally submitted. Failure on the part of the Bidder/Proposer to comply with all of the requirement of these Provisions shall be grounds for the recommendation of the Director to the Board of County Commissioners that the Contract not be awarded to the Bidder/Proposer.

VI. REQUIREMENTS AND PROCEDURES SUBSEQUENT TO CONTRACT AWARD

A. Airport Concession Disadvantaged Business Enterprise Participation Plan. The Proposer shall contract with those ACDBE firms listed on the Bidder/Proposer's Airport Concession Disadvantaged Business Enterprise Participation Plan, and shall thereafter neither terminate such ACDBE Firms nor reduce the scope of the work to be performed by, or decrease the percentage of participation by the ACDBE Firm(s) there under without the prior written authorization of the Director.

B. Substitution of ACDBE Firms

1. Excuse from entering into agreements with ACDBE Firms. If prior to execution of an agreement required by these Provisions, the Bidder/Proposer submits a written request to the Director or his designee and demonstrates to the satisfaction of the Director that, as a result of a change in circumstances beyond its control of which it was not aware and could not reasonably have been aware until subsequent to the date of award of the Contract, an ACDBE Firm which is to enter into such agreement has become not qualified, or that the ACDBE Firm has unreasonable refused to execute the agreement, the successful Bidder/Proposer shall be excused from executing such agreement.

2. Rightful Termination of agreements entered into with ACDBE firms. If after execution of an agreement required by these Provisions, the Bidder/Proposer submits a written request to the Director and demonstrates to the satisfaction of the Director that, as a result of a change in circumstance beyond its control of which it was not aware and could not reasonably have been aware until subsequent to the date of execution of such agreement, an ACDBE Firm

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which entered into such agreement has become not qualified or has committed and failed to remedy a material breach of the agreement, the Bidder/Proposer shall be entitled to exercise such rights as may be available to it to terminate the agreement.

3. Determination of Excuse of Rightful Termination. If the Bidder/Proposer at any time submits a written request under these Provisions to the Director, as soon as practicable, shall determine whether the Bidder/Proposer has made the requisite demonstration, and shall not determine that such a demonstration has not been made without first providing the Bidder/Proposer an opportunity to present pertinent information and arguments.

4. Alternative ACDBE Firm Participation Agreements. If the Bidder/Proposer is excused from entering or rightfully terminates an agreement with an ACDBE firm listed as part of the Bidder/Proposer's ACDBE Participation Plan, the Bidder/Proposer shall make every reasonable effort to enter into an alternative agreement for at least ACDBE Participation percentage as originally submitted as part of their proposal for this contract with another certified ACDBE firm.

The Bidder/Proposer shall be deemed to have satisfied the requirements of this section if:

a. It shall enter each such alternative agreement(s) for at least the ACDBE participation as originally proposed.

b. It demonstrates to the satisfaction of the Director that it has made every reasonable efforts to negotiate with an ACDBE Firm in an attempt to enter into an agreement, but that it was unable to enter into such agreement because the ACDBE Firms were (i) not qualified; (ii) Unavailable; or (iii) although Qualified and not Unavailable, was unwilling or unable to reach an agreement.

c. If any situation covered by this section arises; the ACDBELO shall promptly meet with the Bidder/Proposer and provide him an opportunity to demonstrate compliance with these Provisions.

VII. **Continued compliance** - MDAD shall monitor the compliance of the Bidder/Proposer with the requirements of this Plan during the term of the contract. MDAD shall have access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance with these. Provisions including, but not limited to, manpower tables, records for expenditures, observations at the job site, and contracts between the Bidder/Proposer and his subcontractors, suppliers, etc., entered into during the life of the Contract.

VIII. **Sanctions for violations** - If at any time MDAD has reason to believe that the Bidder/Proposer is in violation of is obligation under these Provisions, or has otherwise failed to comply with these Provisions, MDAD may, in addition to pursuing any other available legal remedy, commence proceeding to impose sanctions which may include, but are not limited to, one or more of the following:

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APPENDIX C
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN/PROVISION

1. The suspension of any payment or part thereof due the ACDBE Subtenant, Joint Venture Partner or Subcontractor from the Bidder/Proposer until such time as the issues concerning the Proposers Compliance are resolved.

2. The termination or cancellation of the Contract in whole or in part, unless the Bidder/Proposer demonstrates within a reasonable time its compliance with the terms of these Provisions.

3. The denial to the Bidder/Proposer of the right to participate in any further contracts awarded by MDAD for a period of not longer than three years. No such sanction shall be imposed by MDAD upon the Bidder/Proposer except pursuant to a hearing conducted by the ACDBELO and/or Director.

ACDBE Reporting Requirements – The Bidder/Proposer shall submit a Notarized MDAD Concession Monthly Utilization Report (**APPENDIX 6**) as required for Contracts in which an ACDBE Goal has been set. In addition, each Joint Venture partner must submit a Notarized Monthly Report of ACDBE Joint Venture Activity (**APPENDIX 7**) providing documentation on the achievement of the ACDBE Joint Venture partner to the Minority Affairs Division.

DEMONSTRATION OF GOOD FAITH EFFORTS
ACDBE UTILIZATION FORM

[Forms ACDBE Utilization Form, Schedule of Participation and Letter of Intent are provided as part of the solicitation documents.]

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space).

_____ The bidder/offeror is committed to a minimum of _____% ACDBE utilization in this Contract.

_____ The bidder/offeror (if unable to meet the ACDBE goal of _____%) is committed to a minimum of _____% ACDBE utilization on this contract and submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No. _____

By: _____ Title: _____
(Signature)

_____ Date: _____
(Print Name)

SCHEDULE OF PARTICIPATION BY ACDBE FIRMS

Listed below is the information pertaining to "certified" ACDBE firms who will be participating in this contract.

NAME OF ACDBE FIRMS	DESCRIPTION OF SERVICES	% OF BID/PROPOSAL

Form to be completed and signed by the Bidder/Proposer. I certify that the representation contained in this Schedule of Participation are to the best of my knowledge true and accurate.

Signature of Proposer Date

Print Name Title Company Name

LETTER OF INTENT
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

To:_____

Project:_____

Contract Number:_____ **Total % of Bidder/Proposal:**_____

The undersigned holds ACDBD Certificate No._____ **expiring on,**_____ **20**_____.

The undersigned intends to perform the following work in connection with the above Bid/ Proposal (Describe):_____

Description of Services	**% of Bid/Proposal**

Total%_____

Signature of ACDBE_____ **Date**_____

Print Name_____ **Title**_____

ACDBE Firm_____

AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) EXPERIENCE SHEET

ACDBE NAME _____

ADDRESS _____

_____

_____

NAME OF CLIENT COMPANY NAME AND ADDRESS	DESCRIPTION OF SERVICES PROVIDED TO CLIENT	GROSS REVENUES	CALENDAR YEAR
(A)			
(B)			
(C)			

NOTES:
USE A SEPARATE SHEET FOR EACH DBE COMPANY.
ADDITIONAL PAGES MAY BE ATTACHED AS NECESSARY

CERTIFICATE OF UNAVAILABILITY

I, _____, _____
Title

of _____ certify that on _____
Date

I contacted the _____ to obtain a Bid/Proposal.
Airport Concession Disadvantaged Business Enterprise

Description of Services:

_____

_____

_____

_____

_____
Signature

_____
Print Name

_____
Title

I, _____, was offered the above opportunity to Bid/Propose.
ACDBE NAME

I was unavailable to provide the services at the above specified time due to:

_____

_____

_____

_____

_____ _____
Signature ACDBD Certificate No.

_____ _____
Print Name Expires

_____
Title

CONCESSION MONTHLY UTILIZATION REPORT

Reporting Period: Name of Prime Concessionaire: _____ YTD ACDBE Goal: Required_____

From: _____ To:_____ Lease Number: _____ Actual _____

Name and Address	Date of Award	Terms of Agreement	Agreement Amount	Modification Amount
		Starting: _____ Expiration: _____ Options: _____		

Amount of Revenues this Period $ _____ ACDBE Revenues for this Period $ _____

Operational Expenses this Period $ _____ ACDBE Operational Expenses this Period $ _____

Total Revenues to Date $ _____ Total ACDBE Revenues to Date $ _____

Total Operational Expenses to Date $_____ Total ACDBE Operational Expenses to Date $ _____

AIRPOR T CONCESSION DISADVANTAGED BUSINESS ENTERPRISES (ACDBE) OPPORTUNITIES

Name of ACDBE Firm	ACDBE Goal	Revenue This Period	Revenues to Date	Operational Expenses This Period	Operational Expenses to Date	Concession Opening Date	Actual Opening Date

I attest that the above information is accurate and complete.

_____ _____ _____ _____ (___)_____

Authorized Signature Print Name Title Date Telephone

Sworn before me: This_____ day of _____ 20___

Notary Public: _____

Additional page (s) may be used if needed.

Monthly Report Of ACDBE Joint Venture Activity

Joint Venture Partner: _____

Reporting Month: _____

Function	Date Performed	Location	# of Hours Per Employee	# of Hours Extended	Attach Support Documentation	JV Partner Signature
		Total				

I attest that the above information is accurate and complete.

_____ _____

For Joint Venture Partner (ACDBE), Please Print and Sign — Date

_____ _____

For Joint Venture (Prime), Please Print and Sign — Date

Sworn before me: This _____ day of _____ 20 _____

Notary Public: _____

Additional page (s) may be used if needed.

Revised 11/22/06

APPENDIX C-2

VOLUNTARY AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

APPENDIX C

VOLUNTARY AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

I. DEFINITION:

Airport Concession Disadvantaged Business Enterprise (ACDBE): *means a concession that is a for-profit small business concern –*

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Small business concern: *means a for- profit business that does not exceed the size standards of 49 CFR Part 23 Section 23.33 for airport concession.*

Socially and economically disadvantaged individual: *means any individual who is a citizen (or lawfully admitted permanent resident) of the United States who is –*

(1) Any individual determined by Miami-Dade County to be a socially and economically disadvantaged individual on a case-by-case basis.
(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
(iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, The U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
(v) "Subcontinent Asian Americas," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
(vi) Women;
(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration, at such time as the Small Business Administration designation becomes effective.
Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

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APPENDIX C

VOLUNTARY AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

II. ACDBE PARTICIPATION

ACDBE participation to be submitted with the proposal by each Bidder/Proposer must contain at least the following:

Signed Schedule of Participation (ACDBE APPENDIX 2) and Signed Letter of Intent (ACDBE APPENDIX 3) by the Bidder/Proposer of the percentage of participation by an ACDBE Firm the Bidder/Proposer intends to have in this Agreement and how the Bidder/Proposer intends to achieve such stated participation.

Below is the documentation for ACDBE Participation for any one or combination of the following:

(a) If Bidder/Proposer intends to meet the ACDBE Participation as an ACDBE itself the Bidder/Proposer shall submit: A Schedule of Participation (ACDBE APPENDIX 2); Letter of Intent (ACDBE APPENDIX 3); ACDBE Certification or applied for ACDBE Certification to the Miami-Dade County, Department of Small Business Development (SBD) (Phone: (305) 375-3111 or the Florida Uniform Certification Program (FLUCP) at (850) 414-4747 or their web address **http. /www.bipincwebapps.com/biznetflorida/.** Explanation of participation by the ACDBE firm in management and day-to-day operation; and Financial participation by the ACDBE Firm Proposer in gross revenues from this agreement.

(b) If Bidder/Proposer intends to meet the ACDBE participation as a partnership or joint venture, the Bidder/Proposer must submit: A Schedule of Participation (ACDBE APPENDIX 2); Letter of Intent (ACDBE APPENDIX 3); Partnership or joint venture agreement; An explanation of participation by the ACDBE participation in the management and day-to-day operations; Financial participation by the ACDBE Firm to meet the ACDBE participation in gross revenues; ACDBE Certification or applied for ACDBE Certification to the Miami-Dade County, Department of Small Business Development (SBD) (Phone: (305) 375-3111 or the Florida Uniform Certification Program (FLUCP) at (850) 414-4747 or their web address http.//www.bipincwebapps.com/biznetflorida/; of the ACDBE Joint Venturer or partner; and Experience of ACDBE joint venturer or partner must be listed on the experience sheet. (ACDBE APPENDIX 4).

(c) If the Bidder/Proposer intends to meet the ACDBE Participation through subcontracting, the Bidder/Proposer must submit: A Schedule of Participation (ACDBE APPENDIX 2); Letter of Intent (ACDBE APPENDIX 3); A listing of those activities which the Proposer intends to subcontract and the estimated percentage of gross revenues such subcontracted services will represent of the gross revenues from all activities under the agreement that will be subcontracted; ACDBE Certification or applied for ACDBE Certification to the Miami-Dade County, Department of Small Business Development (SBD) (Phone: (305) 375-3111 or the Florida Uniform Certification Program (FLUCP) at (850) 414-4747 or their web address http.//www.bipincwebapps.com/biznetflorida/; and Experience of ACDBE subcontractors must be listed on the experience sheet. (ACDBE APPENDIX 4)

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MDAD may request any other information as may be required to determine the listed ACDBE Firm's Qualifications. Agreements between a Bidder/Proposer and an ACDBE Firm in which the ACDBE firm promises not to provide quotations to other bidder/proposers is prohibited. The listing of an ACDBE Firm by a Bidder/Proposer as part of its Airport Concession Disadvantaged Business Enterprise Participation Plan shall constitute a representation by the Bidder/Proposer that such ACDBE Firm is

Qualified and not Unavailable, and a commitment by Bidder/Proposer that if it is awarded this agreement, it will utilize such ACDBE firms listed for the portion of the contract and at the percentage of gross revenues set forth in its submission, subject to the terms of these Provisions.

III. SUBSTITUTION OF ACDBE FIRMS FOR THOSE LISTED ON THE AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION DOCUMENTS PRIOR TO CONTRACT AWARD

A Bidder/Proposer may not change information required by these Provisions from that provided in its Disadvantaged Business Enterprise Participation unless authorized to do so by the Director, or his designee, in writing. Such written authorization may be given upon a receipt of written request from the Proposer outlining the reason the request for change is being submitted specific details of the requested change and impact of the requested change on the ACDBE Participation as originally submitted. Failure on the part of the Bidder/Proposer to comply with all of the requirement of these Provisions shall be grounds for the recommendation of the Director to the Board of County Commissioners that the Contract not be awarded to the Bidder/Proposer.

IV. REQUIREMENTS AND PROCEDURES SUBSEQUENT TO CONTRACT AWARD

A. Airport Concession Disadvantaged Business Enterprise Participation: The Proposer shall contract with those ACDBE firms listed on the Bidder/Proposer's Airport Concession Disadvantaged Business Enterprise Participation Documents, and shall thereafter neither terminate such ACDBE Firms nor reduce the scope of the work to be performed by, or decrease the percentage of participation by the ACDBE Firm(s) there under without the prior written authorization of the Director.

B. Substitution of ACDBE Firms:

1. Excuse from entering in agreements with ACDBE Firms. If prior to execution of an agreement required by these Provisions, the Bidder/Proposer submits a written request to the Director and demonstrates to the satisfaction of the Director that, as a result of a change in circumstances beyond its control of which it was not aware and could not reasonably have been aware until subsequent to the date of award of the Contract, an ACDBE Firm which is to enter into such agreement has become not qualified, or that the ACDBE Firm has unreasonable refused to execute the agreement, the successful Bidder/Proposer shall be excused from executing such agreement.

2. Rightful Termination of agreements entered into with ACDBE firms. If after execution of an agreement required by these Provisions, the Bidder/Proposer submits a written request to the Director and demonstrates to the satisfaction of the Director that, as a result of a change in circumstance beyond its control of which it was not aware and could not reasonably have been aware until subsequent to the date of execution of such agreement, an ACDBE Firm which entered into such agreement has become not qualified or has committed and failed to remedy a material breach of the agreement, the Bidder/Proposer shall be entitled to exercise such rights as may be available to it to terminate the agreement.

3. Determination of Excuse of Rightful Termination. If the Bidder/Proposer at any time submits a written request under these Provisions to the Director, as soon as practicable, shall determine whether the Bidder/Proposer has made the requisite demonstration, and shall not determine that such a demonstration has not been made without first providing the Bidder/Proposer an opportunity to present pertinent information and arguments.

4. Alternative ACDBE Firm Participation Agreements. If the Bidder/Proposer is excused from entering or rightfully terminates an agreement with an ACDBE firm listed as part of the Bidder/Proposer's ACDBE Participation, the Bidder/Proposer shall make every reasonable effort to enter into an alternative agreement for at least ACDBE Participation percentage as originally submitted as part of their proposal for this contract with another certified ACDBE firm. The Bidder/Proposer shall be deemed to have satisfied the requirements of this section if:

   a. It shall enter each such alternative agreement(s) for at least the ACDBE participation as originally proposed.

   b. It demonstrates to the satisfaction of the Director that it has made every reasonable efforts to negotiate with an ACDBE Firm in an attempt to enter into an agreement, but that it was unable to enter into such agreement because the ACDBE Firms were (i) not qualified; (ii) Unavailable; or (iii) although Qualified and not Unavailable, was unwilling or unable to reach an agreement.

   c. Any situation covered by this section arises; the ACDBELO shall promptly meet with the Bidder/Proposer and provide him an opportunity to demonstrate compliance with these Provisions.

V. **Continued Compliance** - MDAD shall monitor the compliance of the Bidder/Proposer with the requirements during the term of the contract. MDAD shall have access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance with these. Provisions including, but not limited to, manpower tables, records for expenditures, observations at the job site, and contracts between the Bidder/Proposer and his subcontractors, suppliers, etc., entered into during the life of the Contract.

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APPENDIX C

VOLUNTARY AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

VI. **Sanctions for Violations** - If at any time MDAD has reason to believe that the Bidder/Proposer is in violation of is obligation under these Provisions, or has otherwise failed to comply with these Provisions, MDAD may, in addition to pursuing any other available legal remedy, commence proceeding to impose sanctions which may include, but are not limited to, one or more of the following:

1. The suspension of any payment or part thereof due the ACDBE Subtenant, Joint Venture Partner or Subcontractor from the Bidder/Proposer until such time as the issues concerning the Proposers Compliance are resolved.

2. The termination or cancellation of the Contract in whole or in part, unless the Bidder/Proposer demonstrates within a reasonable time its compliance with the terms of these Provisions.

3. The denial to the Bidder/Proposer of the right to participate in any further contracts awarded by MDAD for a period of not longer than three years. No such sanction shall be imposed by MDAD upon the Bidder/Proposer except pursuant to a hearing conducted by the ACDBELO and/or Director.

ACDBE Reporting Requirements – The Bidder/Proposer shall submit a Notarized Miami-Dade Aviation Department Concession Monthly Utilization Report (**Appendix 6**) for Contracts with ACDBE Participation. In addition, each Joint Venture partner must submit a Notarized Monthly Report of ACDBE Joint Venture Activity (**Appendix 7**) providing documentation on the achievement of the ACDBE Joint Venture partner to the Minority Affairs Division.

SCHEDULE OF PARTICIPATION BY ACDBE FIRMS

Listed below is the information pertaining to "certified" ACDBE firms who will be participating in this contract.

NAME OF ACDBE FIRMS	DESCRIPTION OF SERVICES	% OF BID/PROPOSAL

Form to be completed and signed by the Bidder/Proposer. I certify that the representation contained in this Schedule of Participation are to the best of my knowledge true and accurate.

Signature of Proposer **Date**

Print Name **Title** **Company Name**

LETTER OF INTENT
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

To:_____

Project:_____

Contract Number:_____ **Total % of Bidder/Proposal:**_____

The undersigned holds ACDBD Certificate No._____ **expiring on,**_____ **20**_____.

The undersigned intends to perform the following work in connection with the above Bid/ Proposal (Describe):_____

Description of Services	**% of Bid/Proposal**

Total%_____

Signature of ACDBE_____ **Date**_____

Print Name_____ **Title**_____

ACDBE Firm_____

AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) EXPERIENCE SHEET

ACDBE NAME _____

ADDRESS _____

_____

_____

	NAME OF CLIENT COMPANY NAME AND ADDRESS	DESCRIPTION OF SERVICES PROVIDED TO CLIENT	GROSS REVENUES	CALENDAR YEAR
(A)				
(B)				
(C)				

NOTES:
USE A SEPARATE SHEET FOR EACH DBE COMPANY.
ADDITIONAL PAGES MAY BE ATTACHED AS NECESSARY

CONCESSION MONTHLY UTILIZATION REPORT

Reporting Period: Name of Prime Concessionaire: _____ YTD ACDBE Goal: Required_____ Actual _____

From: _____ To:_____ Lease Number: _____

Name and Address	Date of Award	Terms of Agreement	Agreement Amount	Modification Amount
		Starting: _____ Expiration: _____ Options: _____		

Amount of Revenues this Period $ _____ ACDBE Revenues for this Period $ _____

Operational Expenses this Period $ _____ ACDBE Operational Expenses this Period $ _____

Total Revenues to Date $ _____ Total ACDBE Revenues to Date $ _____

Total Operational Expenses to Date $_____ Total ACDBE Operational Expenses to Date $ _____

AIRPOR T CONCESSION DISADVANTAGED BUSINESS ENTERPRISES (ACDBE) OPPORTUNITIES

Name of ACDBE Firm	ACDBE Goal	Revenue This Period	Revenues to Date	Operational Expenses This Period	Operational Expenses to Date	Concession Opening Date	Actual Opening Date

I attest that the above information is accurate and complete.

_____ _____ _____ _____ (___)_____

Authorized Signature Print Name Title Date Telephone

Sworn before me: This_____ day of _____ 20___

Notary Public: _____

Additional page (s) may be used if needed.

Revised 11/22/06

Monthly Report Of ACDBE Joint Venture Activity

Joint Venture Partner: _____

Reporting Month: _____

Function	Date Performed	Location	# of Hours Per Employee	# of Hours Extended	Attach Support Documentation	JV Partner Signature
		Total				

I attest that the above information is accurate and complete.

_____ _____

For Joint Venture Partner (ACDBE), Please Print and Sign — Date

_____ _____

For Joint Venture (Prime), Please Print and Sign — Date

Sworn before me: This _____ day of _____ 20 _____

Notary Public: _____

Additional page (s) may be used if needed.

APPENDIX D

ACKNOWLEDGEMENT OF ADDENDA

APPENDIX D

ACKNOWLEDGEMENT OF ADDENDA

RFP TITLE: Retail Concessions Program 2008

RFP NO. MDAD-04-07

Directions: Complete Part I or Part II, Whichever Applies

Part I: Listed below are the dates of issue for each addendum received in connection with this RFP:

Addendum # 1 Date _____, 200____

Addendum # 2 Date _____, 200____

Addendum # 3 Date _____, 200____

Addendum # 4 Date _____, 200____

Addendum # 5 Date _____, 200____

Addendum # 6 Date _____, 200____

Addendum # 7 Date _____, 200____

Addendum # 8 Date _____, 200____

Addendum # 9 Date _____, 200____

Part II _____ **No Addendum was received in connection with this RFP**

_____ **Date**

Proposer (Name) _____

Proposer (Signature) _____

APPENDIX E

PROPOSAL BOND GUARANTY

APPENDIX E

REQUEST FOR PROPOSAL

Retail Concessions Program

PROPOSAL BOND GUARANTY

State of _____, **County of** _____

We, _____ **as Principal**

and _____ **as Surety,** are held and firmly bound unto Miami-Dade County, Florida hereinafter called the County, in the **Penal sum of** _____ **Dollars** ($_____) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. The Principal has submitted the attached Proposal, dated _____,20__, for **a Retail Concessions Program, RFP No. MDAD– 04– 07.** The Principal shall at time of Proposal opening furnish all documents and information required by the RFP Documents, and shall within the time stipulated in the Instructions to Proposers execute and deliver to the County, the Contract, the Performance Bond, Payment Bond and satisfactory evidence of all required Insurance. The Principal shall give a Performance Bond and a Payment Bond with good and sufficient surety, as required by the RFP Documents, for the faithful performance and proper fulfillment of such Contract and for the prompt payment of all persons furnishing labor or materials in connection therewith. Having met these obligations shall render this Bond void and of no effect; or in the event of withdrawal of said Proposal within the period specified, or in the event of the failure to comply with the RFP Documents, or in the event of failure to enter into such Contract and give such Bonds and evidence of insurance within the time specified, if the Principal shall pay the County the difference between the amounts specified in said Proposal and the amount for which the County may procure the required services and supplies, provided the latter amount be in excess of the former, then the above obligations shall be void and of no effect; otherwise, to remain in full force and virtue.

IN WITNESS WHEREOF, the above bound parties have caused this Proposal Bond to be executed by their appropriate officials as of the_____ day of _____, 200__.

WITNESSES

_____

_____

PRINCIPAL (If Corporation)

_____
(Corporate Name)

_____
President

Print Name: _____

Attest: _____
Secretary

(CORPORATE SEAL)

PRINCIPAL (If Partnership or Corporate Joint Venture)

(A) PARTNERSHIP OR CORPORATE JOINT VENTURER:

_____
Name of Joint Venture

By: _____
President

Print Name: _____

Attest: _____
Secretary

(CORPORATE SEAL

(A) PARTNERSHIP OR CORPORATE JOINT VENTURER:

_____
Name of Joint Venture

By: _____
President

Print Name _____

Attest: _____
Secretary

(CORPORATE SEAL)

COUNTERSIGNED BY RESIDENT FLORIDA AGENT OF SURETY:

_____
(Copy of Agent's current Identification Card as issued by State of Florida Insurance Commissioner must be attached)

SURETY:

_____

By: _____
Attorney-in-Fact

(CORPORATE SEAL)

(Power of Attorney must be attached)

APPENDIX F

AFFIDAVIT OF MIAMI-DADE COUNTY LOBBYIST REGISTRATION FOR ORAL PRESENTATION

AFFIDAVIT OF MIAMI-DADE COUNTY
LOBBYIST REGISTRATION FOR ORAL PRESENTATION

(1)ProjectTitle:_____Project No.:_____
(2) Department: _____
(3) Firm/Proposer's Name: _____
Address: _____Zip: _____
Business Telephone: (____) _____

(4) List All Members of the Presentation Team Who Will Be Participating in the Oral Presentation:

NAME	TITLE	EMPLOYED BY	TEL. NO.

(ATTACH ADDITIONAL SHEET IF NECESSARY)

The individuals named above are Registered and the Registration Fee is not required for the Oral Presentation ONLY. Any person who appears as a representative for an individual or firm for an oral presentation before a County certification, evaluation, selection, technical review or similar committee must be listed on an affidavit provided by the County. The affidavit shall be filed with the Clerk of the Board at the time the response is submitted. The individual or firm must submit a revised affidavit for additional team members added after submittal of the proposal with the Clerk of the Board at least **two (2) days prior to the oral presentation**. Any person not listed on the revised affidavit may not participate in the oral presentation.

Other than for the oral presentation, Proposers who wish to address the county commission, a county board or county committee concerning any action, decision or recommendation of county personnel regarding this solicitation MUST register with the Clerk of the Board (Form BCCFORM2DOC) and pay all applicable fees.

I do solemnly swear that all the foregoing facts are true and correct and I have read or am familiar with the provisions of Section 2-11.1(s) of the Code of Miami-Dade County as amended.

Signature of Authorized Representative: _____
Title: _____
STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____,
by _____, a _____, who is
(Individual, Officer, Partner or Agent) (Sole Proprietor, Corporation or Partnership)
personally known to me or who has produced _____ as identification and
who did/did not take an oath.

_____
Signature of person taking acknowledgement)

_____
(Name of Acknowledger typed, printed or stamped)

_____ _____
(Title or Rank) (Serial Number, if any)

The following Appendices are for information purposes only and can be obtained by visiting our Website at:

www.miami-airport.com/html/business opportunities.

Appendix G - Passenger Traffic by Concourse

Appendix H - J.F. Brown Summary of Enplaned Passenger Forecast

APPENDIX I

LOCAL BUSINESS PREFERENCE

LOCAL BUSINESS PREFERENCE

The evaluation of competitive solicitations is subject to Section 2-8.5 of the Miami-Dade County Code, which, except where contrary to federal or state law, or any other funding source requirements, provides that preference be given to local businesses. A local business, for the purposes of receiving the aforementioned preference above, shall be defined as a Proposer which meets all of the following.

1. Proposer has a valid occupational license, issued by Miami-Dade County or Broward County at least one year prior to proposal submission due date to do business within Miami-Dade County or Broward County that authorizes the business to provide the goods, services or construction to be purchased.

   Proposer shall attach hereto a copy of said occupational license(s). (Note: Current and past year licenses shall be submitted as proof that Proposer has had the license at least one year prior to the proposal submission due date.)

2. Proposer has a physical business address located within the limits of Miami-Dade County or Broward County from which the Proposer operates or performs business. (Post Office Boxes are not verifiable and shall not be used for the purpose of establishing said physical address.)

   Proposer shall state its Miami-Dade County or Broward County physical business address _____
   and shall submit proof of occupancy for this address. If Proposer is leasing space from another company, a copy of the lease or an affidavit from the lessor must be submitted.

3. Proposer contributes to the economic development and well-being of Miami-Dade County or Broward County in a verifiable and measurable way. This may include but not be limited to the retention and expansion of employment opportunities and the support and increase in the County's tax base. To satisfy this requirement, the Proposer shall affirm in writing its compliance with any of the following objective criteria as of the proposal submission due date:

   Check box, if applicable:

   a. ☐ Proposer has at least ten (10) permanent full time employees, or part time employees equivalent to 10 FTE ("full-time equivalent" employees working 40 hours per week) that live in Miami-Dade County or Broward County, or at least 25% of its employees that live in Miami-Dade County or Broward County. **Proposer shall provide Internal Revenue Service Forms 941 for a one year period or other supporting documentation.**

   b. ☐ Proposer contributes to Miami-Dade County's or Broward County's tax base by paying either real property taxes or tangible personal property taxes to Miami-Dade County or Broward County. **Proposer shall provide real property tax receipts or tangible personal property tax returns.**

   c. ☐ Proposer contributes to the economic development and well-being of Miami-Dade County or Broward County by some other verifiable and measurable contribution by _____
   _____
   _____
   _____
   _____

Proposer shall check the box if applicable. If checking item "c" above, Proposer shall provide a written statement defining how Proposer meets that criteria and provide supporting documentation.

By signing below, Proposer affirms that it meets the above criteria to qualify for Local Preference and has submitted the requested documents.

In addition, to the above, the Proposer shall also list the total number of employees that are Miami-Dade County and Broward County residents. The number of employees submitted is to be accurate as of the proposal submission due date.

_____employees

Note: At this time, there is an interlocal agreement in effect between Miami-Dade and Broward Counties until September 30, 2009. Therefore, a Proposer which meets the requirements of (1) (2) and (3) above for Broward County shall be considered a local business for the purposes outlined herein.

Name of Firm: _____

Federal Employer Identification Number: _____

Address: _____

City/State/Zip Code: _____

Telephone: (____)_____ Fax: (____)_____

I hereby certify that to the best of my knowledge and belief all the foregoing facts are true and correct.

Signature of Authorized Representative: _____

Title: _____
Date: _____

STATE OF _____
COUNTY OF _____

SUBSCRIBED AND SWORN TO (or affirmed) before me on _____,
(Date)

by _____. He/She is personally known to me or has
(Affiant)

presented _____ as identification.
(Type of Identification)

_____ _____
(Signature of Notary) (Serial Number)

_____ _____
(Print or Stamp Name of Notary) (Expiration Date)

Notary Public _____ Notary Seal
(State)

APPENDIX J-1

MIAMI-DADE COUNTY
MIAMI-DADE AVIATION DEPARTMENT SINGLE EXECUTION AFFIDAVITS

APPENDIX J-1

MIAMI-DADE COUNTY
MIAMI-DADE AVIATION DEPARTMENT SINGLE EXECUTION AFFIDAVITS

This sworn statement is submitted for:

PROJECT TITLE_____

PROJECT NUMBER _____

COUNTY OF _____

STATE OF _____

Before me the undersigned authority appeared _____(Print Name), who is personally known to me or who has provided as identification and who (did or did not) take an oath, and who stated:

That he/she is the duly authorized representative of

_____
(Name of Entity)

_____
(Address of Entity)

____/___-___/___/___/___/___/___/___/
Federal Employment Identification Number

hereinafter referred to as the Entity being its

_____
(Sole Proprietor)(Partner)(President or Other Authorized Officer)

and as such has full authority to make these affidavits and say as follows.

PUBLIC ENTITY CRIMES
SWORN STATEMENT UNDER SECTION 287.133(3)(a),
FLORIDA STATUTES

1. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), **Florida Statutes**, means "a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to any bid, proposal, reply, or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation."

2. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), **Florida Statutes**, means "a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere."

3. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), **Florida Statutes**, means:

"1 A predecessor or successor of a person convicted of a public entity crime; or

2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate."

4. I understand that a "person" as defined in Paragraph 287.133(1)(e), **Florida Statutes**, means "any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members and agents who are active in management of an entity."

5. The statement which is marked below is true in relation to the Entity submitting this sworn statement. **[Please indicate which statement applies.]**

PUBLIC ENTITY CRIMES
SWORN STATEMENT UNDER SECTION 287.133(3)(a),
FLORIDA STATUTES (Cont'd)

_____Neither the Entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the Entity, nor any affiliate of the Entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____The Entity submitting this sworn statement, or one or more of the officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the Entity, or an affiliate of the Entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. **[Please indicate which additional statement applies.]**

_____There has been a proceeding concerning the conviction before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer did not place the person or affiliate on the convicted vendor list. **[Please attach a copy of the final order.]**

_____The person or affiliate was placed on the convicted vendor list. There has been a subsequent proceeding before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer determined that it was in the public interest to remove the person or affiliate from the convicted vendor list. **[Please attach a copy of the final order.]**

_____The person or affiliate has been placed on the convicted vendor list. **[Please describe any action taken by or pending with the Florida Department of General Services.]**

DEBARMENT DISCLOSURE AFFIDAVIT
PURSUANT TO SECTIONS 10-38 AND 2-8.4.1
OF THE MIAMI-DADE COUNTY CODE

Section 10-38 of the Code relates to the debarment of any individual or other legal entity from County work. The Debarment Disclosure Affidavit requires the Entity to affirm, under oath, that neither the Entity, its officers, principals, directors, shareholders owning or controlling more than ten percent (10%) or more of the stock, partners, affiliates, as defined in the Code, nor its

subcontractors/subconsultants, have been debarred by the County. Any individual or Entity listed above that has been debarred by the County is prohibited from entering into any contract with the County during the period for which they have been debarred. Debarment may also constitute grounds for termination of any existing County contract. It is the Entity's responsibility to ascertain this information before submitting the Qualification Statement.

_____ The Entity affirms under oath that neither the Entity, its officers, principals, directors, shareholders owning or controlling more than ten percent (10%) or more of the stock, or affiliates, nor its Subcontractor/Subconsultant have been debarred by the County.

CRIMINAL RECORD AFFIDAVIT
PURSUANT TO SECTION 2-8.6 OF THE
MIAMI-DADE COUNTY CODE

Pursuant to Section 2-8.6 of the Code, the Entity must disclose, at the time the submission, if the Entity or any of its officers, directors, or executives have been convicted of a felony during the past (10) years. Failure to disclose such conviction may result in the debarment of the Entity who knowingly fails to make the required disclosure or to falsify information.

Indicate below if the above named Entity, as of the date of submission:

_____ has not been convicted of a felony during the past ten (10) years, nor does it, as of the date of submission, have an officer, director or executive who has been convicted of a felony during the past ten (10) years.

_____ has been convicted of a felony during the past ten (10) years, or as of the date of submission, has an officer, director or executive who has been convicted of a felony during the past ten (10) years.

DISCLOSURE OF OWNERSHIP AFFIDAVIT
PURSUANT TO SECTION 2-8.1
OF THE MIAMI-DADE COUNTY CODE

I hereby declare that the information given herein and in the documents attached hereto are true and correct.

PART I

1. The full legal name and business address* of the person or Entity transacting business with the County is:

_____

_____

_____

2. If the transaction is with a Corporation**, provide the full legal name and business address* and title for each officer. This disclosure requirement does not apply to publicly traded corporations, however please indicate here whether the Entity is a publicly traded corporation.

_____

_____

_____

3. If the transaction is with a Corporation**, provide the full legal name and business address* for each director. This disclosure requirement does not apply to publicly traded corporations.

_____

_____

_____

DISCLOSURE OF OWNERSHIP AFFIDAVIT
PART I (cont'd)

4. If the transaction is with a Corporation**, provide the full legal name and business address* for each stockholder who holds directly or indirectly five percent (5%) or more of the corporation's stock and state the percentage. This disclosure requirement does not apply to publicly traded corporations.

_____

_____

_____

5. If the transaction is with a Partnership or joint venture, provide the full legal name and address for each partner or joint venture member.

_____

_____

_____

6. If the transaction is with a trust, provide the full legal name and address for each trustee and each beneficiary of the trust.

_____

_____

_____

7. The full legal name and business addresses* of any other individuals (other than stockholders owning less than five percent (5%) of the stock, subcontractors, materialmen, suppliers, laborers, or lenders) who have, or will have, any interest (legal, equitable, beneficial or otherwise) in the transaction with the County are:

_____

_____

_____

DISCLOSURE AFFIDAVIT FOR MIAMI-DADE COUNTY
PART I (cont'd)

1. Does your firm have a collective bargaining agreement with its employees?

☐ Yes ☐ No

2. Does your firm provide paid health care benefits for its employees?

☐ Yes ☐ No

3. Provide a current breakdown (number of persons) of your firm's work force and ownership as to race, national origin and gender:

White:	_____ Males	_____ Females
Asian:	_____ Males	_____ Females
Black:	_____ Males	_____ Females
Native American:	_____ Males	_____ Females
Hispanics:	_____ Males	_____ Females
Alaskan Natives:	_____ Males	_____ Females
_____:	_____ Males	_____ Females
_____:	_____ Males	_____ Females

(ADD EXTRA SHEETS IF NEEDED)

* **Post Office Box addresses not acceptable.**
** **If a Joint Venture, list this information for each member of the Joint Venture**

DISCLOSURE OF OWNERSHIP AFFIDAVIT
PART II

LIST ALL CONTRACTS IN EFFECT WITH MIAMI-DADE COUNTY DURING THE LAST FIVE (5) YEARS:

CONTRACT DATE	DOLLAR AMOUNT OF ORIG.CONTRACT	FINAL AMT. OF CONTRACT	PERCENTAGE DIFFERENTIAL
(1)			
_____	$_____	$_____	_____%

Name of Dept. & Summary of Services Performed _____

_____

_____

Litigation Arising out of Contract _____

_____

_____

(2)			
_____	$_____	$_____	_____%

Name of Dept. & Summary of Services Performed _____

_____

_____

Litigation Arising out of Contract _____

_____

DISCLOSURE OF OWNERSHIP AFFIDAVIT
PART II (Cont'd)

CONTRACT DATE	DOLLAR AMOUNT OF ORIG.CONTRACT	FINAL AMT. OF CONTRACT	PERCENTAGE DIFFERENTIAL
(3)			
_____	$_____	$_____	_____%

Name of Dept. & Summary of Services Performed _____

_____

Litigation Arising out of Contract _____

_____

_____

(4)			
_____	$_____	$_____	_____%

Name of Dept. & Summary of Services Performed _____

_____

Litigation Arising out of Contract _____

_____

_____

(ADD EXTRA SHEET(S) IF NEEDED.)

DISCLOSURE OF OWNERSHIP AFFIDAVIT
PART III

A. How long has Entity been in business? _____

B. Has the Entity or the principals of the Entity ever done business under another name or with another firm? _____
If yes, attach separate sheet(s) listing same information as in parts I, II and III of this affidavit.

AFFIRMATIVE ACTION PLAN/PROCUREMENT POLICY AFFIDAVIT PURSUANT TO SECTION 2-8.1.5 OF THE MIAMI-DADE COUNTY CODE

I, being duly first sworn, hereby state that the Respondent for this contract:

☐ has a current Affirmative Action Plan and Procurement Policy, as required by Section 2-8.1.5 of the Code , processed and approved for filing with the Miami-Dade County Department of Small Business Development under the file No._____ and the expiration date of _____.

☐ had annual gross revenues in excess of $5,000,000 for the previous year and does not have a current Affirmative Action Plan and Procurement Policy as required by Section 2-8.1.5 of the Code, processed and approved for filing with the County Department of Small Business Development. I will contact the Department of Small Business Development at 305-375-3111 regarding this condition of award requirement.

☐ had annual gross revenues less than $5,000,000.00 for the previous year; therefore Section 2-8.1.5 of the Code is not applicable.

☐ has a Board of Directors which is representative of the population make-up of the nation and are exempt from the requirements of Section 2-8.1.5 of the Code. I will contact the Department of Small Business Development at 305-375-3111 in order to submit the required exemption request.

Sign Code of Miami-Dade County
Section 33-82 et seq of the Miami-Dade County Code

I, being duly first sworn, hereby state that the Respondent for this contract:

The Proposer shall disclose whether it has received any notices of any violations of the Sign Code of Miami-Dade County, Section 33-82 et seq of the Miami-Dade County Code, and also whether the proposer is currently in litigation with Miami-Dade County regarding any provisions of the Sign Code of Miami-Dade County. The County may consider the information so disclosed when determining the responsibility of the proposer.

☐ Has not received any notices of any violations of the Sign Code of Miami-Dade County, Section 33-82 et seq of the Miami- Dade County Code,

☐ Has received notices of violations of the Sign Code of Miami-Dade County, Section 33-82 et seq of the Miami-Dade County Code, Please attach explanation.

☐ Is currently in litigation with Miami-Dade County regarding provisions of the Sign Code of Miami-Dade County. Please attach explanation.

☐ Is not currently in litigation with Miami-Dade County regarding any provisions of the Sign Code of Miami-Dade County.

This single execution shall have the same force and effect as if each of the above affidavits had been individually executed.

_____
(Signature of Authorized Representative)

Title_____

Date_____

STATE OF:

COUNTY OF:

The above affidavits were acknowledged before me this _____day of_____, 20__,

by _____,
(Authorized Representative)

of _____
(Name of Corporation, Partnership, etc.)

who is personally known to me or has produced as identification and who did/did not take an oath.

_____ Notary Stamp or Seal:
(Signature of Notary)

_____
(Print Name)

Notary Commission Number: _____

My Commission Expires: _____

APPENDIX J-2

MIAMI-DADE COUNTY
MIAMI-DADE AVIATION DEPARTMENT SINGLE EXECUTION
CONDITION OF AWARD REQUIREMENTS

APPENDIX J-2

MIAMI-DADE COUNTY
MIAMI-DADE AVIATION DEPARTMENT SINGLE EXECUTION
CONDITION OF AWARD REQUIREMENTS

The following pages are provided for the Respondent's convenience and are a prerequisite to a contract award:

- Single Execution Condition of Award Affidavits:

  Disability Nondiscrimination
  Family Leave
  Domestic Leave
  Currently Due Fees and Taxes
  Drug Free Work Place
  Current In County Obligations
  Code of Business Ethics

- Subcontractor/Supplier Listing

- Subcontracting Policies Statement
  (Also required, but no format (insert page is provided))

- Proof of Authorization to do Business
  (Attach a copy of the Certificate of Status or Authorization per 607.0128 F.S., and certificate evidencing compliance with the
  Florida Fictitious Name Statute per 865.09 F.S., if applicable.)
  (Also required, but no format (insert page is provided))

MIAMI-DADE COUNTY

MIAMI-DADE AVIATION DEPARTMENT SINGLE EXECUTION CONDITION OF AWARD AFFIDAVITS

This sworn statement is submitted for:

PROJECT TITLE_____

PROJECT NUMBER _____

COUNTY OF _____

STATE OF _____

Before me the undersigned authority appeared _____(Print Name), who is personally known to me or who has provided _____ as identification and who (did or did not) take an oath, and who stated:

That he/she is the duly authorized representative of

_____

(Name of Entity)

_____

(Address of Entity)

___/___-___/___/___/___/___/___/___/

Federal Employment Identification Number

hereinafter referred to as the Entity being its

_____

(Sole Proprietor)(Partner)(President or Other Authorized Officer)

and as such has full authority to make these affidavits and say as follows.

DISABILITY NONDISCRIMINATION
PURSUANT TO COUNTY RESOLUTION NOS. R-182-00 AND R-385-95,

Pursuant to County Resolution No. R-182-00, amending Resolution No. R-385-95, the Entity shall, as a condition of award, provide written certification that the firm is not in violation of the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, the Federal Transit Act, the Fair Housing Act, nor any other laws prohibiting discrimination on the basis of disability. Any post-award violation of these Acts may result in the contract being declared void. If any certifying Respondent or their affiliate is found in violation of the Acts, the County will conduct no further business with such attesting firm. Any violation of this Resolution may result in debarment.

_____ The Entity affirms under oath that the Entity is not in violation of the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, the Federal Transit Act, the Fair Housing Act, nor any other laws prohibiting discrimination on the basis of disability.

FAMILY LEAVE
PURSUANT TO COUNTY RESOLUTION NO. R-183-00

Pursuant to County Resolution No. R-183-00, the Entity shall, as a condition of award, provide written certification that the firm provides family leave to their employees as required by the County's family leave policy. Failure to comply with the requirements of this Resolution may result in debarment.

_____ The Entity affirms under oath that the Entity is in compliance with the County's family leave requirements.

DOMESTIC LEAVE
PURSUANT TO COUNTY RESOLUTION NO. R-185-00

Pursuant to County Resolution No. R-185-00, the Entity shall, as a condition of award, provide written certification that the firm is in compliance with the County's domestic leave policy. Failure to comply with the requirements of this Resolution may result in the contract being declared void, the contract being terminated, and/or the firm being debarred. The obligation to provide domestic leave to their employees shall be a contractual obligation.

_____ The Entity affirms under oath that the Entity is in compliance with the County's domestic leave policy.

CURRENTLY DUE FEES OR TAXES, PURSUANT TO SECTION 2-8.1 (c) OF THE MIAMI-DADE COUNTY CODE

Pursuant to Section 2-8.1(c) of the Code, the Entity shall verify that all delinquent and currently due fees or taxes - including but not limited to real and property taxes, utility taxes and occupational licenses - collected in the normal course by the County Tax Collector, as well as County issued parking tickets for vehicles registered in the name of the Entity, have been paid. Failure to comply with this requirement may result in debarment.

_____ The Entity affirms under oath that the Entity does not have any County delinquent and currently due fees or taxes, including but not limited to real and property taxes, utility taxes and occupational licenses, or County issued parking tickets for vehicles registered in the name of the Entity.

DRUG FREE WORKPLACE PURSUANT TO SECTION 2-8.1.2 (b) OF THE MIAMI-DADE COUNTY CODE

Pursuant to Section 2-8.1.2(b) of the Code, no person or entity shall be awarded or receive a County contract for public improvements unless such person or entity certifies that it will provide a drug free workplace. Failure to comply with this policy may result in debarment for those persons or entities that knowingly violate this policy or falsify information.

_____ The Entity affirms under oath that it will comply with the County's drug free workplace requirements.

CURRENT IN COUNTY OBLIGATIONS AFFIDAVIT PURSUANT TO SECTION 2-8.1(h) OF THE MIAMI-DADE COUNTY CODE

Pursuant to Section 2-8.1(h) of the Code, no individual or entity shall be allowed to receive any additional County contracts, if it is in arrears in any payment under a contract, promissory note or other loan document with the County, or any of its agencies or instrumentalities, including the Public Health Trust, either directly or indirectly through a firm, corporation, partnership or joint venture in which the individual or entity has a controlling financial interest as that term is defined in Section 2-11.1(b)(8) of the Code, until either the arrearage has been paid in full or the County has agreed in writing to a payment schedule. Failure to meet the terms and conditions of any obligation or repayment schedule with the County shall constitute a default of the subject contract and may be cause for suspension, termination and debarment, in accordance with the terms of the contract and the debarment procedures of the County.

_____The Entity affirms under oath that the Entity is current in its obligations to the County.

CODE OF BUSINESS ETHICS AFFIDAVIT
PURSUANT TO SECTION 2-8.1(i)
OF THE MIAMI-DADE COUNTY CODE

Pursuant to Section 2-8.1(i) of the Code, each person or entity that seeks to do business with the County shall adopt a Code of Business Ethics ("Ethics Code") and shall, prior to the execution of any contract between the Entity and the County, submit an affidavit stating that the Entity has adopted an Ethics Code that complies with the requirements of Section 2-8.1(i) of the Code. An entity failing to submit the required affidavit shall be ineligible for contract award.

_____The Entity affirms under oath that the Entity has adopted an Ethics Code that complies with the requirements of Section 2-8.1(i) of the Code.

This single execution shall have the same force and effect as if each of the above affidavits had been individually executed.

_____
(Signature of Authorized Representative)

Title_____

Date_____

STATE OF:

COUNTY OF:

The above certifications/verifications were acknowledged before me this _____ day of _____, 20___,

by _____,
(Authorized Representative)

of _____,
(Name of Corporation, Partnership, etc.)

who is personally known to me or has produced as identification and who did/did not take an oath.

_____
(Signature of Notary)

Notary Stamp or Seal:

_____
(Print Name)

Notary Commission Number: _____

My Commission Expires: _____

SUBCONTRACTOR/SUPPLIER LISTING
PURSUANT TO SECTION 10-34 OF THE CODE

Firm Name of Prime Entity/Respondent: _____ Project No._____

Project Name: _____

Business Name and Address of First tier Subcontractor/Subconsultant	Principal Owner	Scope of Work to be Performed by Subcontractor/Subconsultant	Subcontractor/ Subconsultant Dollar Amount	(Principal Owner) Gender	Race
Business Name and Address of Direct Supplier	**Principal Owner**	**Supplies/Materials/Services to be Provided by Supplier**	**Supplier Dollar Amount**	**(Principal Owner) Gender**	**Race**

I certify that the certifications contained in this Subcontractor/Supplier Listing are to the best of my knowledge true and accurate

Prime Entity/Respondent Signature _____ Print Name _____ Print Title _____ Date _____

(Duplicate if additional space is needed)

SUBCONTRACTING POLICIES STATEMENT PURSUANT TO SECTION 2-8.8(4) OF THE CODE

(Insert Here)

PROOF OF AUTHORIZATION TO DO BUSINESS

(Attach a copy of the Certificate of Status or Authorization per 607.0128 F.S., and certificate evidencing compliance with the Florida Fictitious Name Statute per 865.09 F.S., if applicable.)

(Insert Here)

APPENDIX K

NOT USED

APPENDIX L

LOBBYING RULES

LOBBYING RULES

1.1 Purpose and Scope of Lobbying Rules

a) The following rules delineate the responsibilities of lobbyists and County personnel lin implementing the requirements of the lobbying section of the Conflict of Interest and Code of Ethics ordinance.

1.2 Definition of "Lobbyist"

a) A lobbyist is any person, firm or corporation employed or retained by a principal that seeks to encourage the passage, defeat or modification of

1) any ordinance, resolution, action or decision of the County Commission;

2) any action, decision, or recommendation of the County Manager or any County board or committee; or

3) any action, decision, or recommendation of County personnel during the time period of the entire decision-making process on such action, decision or recommendation which forseeably will be heard or reviewed by the County Commission or a County board or committee. "Lobbyist" specifically includes the principal as well as any employee whose normal scope of employment includes lobbying activities.

1.3 Exclusions

a) Attorneys or other representatives retained or employed solely for the purpose of representing individuals, corporations or other entities during publicly noticed quasi-judicial proceedings where the law prohibits ex-parte communication. A quasi-judicial proceeding is a hearing before a County or municipal commission or board where the rights of particular persons or entities are determined and for which prior notice, the opportunity to be heard and the introduction and evaluation of evidence are required (e.g. Value Adjustment Board, Community Zoning Appeals Board, Equal Opportunity Board).

b) Expert witnesses who provide only scientific, technical or other specialized information or testimony in public meetings. An expert witness is a person duly and regularly engaged in the practice of a profession who holds a professional degree from a university or college and special training or experience, or a person who is possessed of special knowledge or skill about the subject.

c) A representative of a neighborhood association who appears without compensation or reimbursement, whether direct, indirect or contingent, to express support of or opposition to any item. A neighborhood association is an organization of residential homeowners and tenants created to address quality of life issues in a defined neighborhood or community.

4) Meetings or communication to provide staff or elected officials with general information regarding a firm's background or expertise.

1.6 General Registration Requirements

a) Every lobbyist must file an annual registration form with the Clerk at the time of initial registration and on or before January 15th of each year thereafter, along with an annual registration fee of four hundred and ninety dollars ($490.00).

b) Every lobbyist must file a registration form with the Clerk of the Board for each client within five days of being retained by a principal or before conducting any lobbying activities, whichever comes first.

c) The principal must also submit a principal authorization form prior to any lobbying. The principal must identify whether the lobbyist is retained for a particular matter or may lobby on any matter regarding the principal.

d) Every lobbyist must file a Notice of Withdrawal when the representation ends. The lobbyist must file an expenditure statement for the preceding year.

1.7 Selection Committee Registration Requirements

a) Any person who appears as a representative for an individual or firm for an oral presentation before a County certification, evaluation, selection n, technical review or similar committee shall list on an affidavit provided by the County, all individuals who may make a presentation. The affidavit shall be filed with the Clerk of Board at the time the response is submitted.

b) The individual or firm must submit a revised affidavit for any additional team members with the Clerk of the Board at least 2 days prior to the oral presentation. Any person not listed on the revised affidavit or who is not a registered lobbyist will not be permitted to participate in the oral presentation.

c) All additional team members, who are lobbyists, as defined herein, must file a principal authorization form (for the individual or entity) with the Clerk of the Board of County Commissioners prior to the oral presentation.

1.8 Not for Profit Registration Requirements

a) A lobbyist for a not-for-profit organization (unless lobbying for a community-based organization seeking grant funds) must register and file the required expenditure form. Upon request, the Clerk of the Board may waive the applicable registration fees.

1.9 Expenditure Reports

a) All registered lobbyists must file an expenditure report with the Clerk of the Board by July 1st of each year. The date of filing is the date that the report is received by the Clerk's office.

b) A lobbyist must file a report for every principal and must list all expenditures in excess of twenty-five dollars ($25.00) for the preceding calendar year. The form must be filed even if the lobbyist did not make any expenditures during the prior year.

1.10 Expenditure Categories

a) The lobbyist must report expenditures in the following categories: communications, entertainment, food and beverages, lodging, media advertising, publications and other. The information covered in each category is:

1) "Communications" means dissemination of information, including but not limited to the following means: audio-visual materials, signs, placards, buttons, promotional materials, or other display materials; together with any associated production services. This category does not include media advertising, publications or research.

2) "Entertainment" means amusement or recreation including but not limited to sporting, hunting, fishing, theatrical, artistic, cultural and musical activities or events.

3) "Food and Beverages" means meals, snacks or edible substances or liquids for drinking including services associated therewith.

4) "Lodging" means sleeping or living accommodations for an individual for one or more nights.

5) "Media advertising" means newspaper and magazine advertising, radio and television advertising and outdoor advertising including production services and copyrighting services.

6) "Other" means any item or service which is not included in one of the specified categories; this category does not include any item or service which is not required by law to be reported.

7) "Publications" means mass-produced, printed materials including but not limited to magazines, newsletters, brochures or pamphlets, which expressly encourage to communicate with agency officials or employees or to influence an agency with respect to a decision of the agency in the area of policy or procurement or which are designed to communicate with agency officials or employees.

8) "Research" means obtaining information relating to a specific policy issue or procurement matter regardless of the form or medium in which such information is provided including, but not limited to, surveys, information services, periodicals and consultants or consultant services to gather data or statistics.

9) "Special Events" means large scale functions, including but not limited to receptions, banquets, dinners or fairs to which more than 250 persons are invited and for which the expenditures associated with hosting the function are negotiated

with a catering service or facility at a single, set price or which include multiple expenditure categories.

10) "Travel" means transporting an individual from, one place to another, regardless of the means used.

b) Certain items such as communications, publications and research are office expenses if performed by the lobbyist or principal or their employees. If those functions are performed by independent contractors, other than the lobbyist or principal or an affiliate controlled by the principal, they are reportable under the appropriate expenditure category.

c) If an expense is incurred for a business purpose unrelated to lobbying and the product of that expense is later used for a lobbying purpose, the expenditure does not have to be reported.

1.11 Penalties for Late Filing

a) A late fee of fifty dollars per day per report will automatically be assessed for any report filed after the due date. All fines must be paid to the Clerk of the Board of County Commissioners.

b) The Clerk of the Board of County Commissioners will notify all lobbyists who have failed to file by July 15th of each year that they are not in compliance with the ordinance and of the current fines assessed against the lobbyist.

c) A lobbyist is automatically suspended and may not lobby any employee, elected official or before any County board (including the Board of County Commissioners) if the lobbyist has not filed an expenditure report by September 1rst of each year.

d) The Clerk of the Board of County Commissioners must provide the Ethics Commission with a report listing all lobbyists who have either failed to file disclosure reports or pay assessed fines by October 1rst of each calendar year. The Ethics Commission will provide the list to the Commission Advocate who may initiate complaint proceedings against any lobbyist for failure to file an expenditure report and/or pay assessed fines.

1.12 Appeals

a) Any lobbyist may appeal a fine and request a hearing before the Ethics Commission by filing an appeal with the Ethics Commission within fifteen days receipt of the Notice of Violation. Late fees will continue to accrue after an appeal unless the required forms are filed.

b) The lobbyist must mail or fax a letter to the Executive Director of the Ethics Commission stating the reasons for the appeal. The lobbyist must include in his or her notice of appeal any request for a hearing before the Ethics Commission. The lobbyist must attach any documentation or evidence for consideration by the Ethics Commission in making a determination on the appeal at the time the notice of appeal is filed.

c) The Ethics Commission may delegate determinations of appeals without a request for hearing to Commission staff. The staff may have the authority to waive fines in whole or part for good cause shown. Any determinations by staff must be ratified by the Ethics Commission or a committee appointed by the Chair.

d) A hearing on an appeal under this ordinance may be heard by a committee appointed by the Chair or the Ethics Commission as a whole. The Ethics Commission may waive any fines, in whole or part, for good cause shown.

1.13 Contingency Fees

a) After May 16, 2003, no person may, in whole or in part, pay, give or agree to pay or give a contingency fee to another person. No person may, in whole or in part, receive or agree to receive a contingency fee.

b) A contingency fee is a fee, bonus, commission or non-monetary benefit as compensation which is dependent on or in any way contingent upon the passage, defeat, or modification of: 1) any ordinance, resolution, action or decision of the County Commission; 2) any action, decision or recommendation of the County Manager or any County board or committee; or 3) any action, decision or recommendation of any County personnel during the time period of the entire decision-making process regarding such action, decision or recommendation which forseeably will be heard or reviewed by the County Commission or a County board or committee.

1.14 Departmental Responsibilities

a) All departments and agencies must maintain a visitor log for anyone seeking to do business with the department or agency or seeking administrative action from the department or agency. The log should include information regarding the name of the visitor, the staff person or persons visited and the purpose of the visit (i.e. name of matter or agenda item number).

b) All elected officials, board members and employees shall be diligent to ascertain whether persons appearing before them have registered as lobbyists. County personnel may check on a lobbyist's status through the Lobbyist Registration section of the Metronet or by calling the Clerk of the Board of County Commissioners. Elected officials, board members and employees may not knowingly permit a person who is not registered to lobby them regarding an issue.

1.15 Penalties for Lobbying Violations

a) The Ethics Commission may prohibit any lobbyist who commits a lobbying violation from lobbying before the Board of County Commissioners or any committee, board or personnel of the Miami-Dade County for a period of: 1) ninety days following determination of the first violation; 2) one year following determination of the second violation and 3) five years from determination of the third violation.

b) Any lobbyist who commits a lobbying violation is also subject to a two hundred and fifty-dollar fine for the first violation and a five hundred-dollar fine for the second violation.

c) The County Manager or the Board of County Commissioners may void any contract where a lobbying violation has occurred.

APPENDIX M

NOT USED

APPENDIX N

PEACE LABOR AGREEMENT

(TO BE PROVIDED BY THE PROPOSER)

FORM OF LEASE AND CONCESSION AGREEMENT

BY AND BETWEEN

MIAMI-DADE COUNTY, FLORIDA

AND

MASTER CONCESSIONAIRE

(PACKAGE 1-PACKAGE 2)

FOR RETAIL CONCESSIONS PROGRAM 2008

AT

MIAMI INTERNATIONAL AIRPORT

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DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended.

The term "**Airport Concession Disadvantaged Business Enterprise" or "ACDBE"** shall have the meaning ascribed in Article 14 entitled "Airport Concession Disadvantaged Business Enterprise".

The term **"ACDBELO"** shall mean Airport Concession Disadvantaged Business Enterprise Liaison Officer, Associate Aviation Director, Minority Affairs Division, Miami-Dade County Aviation Department.

The term **"Agreement"** shall mean this Lease and Concession Agreement including all exhibits and attachments thereto and a part thereof entered into by the County and the Master Concessionaire.

The term **"Airport"** shall mean Miami International Airport.

The term **"Approved Improvements"** are the improvements to a Location, which have been approved by the Department which may include the design, equipment, fixtures, flooring, and signage.

The term **"Base Building Work"** shall mean the sub-flooring, ceiling structure, demising walls, utilities infrastructure and other base building improvements, structures and fixtures which the County installs or causes to be installed in the terminal building. Base Building Work includes delivery of portions of the Locations in Shell Condition.

The term "**Beneficial Occupancy**" shall mean the date when a Certificate of Occupancy or Temporary Certificate of Occupancy has been received for each Location.

The term **"Board**" shall mean Board of County Commissioners of Miami-Dade County.

The term **"Capital Improvement Program**" or "**CIP**" shall mean the Airport's construction program that will involve the refurbishment of terminal interiors, airline relocations, changes in access to the terminal and concourses, construction of new concession Locations, and other improvements throughout the Airport.

The term **"Central Terminal"** shall mean the area of the terminal building and concourses, within the central part of the terminal area, landside or airside which is now known as Concourses E thru G.

The term **"Code"** shall mean the Code of Miami-Dade County, Florida.

The term **"Common Logistics Fee"** shall mean an amount to be invoiced as a separate line item and collected from Sub-tenants by the Master Concessionaire for the purpose of reimbursing, without profit or administrative markup, a County imposed or approved logistics program which

the Master Concessionaire may be reimbursed for actual out-of-pocket expenses incurred excluding any administrative overhead in order to lease off-Airport properties for storage or operate on the Airport and operating a common logistical support service as may be necessary for the efficient operation of the Retail Program. The Master Concessionaire will implement an equitable and reasonable formula to calculate and allocate this fee among relevant Sub-tenants.

The term **"Common Logistics Program"** shall mean a program to offer logistics support either on or off Airport which may include leasing of Airport property for storage; delivery services or equipment necessary to the operation of a common logistics system.

The term **"Concessionaire"** shall mean the person, firm, or entity that enters into this Lease and Concession Agreement with the County.

The term **"Consumer Price Index"** or "**CPI**" shall mean that index published by the United States Department of Labor, Bureau of Labor Statistics known as the Consumer Price Index for all urban consumers ("CPI-U") in the U.S. Cities Average: All items.

The term "**County**" shall mean Miami-Dade County, Florida, a political subdivision of the State of Florida.

The term **"Days"** shall mean calendar days, unless specifically stated as other.

The term "**Department**" or **"MDAD"** shall mean the Miami-Dade Aviation Department.

The term **"Director"** shall mean the Director of the Miami-Dade Aviation Department or the Director's designee.

The term **"Extension"** shall mean the addition of one (1) separate two (2) year term following the Term in writing by the County.

The term **"Gross Revenues",** as used in this Agreement, shall mean all Sub-tenant minimum annual guaranteed rents and percentage fees, if any, paid or payable by the Master Concessionaire from the Sub-tenants and any consideration of determinable value paid or payable to the Master Concessionaire by any third party (for example, retail display allowances and other promotional incentives). However, the term Gross Revenues shall not include: (i) any and all pass-through charges such as Sub-tenant payments to the Master Concessionaire for any sums collected for federal, state, County and municipal taxes imposed by law upon the sale of merchandise or services, utilities, the Common Logistics Fee and contribution to the Marketing Program; (ii) any refund given to the customer because of a customer satisfaction issue which must be documented and auditable or (iii) promotional discount and coupon offers issued to customers as a result of a Department approved marketing plan. In connection with such Master Concessionaire's Gross revenues, Master Concessionaire hereby agrees to apply any security deposits received from its Sub-tenants to the payment of Sub-tenant minimum annual guaranteed rents and percentage fees, if any, due to non-payment by a Sub-tenant from time to time following applicable notice and cure periods provided in the Sub-Lease agreement.

The term **"Gross Receipts"** shall mean Gross Revenues received by Master Concessionaire as a result of operations pursuant to Master Concessionaire's Sub-Lease of a Location to an approved Sub-tenant.

The term **"Lease Effective Date"** shall mean the tenth (10th) business day after the date of execution by the County Manager and attestment by the Clerk of the Board of the Lease and Concession Agreement.

The term **" Local Business"** shall mean a business, including but not limited to a sole proprietorship, partnership or corporation, whose majority (at least fifty-one percent (51%) owned) stockholders, partners, owners or local franchisee (meaning a franchise originating in Miami Dade County and not an international, national or regional branded franchise) are residents of Miami-Dade County and whose principal place of business originated and is currently in the Primary Miami-Dade Statistical Area (Miami PMSA) at least one year prior to the advertisement of any solicitation for which a response may be constructed. Evidence of a legitimate business presence in Miami-Dade County shall be verified by a Proposer's valid Occupational License issued by Miami-Dade County and proof of ownership. A joint venture may be a Local Business, but only if all parts of that Joint Venture are Local Businesses. Additionally, it is intended that the Local Business proposer represent a sense of place of the Miami-Dade area and, as such, is reflected in both the store design and merchandising concept.

The term **"Location(s)"** shall mean the concession locations as depicted on Exhibit A, "Locations".

The term **"Location Commencement Date"** shall mean for each Location, the earlier of the date of Beneficial Occupancy or 120 Days after the Turnover Date.

The term **"Master Concessionaire"** shall mean the Concessionaire that will operate certain Locations and will Sub-Lease others.

The term "**Minimum Annual Guarantee" or "MAG"** shall mean as ascribed in Article 3.01.

The term **"Minimum Monthly Guarantee"** shall mean as ascribed in Article 3.01.

The term "**Nonexclusivity**" shall mean as ascribed in Sub-Article 1.08 of this Agreement.

The term **"Market Basket "** shall mean that MIA concession store prices shall not exceed by more than 10% stated market basket of a selection of three (3) Greater Miami Area locations where visitors may purchase similar product categories excluding stadiums, arenas, amusement and entertainment venues and hotels.

The term "**North Terminal**" shall mean the area of the terminal building and concourses, within the north part of the terminal area, landside or airside now known as Concourses A-D.

The term **"Proposal"** shall mean a Proposer's written response to RFP MDAD-04-07.

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The term **"Refurbishment of Locations"** shall mean the refurbishment and expenditure by the Master Concessionaire or its Sub-tenants of not less than fifty dollars per square foot ($50psf) for Approved Improvements to begin no earlier than the sixth (6^{th}) Term year of the Agreement and be completed no later than the last day of the sixth (6^{th}) Term year of this Agreement.

The term **"Request for Proposal" or "RFP"** shall mean this RFP No. MDAD-04-07, and all associated Addenda, Exhibits, Forms, Affidavits and Attachments.

The term **"Retail"** when used in this Agreement shall mean those newsstand and retail Locations as depicted in Exhibit A of the Lease and Concession Agreement.

The term **"Retail Concession Design Guidelines"** shall mean MIA's distinct design guidelines in the North, Central, and South Terminals as set forth in Exhibit E.

The term **"Shell Condition"** shall mean smooth concrete floors, demising studs and walls, and the utility services listed below (conduits, lines, pipes, etc.) stubbed to the lease lines of each Location or area immediately adjacent thereto for electric, telephone and data communications, heating ventilating and air conditioning systems including ducts ("HVAC"), fire alarm system and fire sprinkler system.

The term "**South Terminal**" shall mean the area of the terminal building and concourses, within the south part of the terminal area, landside or airside which is now known as Concourse H, and a new J Concourse and connecting concession and public locations.

The term **"State"** shall mean the State of Florida.

The term **"Sub-Lease"** shall mean the contractual agreement between the Master Concessionaire and its Sub-tenant.

The term **"Sub-tenant"** shall mean any person, firm, entity or organization, entering into an agreement with Master Concessionaire for sale, retail products to the public at the Airport at a Location.

The term "**Term" shall** mean the County hereby leases to the Master Concessionaire the Locations depicted in Exhibit A commencing upon the Lease Effective Date of this Agreement and expiring at 11:59 P.M. on the last day of the eighth (8) year thereafter unless sooner terminated. In no event shall this Agreement afford Master Concessionaire or any other party any right to use or occupy the Locations (or any part thereof) after the expiration, termination of the Agreement.

The term **"TSA"** shall mean the United States Transportation Security Administration, and any successor agency, office or department thereto.

The term "**Turnover Date**" shall mean the date approved by the Department for the Master Concessionaire to commence construction of a Location.

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FORM OF LEASE AND CONCESSION AGREEMENT FOR A NON-EXCLUSIVE MASTER CONCESSIONAIRE FOR RETAIL CONCESSIONS PROGRAM 2008 AT MIAMI INTERNATIONAL AIRPORT

THIS LEASE AND CONCESSION AGREEMENT is made and entered into as of this _____ day of _____, 200__, by and between MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida and _____, ("Master Concessionaire"), a _____Corporation authorized to do business in the State of Florida.

RECITALS:

WHEREAS, the County is the owner of and operates Miami International Airport through the County's Miami-Dade Aviation Department; and

WHEREAS, the Department desires to create a retail concessions program in conjunction with the development program for the North and South Terminal projects; and

WHEREAS, the concessions program is designed to provide a locally, nationally, and internationally recognized themed tenant base; and

WHEREAS, the retail concessions program will enhance the accommodations and conveniences of airline passengers and Airport patrons, and project a positive image of the Airport, the Department, and the County to visitors, as further described herein; and

WHEREAS, Request for Proposal, RFP No. MDAD-04-07 was issued by the County and in response to the Request for Proposal, the County received proposals and an award has been made to the Master Concessionaire,

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

ARTICLE 1 – TERM, EXTENSION AND LOCATIONS

1.01 TERM: The County hereby leases to the Master Concessionaire the Locations depicted in Exhibit A commencing upon the Lease Effective Date of this Agreement and expiring at 11:59 P.M. on the last day of the eighth (8) year thereafter unless sooner terminated. In no event shall this Agreement afford Master Concessionaire or any other party any right to use or occupy the Locations (or any part thereof) after the expiration, termination of the Agreement.

1.02 EXTENSION: At the sole discretion of the County, the initial eight (8) year Term may be extended for a maximum of one (1) two (2) year term provided the extension is mutually agreed to by the County and the Master Concessionaire in writing.

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In the event the County elects to extend the Agreement, the Master Concessionaire shall be notified, in writing, no less than one hundred and twenty (120) Days prior to the expiration of the Term. The Master Concessionaire may elect not to agree to the extension, and, if so, must notify the Department thirty (30) Days after receipt of written notification by the Department to extend the Agreement. In the event the Department does not give such notice, the Agreement shall expire accordingly.

In the event the Master Concessionaire is in default, pursuant to **Article 12 "Default and Termination by County"** of the Lease and Concession Agreement beyond applicable grace and cure periods, the County shall not exercise its rights to extend the Agreement.

1.03 LOCATIONS: The Department hereby provides to the Master Concessionaire the Locations as depicted in **Exhibit A, "Locations"**.

1.04 SUPPORT SPACE: In addition to the Locations provided to the Master Concessionaire in **Sub-Article 1.03 "Locations"**, the Department may provide administrative and support space, if available, to the Master Concessionaire.

The Master Concessionaire shall pay monthly rental payments for the Master Concessionaire's administrative and storage space at the rate applicable for terminal rental payments and annual adjustments as provided for in **Sub-Article 3.06 Annual Rent**.

1.05 STORAGE SPACE: The Department may make available to the Master Concessionaire, in addition to, storage space outside of Location(s), if available.

1.06 COMMON WAREHOUSE SYSTEM: Due to the fact that storage space is limited in this Agreement and such space is separate from the Locations, should the Master Concessionaire determine, in its sole discretion, the need to use off-Airport properties for storage space, the Master Concessionaire shall be entitled through itself, or through an independent third-party contractor, to operate a common logistical support service with respect to the delivery and storage of Sub-tenants' merchandise, inventory, equipment and supplies to a central commissary warehouse location off of the Airport and the re-delivery of Sub-tenants' merchandise, inventory, equipment and supplies to each of the Sub-tenants' Location at the Airport as approved by the Department. The Department may elect to initiate a Common Logistics Program to assist in storage, delivery equipment and supplies in which case a Common Logistics Fee may be assessed to Master Concessionaire.

In the event of a Department initiated Common Logistics Program, the actual costs incurred to rent any such off-Airport properties for storage and/or The actual costs incurred to rent any such off-Airport properties for storage and the actual costs incurred in the operation of the common logistical support service program (including the purchase or renting of equipment needed to operate such program), as may be determined by the Department from time to time, shall be included in the Common Logistics Fee. The Common Logistics Fee shall be reimbursed to the Master Concessionaire by its Sub-tenants on a non-discriminatory basis for all similarly situated Sub-tenants. The Master Concessionaire shall not be entitled to charge Sub-tenants for any of the Master Concessionaire's internal administrative expenses in managing the common logistical

support service program as part of the Common Logistics Fee. All funds received by Master Concessionaire as part Common Logistics Fee shall not be included in Master Concessionaire's Gross Revenues for any and all purposes of this Agreement. It is recognized by the Department that any such payments by Sub-tenants to the Master Concessionaire shall not be included in the calculation of the Percentage Fee, if any, from Master Concessionaire to the Department as provided for in **Article 3.04 "Percentage Fee to the Department"**. The Department reserves the right to review the basis of the actual costs and allocation thereof should the Master Concessionaire elect to implement a common logistics support service program. The Department also reserves the right to approve such program and require that the Master Concessionaire impose the Common Logistics Fee in a non-discriminatory manner.

1.07 ADDITION, DELETION AND MODIFICATION OF LOCATIONS:

A. ADDITION OF LOCATIONS: If at any time after the Lease Effective Date, the Department, at its sole discretion, identifies any additional Location for concession development comparable to the concept categories in this Agreement, the Department may, but is not required to, offer such additional Location to the Master Concessionaire upon written notification. The Master Concessionaire will have thirty (30) Days to submit a written response accepting or rejecting the additional Location. Acceptance of any additional Location will require the Department and the Master Concessionaire to mutually agree upon an applicable retail category as described in Exhibit A at the applicable category percentage fee, **Sub-Article 3.05, Retail Category Percentage Fee**, prior to final approval.

B. ADDITION OF TEMPORARY LOCATIONS: The Department reserves the right to require the Master Concessionaire to provide, and cause to be operated, temporary locations. A temporary location will be required to provide passenger services in locations where airline are offering service. Any rents for these locations are subject to the terms of this Agreement. The square footage for these temporary locations shall not be included in the calculation of the Minimum Annual Guarantee pursuant to **Sub-Article 3.01**. All such concepts, plans, fixtures, equipment and merchandising are subject to review and approval by the Department and, to the extent necessary, other County agencies.

C. DELETION OR MODIFICATION OF LOCATIONS: The Department reserves the right, at its sole discretion, to delete or modify any of the Locations, or any administrative support and storage spaces due to Airport development/construction, operational necessity, and security or safety considerations. In the event of such deletion or modification the Master Concessionaire shall be given no less than: (i) thirty (30) Days written notice, for such deletion or modification due to operational necessity, and security or safety considerations; and (ii) sixty (60) Days written notice, for such deletion or modification due to development/construction.

The Department shall not be held liable to the Master Concessionaire or its Sub-tenants (except for reimbursement of the unamortized costs, pursuant to **Sub-Article 4.10** for any inconvenience or loss of business as a result of the deletion or modification of any Locations or other space pursuant to this Sub-Article.

D. **ADMINISTRATIVE REVISIONS:** This Agreement shall be administratively revised to reflect any additions, deletions or modifications to the Locations pursuant to the provisions herein. Such revision will include revised exhibits and appropriate changes to the Locations in **Sub-Articles 1.03 "Locations", 1.04, "Support Space", and 1.05 "Storage Space"** and total payments due the Department in accordance with **Article 3, Rentals, Payments and Reports** and **Article 2 Use of Locations.**

1.08 NONEXCLUSIVITY: This Agreement is nonexclusive in character and in no way prevents the Department from entering into an agreement with any other parties for the sale or offering of competitive services, products or items by other Master Concessionaires and/or others in other locations at the Airport during the Term, and any Extension of this Agreement.

1.09 CONDITION OF THE LOCATIONS: MASTER CONCESSIONAIRE SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE DEPARTMENT IS LEASING ALL LOCATIONS TO THE MASTER CONCESSIONAIRE ON AN "AS IS" BASIS AND THAT THE MASTER CONCESSIONAIRE IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM THE DEPARTMENT OR ITS AGENTS, AS TO ANY MATTERS CONCERNING THOSE LOCATIONS including, but not limited to: (i) the quality, nature, adequacy and physical condition and aspects of the Locations, including utility systems; (ii) the existence, quality, nature, adequacy and physical condition of utilities serving the Locations; (iii) the development potential of the Locations, the use of the Locations, and the habitability, merchantability, or fitness, suitability, value or adequacy of the Locations for any particular purpose; (iv) the zoning or other legal status of the Locations or any other public or private restrictions on use of the Locations; (v) the compliance of the Locations or its operation with any applicable laws, regulations, statutes, ordinances, codes, covenants, conditions, and restrictions of any governmental or quasi-governmental entity or of any other person or entity; (vi) the presence of hazardous materials or industrial wastes on, under or about the Locations; (vii) the quality of any labor and materials used in any improvements on the Locations; (viii) the condition of title to the Locations; (ix) the agreements affecting the Locations; and (x) the Proposal submitted by Master Concessionaire to the Department, including any statements relating to the potential success or profitability of such Proposal. Master Concessionaire represents and warrants that it has made an independent investigation of all aspects of its Proposal contemplated by this Agreement. Except as specifically provided in this Agreement, the Master Concessionaire has satisfied itself as to such suitability and other pertinent matters by the Master Concessionaire's own inquiries and tests into all matters relevant in determining whether to enter into this Agreement. The Master Concessionaire accepts the Locations in their existing condition, and hereby expressly agrees that if any remediation or restoration is required in order to conform the Locations to the requirements of applicable law, the Master Concessionaire assumes sole responsibility for any such work.

1.10 CAPITAL IMPROVEMENT PROGRAM: The Capital Improvement Program (CIP) is currently underway and will involve the refurbishment of terminal interiors, airline

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relocations, changes in access to the terminal and concourses, construction of new concession Locations, and other improvements that may affect concession operations in the terminal building and on the concourses and access at the curbside or on the airfield. The CIP may affect the operation of the Locations, and **THE DEPARTMENT NEITHER MAKES NOR IMPLIES ANY WARRANTIES AS TO THE EFFECT OF SUCH CAPITAL IMPROVEMENT PROGRAM ON SAID OPERATIONS DURING THE TERM AND ANY EXTENSION OF THIS AGREEMENT.** The Department shall use reasonable good faith efforts to the extent possible, so as to mitigate any adverse impact on the business operations of Locations that will not be demolished by the CIP.

1.11 **REQUEST FOR PROPOSAL INCORPORATED:** The Master Concessionaire acknowledges that it has submitted to the County a Proposal, in response to a Request for Proposal (RFP), that was the basis for the award of this Agreement and upon which the County relied. The RFP and the proposal are incorporated into this Agreement. **IN THE EVENT THERE ARE ANY CONFLICTS BETWEEN THIS LEASE AND CONCESSION AGREEMENT AND THE RFP OR THE PROPOSAL, THE TERMS OF SAID AGREEMENT SHALL GOVERN.**

ARTICLE 2 – USE OF LOCATIONS

2.01 **LOCATIONS:** The Locations as referenced in **Exhibit A, "Locations"** shall be used solely for their assigned and approved concept category unless otherwise modified pursuant to **Sub-Article 2.04. "New Concepts"** Failure to maintain the concept category pursuant to **Article 2 "Use of Locations"** may result in liquidated damages as indicated in **Sub-Article 3.24 "Liquidated Damages"**.

2.02 **USE OF LOCATIONS:** The Master Concessionaire shall have the right, privilege, and obligation to develop, lease, market and manage and to cause the Sub-tenants to operate and maintain the Locations, depicted in **Exhibit A, "Locations"**, for the purpose of establishing high quality, state of the art retail concessions as approved by the Department.

2.03 **MASTER CONCESSIONAIRE SERVICES AND SALES RIGHTS:** The Master Concessionaire shall not allow any services or the sale of any item or product not specifically covered by the categories approved in this Agreement. Any such sales by the Master Concessionaire or Master Concessionaire's Sub-tenants of services, products, or items not specifically approved herein, in writing by the Department, may constitute a violation. In the event of such violation, the Master Concessionaire shall discontinue or cause its Sub-tenants to discontinue the sale or service of the unapproved product immediately, upon written notice from the Department. Failure by Master Concessionaire or its Sub-tenants to discontinue such sales within 24 hours shall subject the Master Concessionaire to liquidated damages pursuant to **Sub-Article 3.24 "Liquidated Damages"**. Upon the assessment of thirty (30) Days of liquidated damages as to a Location for a Location operated by a Sub-tenant, the Master Concessionaire shall tender a notice of default to the Sub-tenant(s) in violation, with copies of said default notice to the Director and pursue all remedies available in law and equity to cease such actions. Failure of the Master Concessionaire to: (i) notify the Sub-tenant(s) of the default, (ii) pursue all

remedies available to cease the unauthorized sales or services shall be an event of default and grounds for termination of this Agreement. Upon the assessment of thirty (30) Days of liquidated damages against a Master Concessionaire for violation committed by such Master Concessionaire or its Sub-tenant(s), a notice of default will be tendered.

2.04 NEW CONCEPTS: The Master Concessionaire and the Department may modify, by mutual agreement, certain concepts within the established categories and among the Locations through an Administrative Modification. The proposed new concept as agreed to by the Department and the Master Concessionaire will be reflected in a revised Exhibit A, a revised Percentage Fee as applicable for the category as provided for in **Article 3 "Rentals, Payments and Reports"**, and a revised **Article 2 "Use of Locations"**.

2.05 SCOPE OF SERVICES: The Master Concessionaire hereby agrees that it will finance, design and construct, lease, manage, operate and maintain the Locations depicted in **Exhibit A, "Locations"**, for the purpose of establishing high quality, state of the art retail concessions as approved by the Department. Its responsibilities are further defined but not limited to the following:

A. Financing:

1. Be capable of financing the design, construction and build out of the Locations depicted on **Exhibit A, "Locations"**.

2. Develop a financial plan indicating the source of funding for capital investment and continued maintenance and operation of the Locations.

B. Developing:

Design a concession location and layout for each of the concept categories in concert with the appropriate MIA Concession Design Guidelines.

C. Design and Construction Coordination:

Design and Construction Coordination requirements are detailed in **Article 4 "Improvements to the Locations".**

D. Leasing:

The Master Concessionaire shall be responsible for subleasing as follows:

1. Coordinate its leasing process with the Department, obtaining approval of each Sub-Lease agreement prior to subleasing.

2. Develop, subject to review and approval by the Department, a standard Sub-tenant Lease Agreement, including Exhibits, if subleasing is conducted, in accordance with **Article 19, "Sub-Leases"** of the Lease and Concession Agreement no later than thirty (30) Days from the Lease Effective Date of the Lease and Concession Agreement. Sub-Lease agreements shall not extend beyond the expiration date or termination date of the Lease and Concession Agreement, contain comparable terms

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and conditions as may be applicable to those contained in the Lease and Concession Agreement and are to be provided to the Department no longer than 90 days from the effective date of this agreement.

3. Perform background checks and investigate all prospective Sub-tenants, including partners, joint ventures, and other key participants. Prepare and make available to the Department, if requested, background check summaries.
4. Negotiate Sub-Leases with potential Sub-tenants to include, but not be limited to:
    1) Negotiating financial terms with potential Sub-tenants in accordance with the Department's approved key business terms and baseline pro-forma.
    2) Preparing term sheets of potential sub-tenant deals, outlining all business terms for the Department's approval.
    3) List of use and products for each concept.

E. ACDBE Plan

1. Maximize ACDBE and local participation by meeting or exceeding the ACDBE goal under this Lease and Concession Agreement.
2. Develop, implement, manage, and monitor a program to identify and include Local/Small/ACDBE businesses in the concession programs.
3. Describe the extent and type of ACDBE subleasing in the Program.
4. Submit a ACDBE community and local business opportunities outreach program for concession opportunities, subject to the Department's approval.

F. Managing

The Master Concessionaire shall, if applicable:

1. Design a concession program fulfilling the concept category and submit a merchandising plan initially and for annual review until expiration of the Agreement identifying the product categories for each Location. The Master Concessionaire will review the store layout plan no less than annually and update the store layout as necessary throughout the Agreement.
2. Manage the Locations in a way that maximizes the highest and best use and financial return to the Department.
3. Monitor and enforce compliance with the terms and conditions of the Lease and Concession Agreement and any Sub-Lease agreements, including but not limited to, use clauses, customer service, insurance, pricing, capital expenditures, quality of merchandise, hours of operation, detailed reporting of sales, payment of fees, rent, and signage.
4. Function as operations liaison between the Department, governmental agencies, Sub-tenants and others.
5. Maintain permanent records for each Location leased.

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6. Maintain computerized records on a commercially available property management software program acceptable to the Department. Programs and all data collected should be available to the Department on-line (digital and electronic).
7. Establish and maintain for the Department a potential Sub-tenant database, including correspondence with potential Sub-tenants.
8. Develop, maintain and make available, if requested, all files, including those of any Sub-tenants, to include copies of licenses, permits, insurance certificates, and letters of credit.
9. Provide from time to time, as requested by the Department, annual financial statements demonstrating its and its Sub-tenant's financial capacity to perform its obligations under the terms of the Agreement.

G. Operating

The Master Concessionaire shall:

1. Provide quality control audits and reports, including maintenance of the street pricing requirements covering compliance with contract requirements, cleanliness of the Location, timeliness of service, quality of the product
2. Generate monthly reports to the Department, including sales by unit, concept and Location.
3. Develop annual revenue projections by month by its Sub-tenant, by Location, concession category, and product category to be updated on a regular basis.
4. Generate and provide the Department monthly airport revenue reports, and such other financial and management reports as are usual and customary in sophisticated airport concession management programs. Prepare other reports and analyses as may be requested periodically by the Department, including number of transactions per hour, average sales per transaction, and sales per product category.
5. Provide on-site staff to perform daily functions as required by the Scope of Services and the Standards of Operations identified in this Lease and Concession Agreement, subject to acceptance by the Department
6. Ensure compliance, or cause Sub-tenants to comply with the Department and other governmental agency ID Badging requirements.
7. Implement any new policies, and procedures, and operational directives as issued from time to time by the Department.
8. Ensure payment is submitted with the Monthly Report of Gross Revenues to the Department.
9. Respond to customer/passenger complaints on a timely basis. Ensure customer service program compliance. The Master Concessionaire and/or its Sub-tenants will submit its/their customer service-training program within thirty (30) Days of the Lease Effective Date of the Agreement, for the Department's review and approval.
10. Coordinate and implement regular employee customer service training programs, to include employees from both the Master Concessionaire and its Sub-tenants, if applicable.

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11. Participate and shall cause any Sub-tenant to participate in an airport-wide customer service program implemented by the Department.

H. Maintaining

The Master Concessionaire shall:

1. Maintain or cause to maintain the Locations pursuant to Department standards, which may be promulgated from time to time.
2. Coordinate and maintain general oversight of deliveries of goods and products for the concession operations from any designated on or off-Airport storage area.
3. Shall take such corrective action as necessitated to maintain Locations in acceptable condition as required by the Department.

2.06 ANNUAL PLAN SUBMISSION: The Master Concessionaire shall prepare a marketing plan. The marketing plan shall be submitted to the Department on or before ninety (90) Days prior upcoming fiscal year for the Department (October 1 – September 30). The Department shall have forty-five (45) Days after receipt of the foregoing plan to approve or disapprove the same in its discretion. If MDAD disapproves the plan, the Master Concessionaire shall operate in substantial conformity with all such plans approved by the Department as may be modified from time to time.

The Department reserves the right to request at any time any further submission of plans.

2.07 PROHIBITED ACTIVITIES: Without limiting any other provision herein, Master Concessionaire or its Sub-tenants shall not, without the prior written consent of the Department which may be withheld in its sole and absolute discretion: (a) advertise or hold any distress, fire, or bankruptcy sales, (b) cause or permit anything to be done, in or about the Locations, or bring or keep anything thereon which might (i) increase in any way the rate of fire insurance on the MIA Terminal Building or any of its contents, (ii) create a nuisance or annoyance or safety hazard, or (iii) obstruct or interfere with the rights of others in the MIA Terminal Building; (c) commit or suffer to be committed any waste upon the Locations; (d) use, or allow the Locations to be used, for any improper or unlawful purpose; (e) do or permit to be done anything in any way tending to injure the reputation of the Department, the County, the Board of County Commissioners, or the appearance of the Airport; or (f) construct any improvement on or attach any equipment to the roof of the Airport. Except as required to permit Master Concessionaire or its Sub-tenants to perform its maintenance and repair obligations under this Agreement, Master Concessionaire or its Sub-tenants shall not gain access to the roof of the MIA terminal building without the consent of the Department, which may be withheld in the Department's sole and absolute discretion.

ARTICLE 3 – RENTALS, PAYMENTS AND REPORTS

3.01 MINIMUM ANNUAL GUARANTEE: As consideration for the privilege to engage in business at Miami International Airport, Master Concessionaire shall pay the Department

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the amount of _____annually as may be reduced by the prorated amount stated below and subject to recalculation pursuant to **Sub-Article 3.03 "Recalculation of the Minimum Annual Guarantee"**, inclusive of Location rent.

The Minimum Annual Guarantee ("MAG") payment shall be in U.S. funds, prorated and payable in twelve equal monthly payments ("Minimum Monthly Guarantee" or "MMG") on or before the first day of each month, in advance, without billing or demand, plus applicable taxes as may be required by law.

Commencing upon the first day of the month after the earlier to occur of (i) Location Commencement Date of each Location or (ii) 365 days from the Effective Date of the Agreement.

Example for the prorated Minimum Annual Guarantee calculation:

Commencing upon Location Commencement Date of each Location:

Location	Square Footage	Percent
North Terminal	1,000	50%

Total square footage is divided by the square footage of Location which have received Beneficial Occupancy or for which 120 Days have elapsed after the Turnover Date for such Location.

The total square footage of Location depicted on **Exhibit A, "Locations"** of 2,000 square feet divided by the Location square footage of 1,000 receiving Beneficial Occupancy or for which 120 Days have elapsed after Turnover Date equals the percentage rate to be applied to the MAG. If the MAG is $10,000.00 dollars, then 50% of the MAG is $5,000.00 dollars, which is due and payable in twelve equal monthly payments on or before the first day of each month, in advance, without billing or demand, plus applicable state taxes as may be required by law.

3.02 NO NEGOTIATIONS OR ADMINISTRATIVE MODIFICATIONS: The Master Concessionaire understands and agrees, as a condition precedent to the County's consideration of the proposal, that the terms and conditions of **Sub-Article 3.01 "Minimum Annual Guarantee"**, and **Sub-Article 3.04 "Percentage Fee to the Department"** are not subject to negotiation or adjustment for any reason, including, but not necessarily limited to, airport construction, airline relocation, airline bankruptcies, change in airline service, and the like, except in the event of an act of God or an event of force majeure as such term is defined in **Sub-Article 22.11 "Force Majeure"**. Nor shall the County be liable for any reduction in sales or disruptions or delays caused in whole or in part by any of the foregoing at any time during the Term and any Extension of this Agreement. If the Master Concessionaire's Locations are so damaged as to significantly impact the Master Concessionaire's operations for a period in excess of seventy two (72) hours, the Department shall provide a proportionate abatement of the MMG for that portion of the Locations rendered unusable for that period of time that the County is unable to make repairs required by **Sub-Article 6.01 "Department Services"**.

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3.03 RECALCULATION OF THE MINIMUM ANNUAL GUARANTEE: The Minimum Annual Guarantee shall be recalculated as of the first day of the month immediately following the anniversary of the Lease Effective Date and every year thereafter. An appropriate adjustment will be made to reflect the change in the Consumer Price Index ("CPI") for all urban consumers ("CPI-U") in the U.S. Cities Average: All Items, for the published, preceding twelve-month period.

3.04 PERCENTAGE FEE TO THE DEPARTMENT: The Master Concessionaire shall pay the Department the total percentage fee of Gross Revenues or the Minimum Monthly Guarantee; whichever is greater, for each respective package. The monthly percentage fee shall be due on the tenth ($10^{th)}$ Day of the month following the month during which the monthly gross revenues were received or accrued. Percentage fees are non-taxable.

The Monthly Percentage Fee payments to the Department shall commence upon the Beneficial Occupancy for each Location.

Monthly Percentage Fee payments to the Department payable on any unreported Gross Revenues, determined by the annual audit required pursuant to **Sub-Article 3.19 "Annual Audit"**, are considered as having been due on the tenth (10^{th}) Day of the month following the month during which the unreported Gross Revenues were received or accrued.

To the extent the Master Concessionaire and the Department mutually agree to change a concept category for a particular Location, then the corresponding percentage fee, as listed per category in **Sub-Article 3.05, "Retail Category Percentage Fee"**, will be adjusted accordingly.

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3.05 CONCESSION CATEGORY PERCENTAGE FEE: The Master Concessionaire shall pay the Department the Percentage Fee for the corresponding category.

The following is the applicable "Percentage Fee per Category" acceptable for each concept category.

CONCEPT CATEGORY	APPLICABLE PERCENTAGE
RETAIL	
Bookstores	12%
News & Gifts 19% for Gifts 16% for News	 16% 19%
Newsstands (Gifts 19%)	16% 19%
Entertainment & Electronics	11%
Fashion Apparel & Accessories	14%
Gift Specialty Shops	16%
Jewelry, Watches & Accessories	17%
Sundries, Personal Care	17%
Travel Accessories	17%
Coffee Shop/Café - Food Coffee Shop/Café - Liquor	15% 19%

3.06 ANNUAL RENTAL: The Master Concessionaire shall be required to pay rent at the prevailing terminal class rates for the lease of support and storage spaces provided by **Sub-Articles 1.04** and **1.05**, prorated and payable in equal monthly installments in U.S. funds, on the first day of each and every month, in advance and without billing or demand, at the offices of the Department as set forth in **Article 3.17, Address for Payments**.

3.07 NOT USED

3.08 ANNUAL RENTAL RATE ADJUSTMENT: On October 1st of each year of the Agreement, the rental rates, pursuant to **Article 3.06, "Annual Rental"** shall be subject to

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recalculation and adjustment in accordance with the policies and formulae approved by the Board of County Commissioners, as may be amended from time to time. When such adjusted rental rates are established, this Agreement shall be considered and deemed to have been administratively amended to incorporate such adjusted rental rates, effective as of such October 1st date. Payments for any retroactive rental adjustments shall be due upon billing by the Department and payable within ten Days of same.

3.09 COMMON WAREHOUSE LOGISTICS FEE: In the event the Department initiates a Common Logistics Program the actual costs incurred to rent any such off-Airport properties for storage and the actual costs incurred in the operation of the common logistical support service program (including the purchase or renting of any equipment needed to operate such program), as may be determined by the Department and/or Master Concessionaire from time to time, shall be included in the Common Logistics Fee. The Common Logistics Fee shall be reimbursed to the Master Concessionaire by its Sub-tenants on a non-discriminatory basis for all similarly situated Sub-tenants. The Master Concessionaire shall not be entitled to charge Sub-tenants for any of the Master Concessionaire's internal administrative expenses in managing the common logistical support service program as part of the Common Logistics Fee. All funds received by Master Concessionaire as part of the Common Logistics Fee shall not be included in Master Concessionaire's Gross Revenues for any and all purposes of this Agreement, it being recognized by the Department that any such payments by Sub-tenants to the Master Concessionaire shall not be included in the calculation of the Percentage Fee, if any, due from Master Concessionaire to the Department as provided for in **Sub-Article 3.04 "Percentage Fee to the Department"**. The Department reserves the right to approve and review the basis of the actual costs and allocation thereof should the Master Concessionaire elect to implement a common logistics support service program. The Department also reserves the right to either itself impose or require that the Master Concessionaire impose the Common Logistics Fee in a non-discriminatory manner within store categories.

3.10 CONCESSION MARKETING FEE: A concession marketing fee of one half (l/2) of one percent (1%) of Gross Revenues will be assessed annually to be paid to the Department monthly, beginning the month following the first Location opening on the twentieth (20^{th}) of each month to be used for marketing the concessions at the Airport.

3.11 MAG PERFORMANCE BOND: Within thirty (30) Days of the award of this Agreement, the Master Concessionaire shall provide the Department a Performance Bond to guarantee payment of the MAG and non-Location rent. Master Concessionaire shall keep such Performance Bond in full force and effect during the Term and any Extension of this Agreement, as applicable, and, thereafter, until all financial obligations, reports or other requirements of this Agreement are satisfied. The Performance Bond shall be a surety bond. In the alternative, an irrevocable letter of credit, or other form of security acceptable to the Department may be furnished. Any such form of security instrument shall be endorsed as to be readily negotiable by the Department for the payments required hereunder. The Performance Bond shall be effective for the current year of operation with automatic renewal for each of the remaining years under this Agreement, including any extensions naming the County as obligee and issued by a surety company or companies in such form as approved by the County Attorney. The form of security shall initially be in

an amount equal to seventy-five percent (75%) of the MAG and rent. Thereafter, the amount shall be adjusted as necessary to reflect any increases in the MAG and non Location rent.

The Department may draw upon such form of security instrument, if the Master Concessionaire fails to pay any monies or perform any obligations required hereunder following applicable notice and cure periods specified herein. Upon notice of any such draw, Master Concessionaire shall immediately replace the Performance Bond with a new Performance Bond in the full amount of the Performance Bond required hereunder. A failure to renew the Performance Bond, or increase the amount of the Performance Bond, or other forms of security instrument, if required due to such draw, shall (i) entitle the Department to draw down the full amount of such Performance Bond, and (ii) be a default of this Agreement entitling Department to all available remedies. Provided Master Concessionaire is not in default and fully complies with all the payment requirements of this Agreement, the payment security instrument will be returned to Master Concessionaire within one hundred eighty (180) Days after the end of the Term or any Extension of the Term.

3.12 TAXES: The Master Concessionaire shall be solely responsible for the payment of all applicable taxes, levied upon the fees and other charges payable by the Master Concessionaire to the Department hereunder, whether or not the same shall have been billed or collected by the Department, together with any and all interest, liquidated damages and charges levied thereon. The Master Concessionaire hereby agrees to indemnify the County and Department and hold it harmless from and against all claims by any taxing authority that the amounts, if any, collected from the Master Concessionaire and remitted to the taxing authority by the Department, or the amounts, if any, paid directly by the Master Concessionaire to such taxing authority, were less than the total amount of taxes due, and for any sums including interests and liquidated damages payable by the Department as a result thereof. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.

3.13 REPORTS OF GROSS REVENUES: On or before the tenth (10^{th}) Day following the end of each month throughout the Term and any Extension of this Agreement, the Master Concessionaire shall furnish to the Department, a Statement of Monthly Gross Revenues, using Exhibit I "Monthly Report of Gross Revenues". The report shall report each Location under this Agreement, together with any percentage fee due to the Department pursuant to **Sub-Article 3.04 "Percentage Fee to the Department"**. The Master Concessionaire shall certify as to the accuracy of such Gross Revenues in such form as shall be prescribed by the Department. The Department may modify from time to time, the form of reporting upon not less than thirty (30) Days written notice to the Master Concessionaire. The statement must be signed by an officer (if the Master Concessionaire is a corporation), partner (if a partnership), or owner (if a sole proprietorship) of the Master Concessionaire, and identify all Gross Revenues by Location reported to the Master Concessionaire during such month. Failure to comply within ten (10) Days following the due date of the report shall result in a late fee liquidated damage of fifty dollars ($50.00) per Day, as provided in Sub-Article 3.24 "Liquidated Damages".

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3.14 OTHER REPORTS: The Master Concessionaire shall provide the Department with financial data and operating statistics in a format and frequency specified by the Department, and the Department shall provide no less than thirty (30) Days written notice of the format and frequency required for said financial data and operating statistics.

3.15 LATE PAYMENT: In the event the Master Concessionaire fails to make any payments as required to be paid under the provisions of this Agreement within ten (10) business days of the due date, delinquency charges established by the Board will be imposed. Such rate is currently 1½% delinquency charge per month.

3.16 DISHONORED CHECK OR DRAFT: In the event the Master Concessionaire delivers a dishonored check or draft to the Department in payment of any obligation arising under this Agreement, the Master Concessionaire shall incur and pay a service fee of TWENTY-FIVE DOLLARS ($25.00), if the face value of the dishonored check or draft is fifty dollars ($50.00) or less, THIRTY DOLLARS ($30.00) if the face value of the dishonored check or draft is more than fifty dollars ($50.00) and less than three hundred dollars ($300.00), or FORTY DOLLARS ($40.00), if the face value of the dishonored check is three hundred dollars ($300.00) or more, or five percent (5%) of the face value of such dishonored check or draft, whichever is greater, plus liquidated damages imposed by law. Further, in such event, the Department may require that future payments required pursuant to this Agreement be made by cashier's checks or other means acceptable to the Department.

3.17 ADDRESS FOR PAYMENTS: The Master Concessionaire shall pay all monies payable and identify the Lease and Concession Agreement for which payment is made, as required by this Agreement, to the following:

In Person: Miami-Dade Aviation Department
Finance Division
4200 N.W. 36th Street
Building 5A, Suite 300

During normal business hours, 8:30 A.M. to 5:00 P.M., Monday through Friday:

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. 36th Street
Building 5A, Suite 300
Miami, Florida 33122

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

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3.18 REVENUE CONTROL PROCEDURES: Notwithstanding anything to the contrary contained herein, the Master Concessionaire shall comply with such revenue control procedures as may be established from time to time by the Department. The Department shall provide the Master Concessionaire with at least thirty (30) Days prior written notice together with a copy of such revenue control procedures prior to requiring the Master Concessionaire to implement any such revenue control procedures.

3.19 ANNUAL AUDIT: Within ninety (90) Days of each anniversary of the Lease Effective Date of this Agreement and within ninety (90) Days following expiration or earlier termination of this Agreement, the Master Concessionaire shall, at its sole cost and expense, provide to the Department on an annual basis, an audited report of monthly Gross Revenues and percentage fees separately stating its and each Sub-tenants Gross Revenues, containing an opinion, prepared and attested to by an independent certified public accounting firm, licensed in the State of Florida. The audited report, as detailed in Exhibit G "Independent Auditor Report", shall include a schedule of monthly Gross Revenues and percentage fees paid to the Department under this Agreement, prepared in accordance with Generally Accepted Auditing Standards. The report shall also be accompanied by a management letter containing the findings discovered during the course of the examination, recommendations to improve accounting procedures, revenue and internal controls, as well as significant matters under this Agreement. In addition, the audit shall also include as a separate report, a comprehensive compliance review of procedures to determine whether the books of accounts, records and reports were kept in accordance with the terms of this Agreement for the period of examination. Each audit and examination shall cover the period of this Agreement. The last such report shall include the last day of operation. There shall be no changes in the scope of the reports and letters required hereunder without the specific prior written approval of the Department.

3.20 RIGHT TO AUDIT/INSPECT: The Department and the auditors of the County shall have the right, without limitation, at any time during normal working hours, to enter into any locations on or off the Airport, which the Master Concessionaire may use as administrative, maintenance and operational locations, in connection with its operations pursuant to this Agreement, to: (1) verify, check and record data used in connection with operation of this Agreement; (2) inspect, review, verify and check all or any portion(s) of the procedures of the Master Concessionaire for recording or compiling Gross Revenues information and (3) audit, check, inspect and review all books of account, records, financial reports, financial statements, operating statements, inventory records, and state sales tax returns, and work papers relating to operation of this Agreement, and other pertinent information as may be determined to be needed or desirable by the Department. Prior to entering any Locations located on the Airport, the Department shall give advance notice to the Master Concessionaire.

If it is established that the percentage fees have been underpaid to the Department, the Master Concessionaire shall forthwith, pay the difference with interest thereon at the rate set forth in **Sub-Article 3.15 "Late Payment"** from the date such amount or amounts should have been paid.

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Further, if such examination establishes that Master Concessionaire has underpaid percentage fees for any period examined by three percent (3%) or more, then the entire expense of such examination shall be borne by Master Concessionaire.

In the event of any conflict between any provisions of this Agreement and generally accepted accounting principles or generally accepted auditing standards, the provisions of this Agreement shall control even where this Agreement references such principles or standards. In particular, without limitation, the Master Concessionaire shall maintain all records required under this Agreement to the full extent required hereunder, even if some or all of such records would not be required under such general principals or standards.

In addition to the foregoing, the Department reserves the right to review any and all fees imposed by the Master Concessionaire to each Sub-tenant and the basis of such fee and allocation to each Sub-tenant.

3.21 RECORDS AND REPORTS: The Master Concessionaire shall, at all times during the Term of this Agreement, or any Extension hereof and in accordance with applicable law, maintain at the Master Concessionaire's principal corporate office located in the United States and make available to the Department in Miami-Dade County, Florida, complete and accurate books and records of all receipts and disbursements from its operations on the Locations, in a form consistent with good accounting practice. In addition, Master Concessionaire shall install or cause to be installed for use at all times in each Location such devices and forms as are reasonably necessary to record properly, accurately and completely all merchandise sales and services from each Location. The form of all such books of account records and reports shall be subject to the approval of the Department and/or the auditors of the County (one or more of the following: the designated external auditing firm or other certified public accounting firm selected by the Department, or the Audit and Management Services Department of the County) prior to commencement of operations hereunder.

The Master Concessionaire shall account or shall cause its Sub-tenants to account for all revenues of any nature related to transactions in connection with this Agreement in a manner which segregates in detail those transactions from other transactions of the Master Concessionaire (and of the Sub-tenants, as the case may be) and which supports the amounts reported to the Department in the Master Concessionaire's monthly schedules. At a minimum, the Master Concessionaire's accounting for such receipts shall include the following:

1. Master Concessionaire's bank account statements (separate bank accounts shall be maintained for receipts from Sub-tenants' payments to the Master Concessionaire and no receipts from any other source shall be deposited in such accounts);
2. A compiled report of transactions by Location showing all Gross Revenues and all exclusions from Gross Revenues by category, which report shall be subtotaled by day and totaled by month. The monthly total shall correspond with the amounts reported to the Department on the Master Concessionaire's monthly "Revenue Reports"; and

3. Such other records, if any, which would normally be examined by an independent certified public accountant in performing an examination of the Master Concessionaire's Gross Revenues in accordance with generally accepted auditing standards and the provisions of this Agreement.

   Such records may be in the form of (a) electronic media compatible with the computers available to the Department, or (b) a computer run hard copy. The Department may require other records necessary in its determination to enable the accurate audit of Master Concessionaire's Gross Revenues hereunder. Upon ten (10) business days written notice from the Department, all such books and records, including the general ledger and bank statements and all federal, state and local tax returns relating to Sub-tenant's sales, shall be made available, either at the Locations, or at the Department's option, at the offices of the Department, for inspection by Department through its duly authorized representatives at any time for up to three (3) years subsequent to final termination of the period to be examined to which such books and records relate (and the Master Concessionaire shall not be obligated to retain such books and records subsequent to the termination of such three (3) year period); provided, however, that any such inspection on the Locations will be conducted during reasonable business hours and in such a manner and at such time as not to interfere unduly with the conduct of the Master Concessionaire's business.

3.22 ADDITIONAL FEES DUE: If the Department has paid any sum or has incurred any obligation or expense for which the Master Concessionaire agreed to pay or reimburse the Department, or if the Department is required or elects to pay any sum or incur any obligation or expense because of the failure, neglect or refusal of the Master Concessionaire to perform or fulfill any of the terms or conditions of this Agreement, then the same shall be deemed due and subject to an additional administrative fee of twenty-five percent (25%) of such payment, obligation, or expense.

3.23 UTILITIES: The cost of all utilities used or consumed on the Locations shall be borne by the Master Concessionaire; provided, however, except with respect to the Master Concessionaire's support and storage space as defined in **Sub-Articles** 1.05 and 1.05 at the Airport, the Master Concessionaire shall be entitled to pass the cost of all utilities used or consumed to the Sub-tenants at the same rates as billed to the Master Concessionaire without any administrative mark-up or profit. The Department requires the Master Concessionaire where such capability exists, to provide and install or cause the Sub-tenants to provide and install meters for utilities used at the Master Concessionaire's or its Sub-tenant's expense. If the Locations are not provided with separate electric, gas, and/or water meters, the Master Concessionaire agrees to pay for such utilities in the Locations as a monthly charge, plus any applicable taxes, upon billing by the Department, or utility companies. If billed by the Department, the Department at its sole discretion, will base this monthly charge on (i) a survey of consumption by the Department and current non-discriminatory rates charged others in the Terminal Building or (ii) at the option and expense of the Master Concessionaire on actual usage measured by temporary meters, arranged and paid for by the Master Concessionaire. This monthly charge may also be adjusted on a non-discriminatory basis and billed retroactively from time to time based on changes in consumption and rates. Master Concessionaire hereby agrees to pay the same within thirty (30) Days after it has received Department's invoice thereof. The Master

Concessionaire shall pay for all other utilities used by it including telephones and telephone service hook-up, data lines and additional electrical and communications services required.

3.24 LIQUIDATED DAMAGES: If the Master Concessionaire or its Sub-tenants are at fault under any of the covenants or terms and conditions, of this Agreement, Department shall impose the financial liquidated damages described below, as a result of the violation(s), on a daily basis, in addition to any other liquidated damages permissible by law and/or pursuant to the provisions of this Agreement, until said violations are remedied:

Violation	Fee
Violation of Permitted Use of a Location	$100 per Day/per Location
Failure to Maintain Required Hours of Operation	$ 25 per hour/per Location
Failure to Submit Required Documents and Reports	$ 50 per Day/per Location
Unauthorized Advertising	$ 50 per Day/per Location
Failure to Maintain Location Clean	$ 50 per Day/per Location
Failure to Maintain Market Basket Pricing or to conduct the surveys as required	$ 50 per Day/per Location
Installation of Unapproved Items in Locations	$ 50 per Day/per Location
Violations of Other Terms and Conditions	$75 per Day/per Location

The foregoing is due and payable from the Master Concessionaire; however, it shall not be construed as prohibiting the Master Concessionaire from imposing the financial liquidated damages described above, as a result of the Sub-tenant's violation(s), on a daily basis, on the applicable Sub-tenants, in addition to any other liquidated damages permissible by law and/or pursuant to the provisions of the Sub-Lease agreements, until said violations are remedied by the applicable Sub-tenants.

3.25 PAYMENT SECURITY: The Master Concessionaire shall provide the County with an irrevocable standby letter of credit in the format approved by the Department or cash for the payments required by this Sub-Article in an amount equal to twenty-five percent (25%) of the MAG and twenty-five percent (25%) of any annual rent, which may be required by **Sub-Articles 1.04** and **1.05**. Thereafter the amount shall be adjusted as necessary to reflect any increases in the MAG and annual rent. This requirement shall be met no later than thirty (30) Days after the Lease Effective Date of the Agreement. The payment security shall be kept in full force throughout the Term and any Extension of this Agreement thereof. The Department may draw upon such payment security instrument if the Master Concessionaire fails to make the payments secured by this Sub-Article. Upon notice of any such draw, Master Concessionaire shall immediately replace the payment security with a new payment security in the full amount of the payment security required hereunder. A failure to renew the payment security, or increase the amount of the payment security, if required pursuant hereto, shall (i) entitle the Department to draw down the full amount of such payment security, and (ii) be a default of this Agreement entitling Department to all available remedies.

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ARTICLE 4 – IMPROVEMENTS TO THE LOCATIONS

4.01 IMPROVEMENTS TO LOCATIONS: The Master Concessionaire shall be required to invest a minimum of two twenty hundred dollars per square foot ($220.00 psf), for Approved Improvements for the design, construction, furniture, fixtures and equipment excluding interior signage and inventory for each Location listed in Exhibit A and any additional location taken by the Master Concessionaire pursuant to **Sub-Article 1.07(A) "Addition of Locations"**. Notwithstanding the actual amount of design and engineering costs incurred with respect to improvements for a Location, the maximum proportion of soft costs permitted to be included as Approved Improvements shall be no more then fifteen percent (15%) of the total design and engineering cost. All improvements shall be subject to review and approval by the Department. The Department may, with mutual agreement, fund certain improvements needed to support the concession space and allow the Master Concessionaire to build such improvements in compliance with MDAD TAC procedures.

It is the intent of the parties that Approved Improvements may include but are not limited to the décor, remodeling of the wall and floor coverings, ceiling, lighting, millwork, HVAC, fire detection and fire suppression or such other improvements as are approved by the Department. Such improvements shall be shown in the design detail in the Final Plans, as such term is defined in **Sub-Article 4.02 "Design of Improvements"**.

Improvements not constituting Approved Improvements shall include improvements that (i) are non-fixed, (ii) have not been reimbursed by the Department pursuant to **Sub-Article 4.09 "Cost Documentation"**, and (iii) can be removed without damage to the premises. The Master Concessionaire is liable and shall indemnify the Department for any damage to the Locations which results from the removal of said improvements. This provision shall survive the termination or expiration of this Agreement.

Off-Airport properties used as storage space will not be considered as Locations, as stated in **Article 4 "Improvements to the Locations"** or as an extension of this Agreement, and costs incurred by either the Master Concessionaire or its Sub-tenants to provide such storage space shall not constitute Approved Improvements.

4.02 DESIGN OF IMPROVEMENTS: Plans for the design of improvements will be in accordance with Exhibit E "Retail Concessions Design Guidelines", Exhibit F "Tenant Airport Construction Non-Reimbursable Projects (TAC-N) Design and Construction Procedures" or Exhibit M "Tenant Airport Construction Reimbursable Projects (TAC-R) Design and Construction Procedures", as applicable, the "MDAD Life Safety Master Plan" and the "MDAD Design Guidelines Manual" (www.Miami-Airport.com) as may be established for the Concessions Retail Program. As plans for the improvement of individual Locations or common area improvements are completed, the Master Concessionaire shall submit to the Department for review, approval or modification detailed final plans ("Final Plans") and specifications (including materials, colors, textures and fixtures), construction cost estimates and schedules for the construction of the improvements. The Final Plans shall be prepared by an architectural interior design and/or

engineering firm registered in the State of Florida and in accordance with the Florida Building Code and all applicable State and local laws, ordinances, and regulations.

4.03 REFURBISHMENT OF LOCATIONS: The Master Concessionaire will be required to refurbish the Locations or cause its Sub-tenants to refurbish their respective Locations to begin no earlier than the sixth (6^{th}) Term year of the Agreement and be completed no later than the last day of the sixth (6^{th}) Term year of this Agreement.

Approved Improvements for the refurbishment of the Locations shall not be less than fifty dollars per square foot ($50 psf). There will be no reimbursement or amortization of these costs for refurbishment.

4.04 CERTAIN CONSTRUCTION CONTRACT TERMS: All contracts entered into by the Master Concessionaire and/or its Sub-tenants for the construction of the Improvements shall require completion of the improvements within the schedules submitted pursuant to **Sub-Article 4.02 "Design of Improvements"** and shall contain reasonable and lawful provisions for the payment of actual or liquidated damages to the County in the event the contractor fails to complete the construction on time. The Master Concessionaire agrees that it will use its best efforts and shall also require the Sub-tenants to take all necessary action available under such construction contracts to enforce the timely completion of the work covered thereby.

Prior to the commencement of any installation work by the Master Concessionaire, the Master Concessionaire shall provide or cause to be provided to the County copies of a fixed price contract or contracts for all work to be performed at the Locations. The work to be performed under such contract(s) shall be insured by a Exhibit B, "Surety Performance and Payment Bond" provided by Master Concessionaire to the County in the form contained in Exhibit B "Surety Performance and Payment Bond" in the Lease and Concession Agreement. The Surety Performance and Payment bond shall be in full force throughout the term of the installation contract.

4.05 IMPROVEMENTS FREE AND CLEAR: The improvements, upon completion, shall immediately become the property of the County, free and clear of any liens or encumbrances whatsoever, other than the County's obligation to reimburse the Master Concessionaire for the un-amortized value of the Approved Improvements as provided in this Agreement. The Master Concessionaire agrees that any contract for construction, alteration or repairing of the improvements or Locations or for the purchase of material to be used, or for work and labor to be performed, shall be in writing and shall contain provisions to protect the County (and the Master Concessionaire for contracts entered into by Sub-tenants) from the claims of any laborers, subcontractors or material men against the locations or improvements.

4.06 OTHER REQUIREMENTS: The Master Concessionaire shall or shall cause the Sub-tenants to apply for and obtain a building permit from the County for all appropriate inspections and a Certificate of Occupancy upon completion. Within sixty (60) Days following the completion of construction of the improvements, the Master Concessionaire shall furnish or shall cause the Sub-tenants to furnish to the Master Concessionaire and the County four complete sets each of legible prints (black line), photo mylars and 35 mm

aperture card microfilm of construction drawings, and auto cad files revised to "as built", including all pertinent shop and working drawings, copies of all releases of all claims and a copy of the Certificate of Occupancy provided the Master Concessionaire does not disseminate such information, refer to Transportation Security Regulations (TSR), 49 C.F.R. 1520, et al., Protection of Sensitive Security Information.

No Facility will be allowed to open without obtaining a Temporary Certificate of Occupancy or a Certificate of Occupancy.

Any change in the Location, concept or tenant proposed in response to the Request for Proposals must be approved in writing by the County. The Sub-tenant occupying the Location submitted in response to the Request for Proposal shall be given notice of the proposed change in writing with a copy to the County and an opportunity to respond in writing to the County and have an opportunity to be heard by the County.

4.07 REVIEW OF CONSTRUCTION: The County shall have the right, but not obligation, to periodically observe the construction to ensure conformity with the Final Plans and any changes thereof requested by the Master Concessionaire or the Sub-tenant and approved by the County.

4.08 COST DOCUMENTATION: Within one hundred eighty (180) Days from the date of Beneficial Occupancy, specifically including those improvements described in **Sub-Articles 4.01 "Improvements to Locations",** and **4.03 "Refurbishment of Locations"**, the Master Concessionaire shall submit to the County a certified audit of the monies actually expended in the design and construction of the Approved Improvements by Location in accordance with the Final Plans, prepared by an independent certified public accounting firm ("Auditor"), approved in advance by the County (the "Certified Audit"). The Master Concessionaire or the Sub-tenants, as the case may be, shall be responsible for documenting for the Auditor that the monies that were expended are true and correct. The costs of design and construction, in accordance with the Final Plans and any changes thereto requested by the Master Concessionaire or the Sub-tenants and approved by the County, including the costs of required bonds, construction insurance and the construction audit, shall not include the cost of any other consultant or accountant fees, financing or legal fees and personal property of the Master Concessionaire or the Sub-tenants, as the case may be. No non-receipted expenditures will be credited. Master Concessionaires not submitting certified audits within the allotted time may be billed a liquidated damage of fifty dollars ($50.00) per Day. Upon reconciliation, any difference due the County shall also include an administrative fee of ten per cent (10%) of the monies due the County on the build-out of the Locations. In the event of any disputes between the County and the Master Concessionaire as to whether certain costs are to be included in the audit, said dispute shall be submitted to the consulting engineer named pursuant to the Trust Agreement, as defined in **Sub-Article 17.01 "Incorporation of Trust Agreement by Reference"**. The decision of said consulting engineer, acting in good faith, shall be final and binding upon the parties hereto.

The Department shall notify the Master Concessionaire in writing that it has approved or disapproved the certified costs for each Location and the common area improvements

detailed in the Certified Audit within sixty (60) Days from the date of its receipt of the Certified Audit. If the Master Concessionaire fails to submit the Certified Audit within the time prescribed above for any Location, then a liquidated damage will be assessed as noted in **Sub-Article 3.24 "Liquidated Damages"**. The Approved Improvement cost for purposes of calculating the County's obligation to reimburse the Master Concessionaire for un-amortized improvement costs for such Location pursuant to **Sub-Article 4.09 "Amortization Schedule"** shall equal the lesser of two hundred twenty dollars ($220) per square foot or the square footage rate of improvement costs for such Location certified by the Auditor.

If the approved total receipted amount is below the Master Concessionaire or its Sub-tenant's minimum investment and is depicted as such in the results of the Certified Audit, the Master Concessionaire shall be required to pay to the Department the difference between the expended amount and the minimum investment, within one hundred eighty (180) Days from the date of Beneficial Occupancy of the corresponding Location.

If the approved total receipted amount for Refurbishment of Locations is below the Master Concessionaire's or its Sub-tenant's investment, the Master Concessionaire shall be required to pay the Department the difference between the expended amount and the refurbishment amount within one hundred eighty (180) Days from the date of completion of refurbishment.

The Master Concessionaire shall be entitled to obtain reimbursement of such payments made to the Department from the applicable Sub-tenant(s) who fails to spend the minimum investment or the refurbishment amount for their specific Locations.

4.09 AMORTIZATION SCHEDULE: The Master Concessionaire shall amortize its capital investment for a period not to exceed (60) months using the straight-line depreciation method. If, at any time during the Term of the Agreement, excluding any extension, the Department requires the deletion and/or modification of any Location, the Department may designate new Locations at its sole discretion and reimburse the Master Concessionaire the unamortized balance of Approved Improvements for that Location.

Investment subject to such reimbursement shall include the following items only:

1. Directly contracted costs of construction.

2. Stores displays more than $500 per display, furniture, fixture, equipment and signage purchased and installed for direct use in the facility.

3. Design and engineering costs not to exceed fifteen percent (15%) of the total approved construction, installation, store displays, furniture, fixture, equipment and signage cost.

There will be no other reimbursement.

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A certified audit of monies for the above expenditures performed at the expense of the Master Concessionaire will be required to confirm the Minimum Investment within one hundred twenty (120) Days of Beneficial Occupancy for each Location. No non-receipted expenditures will be credited. If the approved total receipted amount is below the ($220/psf) minimum, the Master Concessionaire will be required to pay the Department the difference between the Minimum Investment amount and the actual receipted expenditure within ninety (90) Days after billing by the Department.

Master Concessionaires not submitting a certified audit within the allotted time may be billed a liquidated damage of fifty dollars ($50.00) per Day. Upon reconciliation, any difference due the Department shall also include an administrative fee of twenty-five percent (25%) of the monies due the Department on the build-out of the Locations.

Prior to the commencement of any construction installation or work by the Master Concessionaire, the Master Concessionaire shall provide or cause to be provided to the Department copies of a fixed price contract or contracts for all work to be performed at the Locations. The work to be performed under such contract(s) shall be insured by a Performance and Payment Bond provided by Master Concessionaire to the Department in the form contained in Exhibit B "Performance and Payment Bond" in the Agreement. The Performance and Payment Bond shall be in full force throughout the term of the installation / construction contract.

4.10 CONSTRUCTION PERMIT FEE: The Master Concessionaire shall pay a permit fee to the Department for improvements which would customarily be paid to the County's Building Department as a condition to issuance of a permit. The permit fee payable by the Master Concessionaire to the Department is an amount equal to one percent (1%) of the estimated construction cost of the improvements. Such fee shall be used to reimburse the Department its costs of maintaining on-site Building Department staff to review Master Concessionaire's and Sub-tenant's plans/specifications. Such fee shall be non-refundable. The Master Concessionaire shall be entitled to require the Sub-tenants to pay their proportionate share for the construction costs for the improvements to be made by the Sub-tenants in each Location.

4.11 CONSTRUCTION SERVICES: The Master Concessionaire shall provide at a minimum, but not limited to, the following design and construction services:

1) Master Concessionaire Improvements

Pursuant to the terms of this Agreement, the Master Concessionaire shall construct or cause to construct certain improvements. The Department shall provide the Master Concessionaire with the scope of such improvements and within a reasonable time period to be mutually agreed to by the Master Concessionaire and the Department, the Master Concessionaire shall provide the Department with a preliminary estimate of hard and soft costs for such improvements. Once the Department and the Master Concessionaire have mutually agreed on the scope of the improvements and the preliminary estimates, the Master Concessionaire shall

proceed to design and construct or cause to be designed and constructed the improvements in accordance with the provisions of this Agreement.

2) Design and Construction Coordination

a. Master Concessionaire shall:

1. Be responsible for construction management and coordination of all improvements to the Locations and authorized administrative support space including those of Sub-tenants.
2. Coordinate meetings with Sub-tenants and Sub-tenant's architects, if applicable, MDAD's architects, consultants and others, to review procedures, scheduling site surveys and develop build-out schedules.
3. Coordinate the processing and review of improvement submittals. Design and construction shall be in accordance with the MDAD Design Guidelines Manual, Life Safety Master Plan, MDAD Retail Concessions Design Guidelines, Florida Building Code and the TAC-N or TAC-R Procedures, as well as all other applicable codes and regulations.
4. Provide Sub-tenants, if applicable, with required information such as, but not limited to, leasehold outline or as-built drawings provided by the Department's Technical Support Division.
5. Provide and coordinate access to Location as necessary.
6. Purchase materials and services, and coordinate the fabrication and installation of the Master Concessionaire development requirement, whereby such elements are the designated responsibility of the Master Concessionaire, if so implemented.

3) Construction

Master Concessionaire shall:

1. Attend or cause Sub-tenants to attend pre-construction meetings, construction meetings, coordinate construction with Sub-tenants if applicable, monitor schedule, and coordinate locations development with the Department as required, pursuant to the TAC-N procedures.
2. Adhere to and or cause Sub-tenants to adhere to MDAD's TAC-N or TAC-R Design and Construction procedures and requirements.
3. Ascertain that MDAD's TAC-N or TAC-R Design and Construction procedures and requirements, as applicable, are adhered to by all.
4. Monitor and coordinate the construction start, project timetable schedule and completion date for all Locations, including those of any Sub-tenants.
5. Monitor and report to the Department on on-site activities and progress for improvement work. The Architect/Engineer of record is responsible for day-to-day field observation of all construction activities including, but not limited to inspections, delivery, coordination and reporting.

6. Monitor construction progress with regard to the schedule and procedures established and make recommendations to the Department for maintaining and improving construction progress as necessary.
7. Establish a uniform system for the timely processing and control of drawings.
8. Review status of drawings with contractor(s) and architect(s) at progress meetings.
9. Review and advise the Department on all changes to the work with regard to cost and impact on the project pro-forma and construction schedule.
10. Monitor punch list completion and review testing and inspection reports for all Locations.
11. Organize and have available upon request completed project files.
12. Coordinate access to the Location to allow staff training and equipment testing.
13. Obtain Certificate of Occupancy for each Location.
14. Submit Record Drawings (as-built drawings) as per the TAC-N or TAC-R requirements within sixty (60) Days from the issuance date of the Certificate of Occupancy, and deliver them to the Department pursuant to the TAC-N or TAC-R procedures.

ARTICLE 5 – STANDARDS OF OPERATION

5.01 STANDARDS OF OPERATION: The Master Concessionaire shall comply with the Department's "Tenant Handbook", Exhibit K; the "Standards of Operations", Exhibit L, the "MIA Terminal Standards" available on **www.miami-airport.com,** and all revisions to same promulgated from time to time by the Department.

The Department shall have the right to adopt and enforce reasonable and non-discriminatory rules and regulations and operating performance standards with respect to the use of Locations, which the Master Concessionaire agrees to observe and obey and cause its Sub-tenants to observe and obey. The Department may amend such rules or regulations and operating performance standards from time to time and shall provide copies thereof to the Master Concessionaire. The Master Concessionaire shall distribute such rules and regulations and operating performance standards to its Sub-tenants. The Department shall provide the Master Concessionaire with reasonable prior written notice, not less than thirty (30) Days, prior to the implementation of any such amendment to the rules or regulations and operating performance standards. Those rules include, but are not limited to, any rules and regulations imposed upon the Department by any governmental agency.

The Master Concessionaire shall implement and comply with all amended requirements, within fifteen (15) Days of receipt of an amendment to Exhibit L "Standards of Operation". The Master Concessionaire shall immediately implement and comply and shall cause its Sub-tenants to immediately implement and comply with any rules and regulations promulgated for safety or security reasons.

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The Master Concessionaire acknowledges the desire of the Department, as part of its obligation to ensure the highest level of public service, to provide the public and air traveler an adequate range and quality of service. The Department may monitor, test or inspect the Locations at any time through the use of its own personnel, and/or the use of a shopping service, and/or by any other reasonable means that do not unduly interfere with the operation of the business. The results of such service audits may be employed by the Department to enforce the obligations in this Agreement.

The Department shall retain the right, in accordance with the provisions of this Agreement, to make reasonable objections to the quality of articles sold, the character of the service rendered to the public, the prices charged, and the appearance and condition of the Locations, pursuant to Exhibit L "Standards of Operation", as may be amended from time to time.

5.02 MARKET BASKET PRICING POLICY: The Department has instituted a Market Basket pricing policy to ensure that Airport prices are comparable to retail in the Miami Dade County, Florida area to reinforce the objective of making the Airport a more "passenger friendly" airport, pursuant to Exhibit L "Standards of Operation."

The Master Concessionaire or its Sub-tenants who are not in compliance with the provisions of this Sub-Article shall be given seven (7) Days after notice of such non-compliance pursuant to **Sub-Article 18.09 "Notices"** to bring all products into compliance. Failure to do so shall subject the Master Concessionaire to liquidated damages pursuant to **Sub-Article 3.24 "Liquidated Damages"** and shall constitute a default under this Agreement.

ARTICLE 6 – OBLIGATIONS OF THE DEPARTMENT

6.01 DEPARTMENT SERVICES:

A. Department's Maintenance Obligation: The Department shall clean, maintain and operate in good condition the terminal building, excluding the Locations. This obligation includes, but is not limited to, all structural (including, but not limited to, the roof and base floor of the terminal building) and all base building work, maintenance of main electrical and mechanical systems, maintenance of walls and ceilings, and repair/maintenance of the roof. The Department shall maintain the public areas in the terminal building furnished and will provide adequate light, cold water and conditioned air. The Department agrees to make all necessary structural repairs to the Locations at its own expense; provided, however, that for purposes of this Agreement such structural repairs shall not include any repairs to any equipment installed by the Master Concessionaire or its Sub-tenants, and further provided that the Master Concessionaire shall or shall cause its Sub-tenants to reimburse the Department, within ten (10) Days of receipt of written demand for such reimbursement, for the cost and expense of all structural repairs required as a result of the negligent or intentional acts of the Master Concessionaire, its officers, partners, employees, agents, contractors, subcontractors, licensees, Sub-tenants or invitees. The Master Concessionaire shall give the Department written notice (or

verbal notice in the event of any emergency conditions which may result in harm to the patrons of the Airport, which verbal notice shall be followed by written notice within twenty-four (24) hours) describing any repair, which is the responsibility of the Department. The Department shall commence the repair process promptly after its receipt of such written notice if the Department agrees that such repair is required and is the Department's responsibility hereunder.

B. The Master Concessionaire must ascertain the extent of the existing utility capacities, before designing any new loads to be connected to existing systems and piping. The Department agrees to cooperate in providing access to the Locations.

Such maintenance by the Department may be subject to interruption caused by repair, strikes, lockouts, labor controversies, inability to obtain fuel, power or parts, accidents, breakdowns, catastrophes, national or local emergencies, and other conditions beyond the control of the Department. If the Master Concessionaire's or Sub-tenant's Locations are of such a condition as to significantly impact the Master Concessionaire's or a Sub-tenant's operations for a period in excess of seventy two (72) hours and such damage is not insurable under an insurance policy of the type required to be maintained by the Master Concessionaire pursuant to this Agreement or the Sub-tenant pursuant to the Sub-Lease or license agreement, the Department may provide a rent abatement for that portion of the Locations rendered unusable for that period of time that the Department is unable to make repairs required by **Sub-Article 6.01 "Department Services"**.

C. No Other Obligation of Department: The Master Concessionaire acknowledges that the Department has made no representations or warranties concerning the suitability of the Locations for the Master Concessionaire's or its Sub-tenant's use or for any other use, and that except as expressly provided in this Agreement, the Department shall have no obligations whatsoever to repair, maintain, renovate or otherwise incur any cost or expense with respect to the Locations or any improvements, furnishings, fixtures, trade fixtures, signage or equipment constructed or used on or in the Locations by the Master Concessionaire or its Sub-tenants.

1. The Master Concessionaire hereby confirms that it has made its own investigation of all the costs of doing business under this Agreement, including the costs of furnishings, fixtures, trade fixtures, inventory, signs and equipment needed for Sub-tenants to operate from the Locations hereunder, that it has done its own projections of the volume of business expected to be generated, that it is relying on its own business judgment concerning its prospects for providing the services required under this Agreement on a profitable basis, and that the Department has not made any representations or warranties with respect to any such matters.

2. The Department does not warrant the accuracy of any statistics or projections relating to the Airport and its operations, which have been provided to the Master Concessionaire by the Department or anyone on its behalf and the Department shall not be responsible for any inaccuracies in such statistics or their interpretation.

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3. All statements contained in this Agreement or otherwise made by the Department or anyone on its behalf concerning any measurement relating to the Locations or any other area of the Airport are approximate only, and any inaccuracy in such statements of measurements shall not give rise to any claim by the Master Concessionaire under or in connection with this Agreement.

4. The Department shall not be liable to the Master Concessionaire for any loss of business or damages sustained by the Master Concessionaire as a result of any change in the operation or configuration of, or any change in any procedure governing the use of, the construction improvements of the terminal building.

ARTICLE 7–FURNITURE, FIXTURES AND EQUIPMENT

7.01 FURNITURE, FIXTURES, AND EQUIPMENT: Any equipment, furnishings, fixtures and signs installed in the Locations by the Master Concessionaire or its Sub-tenant shall be in keeping with the decor of the terminal building and must be approved in advance by the Department. Any such equipment, furnishings, fixtures and signs so installed by the Master Concessionaire or its Sub-tenant, as provided in **Sub-Article 4.01 "Improvements to Locations"**, shall, except as provided in **Sub-Article 7.03(B) "Disposal of Furniture, Fixtures, and Equipment"**, be removed from the Locations within five (5) Days following the expiration or earlier termination of this Agreement.

7.02 AMERICANS WITH DISABILITIES ACT REQUIREMENTS: The Master Concessionaire will be responsible, at its cost, for ensuring that the Locations and all equipment therein, and all functions it performs therein as part of the concession, conform in all respects to the requirements of the Americans with Disabilities Act (the "ADA"), including without limitation, the accessibility guidelines promulgated pursuant thereto. The ADA imposes obligation on both public entities, like the Department and those private entities that offer services for the convenience of users of the public entities' locations. In some circumstances, the public entity must ensure that the operations of the private entity comply with the public entity's ADA obligations. In most cases the ADA obligations of the Department and the Master Concessionaire will be the same. However, the Department reserves the right to require the Master Concessionaire to modify its or its Sub-tenant's operations or its physical locations to comply with the Department's ADA obligations with respect to the Locations, as the Department in its sole discretion deems reasonably necessary.

7.03 DISPOSAL OF FURNITURE, FIXTURES, AND EQUIPMENT: At least thirty (30) Days prior to the expiration of this Agreement, or upon termination pursuant to **Article 12 "Default and Termination by County"** or **Article 13 "Claims and Termination by Master Concessionaire"** hereof, the Department shall exercise, at its sole discretion, one (1) of the following options as to any equipment, furnishings, fixtures, signs, or carts installed in the Locations by the Master Concessionaire or any Sub-tenant:

(A) Require the Master Concessionaire to remove such equipment, furnishings, fixtures, signs, or carts from the Locations within five (5) Days following the expiration or earlier termination of this Agreement, subject to the provisions of **Sub-Article 4.01**

"Improvements to Locations"; or

(B) Retain any portion of the equipment, furnishings, fixtures, signs, or carts of the Master Concessionaire or any Sub-tenant (personal property as referred to in **Sub-Article 4.01 "Improvements to Locations"**) in accordance with the provisions of this Agreement; provided however, the Department shall have no right to use or display any proprietary signs or logos (e.g., brand names owned by, or licensed or franchised to Master Concessionaire or any Sub-tenant).

ARTICLE 8 – MAINTENANCE

8.01 CLEANING: The Master Concessionaire shall, at its cost and expense, keep or cause its Sub-tenants to keep the Locations clean, neat, orderly, sanitary and presentable at all times. If the Locations are not kept clean as provided in the Standards of Operation, Exhibit L, the Master Concessionaire will be so advised and shall take immediate corrective action. Failure to take immediate corrective action may result in liquidated damages being assessed pursuant to **Sub-Article 3.24 "Liquidated Damages"**.

8.02 REMOVAL OF TRASH: The Master Concessionaire shall, at its cost and expense, remove or cause to be removed from the Locations and properly disposed of in Department provided containers, all trash and refuse of any nature whatsoever which might accumulate and arise from the operations hereunder. If the Master Concessionaire enters into agreements for the janitorial and trash removal or any Sub-tenant service within the Locations, such service providers must have permits issued by the Department to do business at the Airport. Trash shall not be stored in any area visible to the public nor cause a private or public hazard through its means of storage. All edible items must be contained so as to minimize exposure to pests. The Master Concessionaire shall have the right to charge Sub-tenants for a proportionate share of any such costs and expenses incurred to remove and properly dispose of all trash, refuse, and pest control as a result of inactions or actions by the Master Concessionaire and/or its Sub-tenants of any nature whatsoever. Any trash left or stored in any area visible to the public or edible items not properly contained may result in liquidated damages being assessed pursuant to **Sub-Article 3.24 "Liquidated Damages"**.

The Department reserves the right to charge the Master Concessionaire retroactively non-discriminatory proportionate share for waste disposal a proportionate share in a non-discriminatory manner either indirectly through rental rates or directly by a Department generated bill for actual usage. Such charges shall not exceed the Department's actual costs.

8.03 MAINTENANCE AND REPAIR: Except with respect to the Department's maintenance and repair obligations as set forth in **Sub-Article 6.01 "Department Services"**, the Master Concessionaire shall maintain and repair or cause to be maintained and repaired the interiors and exterior storefronts of the Locations. Such maintenance and repairs shall include, but not be limited to, painting, ceiling, walls, floors, laminating doors, windows, equipment, furnishings, fixtures, appurtenances, replacement of ceiling light bulbs, ballast and the replacement of all broken glass, which repairs shall be in quality and class equal to

or better than the original work to preserve the same in good order and condition. Maintenance for all equipment furnished by the Master Concessionaire or its Sub-tenants specifically as a result of their operation shall remain the obligation of the Master Concessionaire or its Sub-tenants. The Master Concessionaire shall repair or cause to be repaired, at or before the end of the Term or Extension, if applicable, of this Agreement, all injury done by the installation or removal of furniture and personal property so as to restore the Locations to the state they were at the commencement of this Agreement, reasonable wear and tear excluded. The Department may, at any time during normal business hours, enter upon the public areas of the Locations, or with appropriate notice, enter upon the non-public areas of the Locations, to determine if maintenance is being performed satisfactorily. The Department may enter upon any Location when a Location is not open for business if the Department provides the Master Concessionaire notice no less than two (2) hours in advance so that a representative of either the Master Concessionaire and/or a representative of the applicable Sub-tenant may be present, except in the case of real or perceived emergencies where no such representatives shall be required to be present. If it is determined that said maintenance is not satisfactory, the Department shall so notify Master Concessionaire in writing. If said maintenance is not performed by Master Concessionaire (or if the Master Concessionaire fails to cause the Sub-tenant to perform such maintenance) to the satisfaction of the Department within seven (7) Days after receipt of such written notice, Department shall have the right to enter upon the Locations and perform such maintenance and charge Master Concessionaire for such services, as provided by **Sub-Article 8.04.**

8.04 FAILURE TO MAINTAIN: Upon failure of the Master Concessionaire or its Sub-tenants to maintain the Locations as provided in this **Article 8 "Maintenance"**, the Department may enter upon the Locations and perform all cleaning, maintenance and repairs which may be necessary and the cost thereof plus twenty-five percent (25%) for administrative costs, shall constitute additional rental, and shall be billed to and paid by the Master Concessionaire, in addition to any liquidated damages imposed by the Department pursuant to **Sub-Article 3.24 "Liquidated Damages"**.

Failure to pay said costs upon billing by the Department will cause this Agreement to be in default as stated in **Sub-Article 12.02 "Payment Default"**.

8.05 ENVIRONMENTAL RECYCLING: The Department is actively engaging in the development of environmental programs. A recycling program is planned at the Airport to include the participation of all Airport Master Concessionaires. Participation in this program, once established, will be mandatory. The Master Concessionaire and/or its Sub-tenants shall agree to bear any reasonable and actual costs associated with the implementation and continued operation of this recycling program, or propose for approval by the Department an alternative environmental recycling plan which such approval shall not be unreasonably withheld.

Proper disposal of contaminated and/or regulated materials generated by the Master Concessionaire or its Sub-tenants is the sole responsibility of the Master Concessionaire. Disposal must be through the use of a licensed vendor regulated by the State of Florida and/or any other federal or local regulatory agency.

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8.06 FIRE PROTECTION AND SAFETY EQUIPMENT: The Master Concessionaire and its Sub-tenants must provide and maintain all fire protection and safety equipment and all other equipment of every kind and nature required by any applicable law, rule, ordinance, resolution or regulation, for the Term and any Extension of this Agreement or any insurance carrier providing insurance covering any portion of the Locations.

ARTICLE 9 – ASSIGNMENT AND OWNERSHIP

9.01 NO ASSIGNMENT: The Master Concessionaire shall not assign, transfer, pledge or otherwise encumber this Agreement nor shall the Master Concessionaire allow others to use the Locations, without the prior written consent of the Department.

9.02 OWNERSHIP OF THE MASTER CONCESSIONAIRE: Since the ownership, control, and experience of the Master Concessionaire were material considerations to the County in the award of this concession and the entering into of this Agreement, the Master Concessionaire shall take no actions which shall serve to transfer or, sell majority ownership or control (deemed to mean more than fifty percent (50%) of the stock) of the Master Concessionaire without the prior written consent of the Department.

9.03 CHANGE OF CONTROL: If Master Concessionaire is a corporation the issuance or sale, transfer or other disposition of a sufficient number of shares of stock (deemed to mean more than fifty percent (50%) of the stock) in the Master Concessionaire to result in a change of control of Master Concessionaire shall be deemed an assignment of this Agreement for purposes of this **Article 9 "Assignment and Ownership".** If the Master Concessionaire is a partnership, transfer of any interest in the partnership, which results in a change in control of such Master Concessionaire (deemed to mean more than fifty percent (50%) of the ownership interest), shall be deemed an assignment of this Agreement for purposes of this **Article 9 "Assignment and Ownership"**.

9.04 HOLDOVER:

A. With the Department's Permission:

If the Master Concessionaire (or anyone claiming through Master Concessionaire) shall remain in possession of the Locations of no less than seventy percent (70%) of the square footage of the Locations thereof after the termination of this Agreement, by written agreement executed by the Department the person or entity remaining in possession shall be deemed a tenant at sufferance otherwise subject to all of the provisions of this Agreement.

B. Without Department Permission:

If the Master Concessionaire (or anyone claiming through Master Concessionaire) shall remain in possession of the Locations or any part thereof after the termination of this Agreement, without a written agreement executed by the Department, then without limiting the Department's other rights and remedies, the person or entity

remaining in possession shall be deemed a tenant at sufferance otherwise subject to all of the provisions of this Agreement. The Master Concessionaire shall thereafter pay on account of its holdover use and occupancy of the Locations a sum, at a rate equal to two times (2x) the amount payable monthly as MMG PLUS monthly Percentage Fee PLUS monthly installment of the support space annual lease rental pursuant to **Sub-Article 3.06 "Annual Rental"**, and with all additional rent also payable as provided in this Agreement (the "Holdover Charges"). Imposition of Holdover Charges, extinguishes any un-amortized investment amounts owed the Master Concessionaire by the Department, for the slippage in Location turnover. The Holdover Charges shall be payable weekly in advance. Notwithstanding the above, the Master Concessionaire shall remain liable to the Department for all damages resulting from such breach, with the amount of any Holdover Charges accepted by the Department on account of the holdover considered as mitigation of such damages. The covenant in this Sub-Article shall survive the expiration or the termination of this Agreement.

ARTICLE 10 – INDEMNIFICATION

10.01 INDEMNIFICATION REQUIRED OF MASTER CONCESSIONAIRE: The Master Concessionaire shall indemnify, defend, and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and cost 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 by the Master Concessionaire or its employees, agents, servants, partners, principles or any other persons. The Master Concessionaire 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 all costs, judgments, and attorney's fees which may issue thereon.

The Master Concessionaire expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Master Concessionaire 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.

ARTICLE 11 – INSURANCE

11.01 INSURANCE REQUIRED OF MASTER CONCESSIONAIRE: Prior to execution of this Agreement by the County and commencement of the Term of this Agreement, the Master Concessionaire shall obtain all insurance required under this Article and submit it to the Department, c/o Risk Management, P.O. Box 025504, Miami, Florida 33102-5504 for approval. All insurance shall be maintained throughout the Term and any Extensions of this Agreement.

The limits for each type of insurance may be revised upon review and approval of the Master Concessionaire's operations. Additional types of insurance coverage or increased

limits may be required if, upon review of the operations, the Department determines that such coverage is necessary or desirable.

Certificate(s) of insurance from the Master Concessionaire and its Sub-tenants must show coverage has been obtained that meets the requirements as outlined below during the construction and operation phase of this Agreement:

A. Workers' Compensation as required by Chapter 440, Florida Statutes.

B. Commercial General Liability Insurance on a comprehensive basis including Contractual Liability, Broad Form Property Damage and Products and Completed Operations in an amount not less than $1,000,000 per occurrence for Bodily Injury and Property Damage combined. This policy shall include Miami-Dade County as an additional insured with respect to this coverage.

The Commercial General Liability Insurance coverage shall include those classifications, as listed in Standard Liability Insurance Manuals, which are applicable to the operations of the Master Concessionaire in the performances of this Agreement.

C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this Agreement in an amount not less than $500,000* per occurrence for Bodily Injury and Property Damage combined.

*Under no circumstances is the Master Concessionaire or its Sub-tenants allowed on the Airside Operation Area (AOA) without increasing automobile coverage to $5,000,000 as approved by the Risk Management Office.

11.02 CERTIFICATE CONTINUITY: The Master Concessionaire shall be responsible for assuring that the insurance certificates required in conjunction with Article 11 "Insurance" remain in force for the duration of this Agreement, including the Extension, if applicable. If insurance certificates are scheduled to expire during the lease period, the Master Concessionaire shall be responsible for submitting new or renewed insurance certificates for its and its Sub-tenants' operations to the Department's Risk Management Unit at a minimum of thirty (30) Days before such expiration.

Certificates will show that no modification or change in insurance shall be made without thirty (30) Days written advance notice to the certificate holder.

11.03 INSURANCE COMPANY RATING REQUIREMENTS: All insurance policies required above from the Master Concessionaire and its Sub-tenants shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength, according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick,

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New Jersey, or its equivalent, subject to the approval of the Department's Risk Management Office.

11.04 MASTER CONCESSIONAIRE LIABLE: Compliance with the requirements as to carrying insurance in Article 11 "Insurance" shall not relieve the Master Concessionaire and its Sub-tenants from liability under any other provision of this Agreement.

11.05 CANCELLATION OF INSURANCE OR BONDS: Cancellation of any insurance or bonds, or non-payment by the construction contractors of any premiums for any insurance policies or bonds required by this Agreement shall constitute a breach of this Agreement.

11.06 RIGHT TO EXAMINE: The Department reserves the right, upon reasonable notice and at the County's sole cost and expense, to examine the original policies of insurance of the Master Concessionaire and its Sub-tenants (including but not limited to: binders, amendments, exclusions, endorsements, riders and applications) to determine the true extent of coverage. The Master Concessionaire agrees to permit or cause its Sub-tenants to permit such inspection at the offices of the Master Concessionaire and/or its Sub-tenants, as may be applicable. In addition, upon request (but no later than five (5) Days from the date of request, unless such longer period is agreed to by the Department) the Master Concessionaire and/or its Sub-tenant agree to provide copies to the Department, at the Master Concessionaire's or Sub-tenant's sole cost and expense.

11.07 PERSONAL PROPERTY: Any personal property of the Master Concessionaire or its Sub-tenants, or of others, placed in the Locations and support/storage spaces shall be at the sole risk of the Master Concessionaire or the owners thereof, and the County shall not be liable for any loss or damage thereto, irrespective of the cause of such loss or damage.

11.08 SURVIVAL OF PROVISIONS: The provisions of **Article 11 "Insurance"** shall survive the expiration or earlier termination of this Agreement.

11.09 INSURANCE REQUIRED OF SUB-TENANTS: The limits for each type of insurance may be revised upon review and approval of the Sub-tenant's operations. Additional types of insurance coverage or increased limits may be required if, upon review of the operations, the Department determines that such coverage is necessary or desirable.

The Master Concessionaire shall cause its Sub-tenant to provide certificates of insurance indicating the following types of insurance coverage prior to any occupation of the premises:

A. Commercial General Liability Insurance on a comprehensive basis including Contractual Liability, Broad Form Property Damage and Products and Completed Operations in an amount not less than $1,000,000 per occurrence for Bodily Injury and Property Damage combined. Miami-Dade County must be shown as an additional insured with respect to this coverage.

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The Public Liability Insurance coverage shall include those classifications, as listed in Standard Liability Insurance Manuals, which are applicable to the operations of the contractor(s) in the performances of the construction contract.

B. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this Agreement in an amount not less than $500,000* per occurrence for Bodily Injury and Property Damage combined.

*Under no circumstances is the Master Concessionaire or a Sub-tenant allowed on the Airside Operation Area (AOA) without increasing automobile coverage to $5,000,000 as approved by the Safety and Insurance Office.

C. **Certificate Continuity:** The Master Concessionaire and its Sub-tenants shall be responsible for assuring that the insurance certificates required in conjunction with this Sub-Article remain in force for the duration of the lease, including any and all option years, if applicable. If insurance certificates are scheduled to expire during the contract period, the Sub-tenant shall be responsible for submitting new or renewed insurance certificates to the Master Concessionaire at a minimum of thirty (30) Days before such expiration.

D. **Insurance Company Rating Requirements:** All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength, according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the MDAD's Safety and Insurance Office.

Certificates will show that no modification or change in insurance shall be made without thirty (30) Days written advance notice to the certificate holder.

E. **Right to Examine:** The Department reserves the right, upon reasonable notice, to examine the original policies of insurance (including but not limited to: binders, amendments, exclusions, endorsements, riders and applications) to determine the true extent of coverage. The Master Concessionaire agrees to permit or cause such inspection to be permitted at the offices of the Department.

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11.10 INDEMNIFICATION, CONSTRUCTION BONDS AND INSURANCE REQUIRED:

A. Indemnification, Bonds and Insurance Required from Construction Contractor: The following language, including the indemnification clause, shall be included in all construction contracts between the Master Concessionaire and its general contractor(s) and subcontractors and shall also be included in all construction contracts between the Sub-tenants and their respective general contractors and subcontractors:

Indemnification: The Contractor shall defend, indemnify, and save harmless the County, the Consulting Engineers, the Architect/Engineer, the Field Representative, the Lessee of the locations, and their officers (elected or otherwise), employees, and agents (collectively "Indemnitees"), from any and all claims, demands, liability, losses, expenses and causes of actions, arising from personal injury (including death), property damage (including loss of use thereof), economic loss, or any other loss or damage, due in any manner to the negligence, act, or failure to act of the Contractor or its contractors, subcontractors, sub-subcontractors, materialmen or agents of any tier or their respective, employees arising out of or relating to the performance of the work covered by the Contract Documents except as expressly limited herein. The Contractor shall pay all claims and losses of any nature whatsoever in connection therewith and shall defend all suits in the name of the County, when applicable, including appellate proceedings, and shall pay all costs and judgments which may issue thereon, provided however, that the Contractor's obligation to indemnify or hold harmless the Indemnitees for damages to persons or property caused in whole or in part by any act, omission, or default of any Indemnitee arising from the contract or its performance shall be limited to the greater of $1 million or the Contract Amount. Further, this indemnification requirement shall not be construed so as to require the Contractor to indemnify any of the above-listed Indemnities to the extent of such indemnities' own gross negligence, or willful, wanton, or intentional misconduct of the Indemnitee or its officers, directors, agents, or employees, or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused in whole or in part by or result from the acts or omissions of the indemnitor or any of the indemnitor's contractors, subcontractors, sub-subcontractors, materialmen, or agents of any tier or their respective employees. This indemnification provision is in addition to and cumulative with any other right of indemnification or contribution which any Indemnitee may have in law, equity, or otherwise.

B. **Surety Performance and Payment Bonds:** Pursuant to and in accordance with Section 255.05, Florida Statutes, the Master Concessionaire or each contractor performing any part of the work for the Master Concessionaire or its Sub-tenants shall obtain and thereafter at all times during the performance of the work maintain a combined performance bond and labor and material payment bond for the work (referred to herein as the "Bond") in an amount equal to one hundred percent (100%) of the cost of the improvements, as it may be amended from time to time, and in the form attached hereto as Exhibit "B", Surety Performance and Payment Bond". Within ten (10) Days of issuance, Master Concessionaire shall record all bonds required by this Agreement in the Department of Public Records of Miami-Dade County. Prior to performing any portion of the Work, the Master Concessionaire

shall deliver to County the Bonds required to be provided by Master Concessionaire or each contractor as set forth in this Agreement.

All bonds shall be written through surety insurers authorized to do business in the State of Florida as Surety, with the following qualifications as to management and financial strength according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey:

Bond (Total Contract) Amount	Best's Rating
$ 500,001 to $1,500,000	B V
1,500,001 to 2,500,000	A VI
2,500,001 to 5,000,000	A VII
5,000,000 to 10,000,000	A VIII
Over $10,000,000	A IX

For contracts of $500,000 or less, the bond provisions of Section 287.0935, Florida Statutes (1985) shall be in effect and surety companies not otherwise qualifying with this paragraph may optionally qualify by:

a) Providing evidence that the surety has twice the minimum surplus and capital required by the Florida Insurance Code at the time the Request for Proposals is issued.

b) Certifying that the surety is otherwise in compliance with the Florida Insurance Code, and

c) Providing a copy of the currently valid Certificate of Authority issued by the United States Department of Treasury under Section 31 U.S.C. 9304-9308.

d) Surety insurers shall be listed in the latest Circular 570 of the U.S. Department of the Treasury entitled "Surety Companies Acceptable on Federal Bonds", published annually. The bond amount shall not exceed the underwriting limitations as shown in this circular.

e) For contracts in excess of $500,000 the provision of this Sub-Article must be adhered to, plus the surety insurer must have been listed on the United States Treasury list for at least three (3) consecutive years, or currently hold a valid Certificate of Authority of at least 1.5 million dollars and listed on the Treasury list.

f) Surety bonds guaranteed through U.S. Government Small Business Administration or Contractors Training and Development Inc. will also be acceptable.

g) The attorney-in-fact or other officer who signs an Exhibit B, "Surety Performance and Payment Bond" for a surety company must file with such bond a certified copy of his/her power of attorney authorizing him/her to do so.

The required Bond shall be written by or through and shall be countersigned by, a licensed Florida agent of the surety insurer, pursuant to Section 624.425 of the Florida Statutes.

The Bond shall be delivered to the Department upon execution of the contract between the Master Concessionaire and its contractor or the Sub-tenant and its contractor, as the case may be.

C. **Insurance Required of Construction Contractor(s):** The limits for each type of insurance may be revised upon review and approval of the construction plans. Additional types of insurance coverage may be required if, upon review of the construction plans, the Department reasonably determines that such coverage is necessary or desirable.

The Master Concessionaire shall cause its contractor(s) and the Sub-tenants' respective contractor(s) to provide certificates of insurance and copies of original policies, if requested, which shall clearly indicate that the construction contractor has obtained insurance in the type, amount and classifications as required for strict compliance with this Sub-Article. Evidence of such coverage must be submitted prior to any construction:

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

(b) Public Liability Insurance on a comprehensive basis including Contractual Liability, Broad Form Property Damage and Products and Completed Operations in an amount not less than $5,000,000 per occurrence for Bodily Injury and Property Damage combined. The County and the Master Concessionaire must be shown as an additional insured with respect to this coverage.

(c) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this Agreement in an amount not less than $500,000* per occurrence for Bodily Injury and Property Damage combined.

*Under no circumstances is the contractor allowed on the Airside Operation Area (AOA) without increasing automobile coverage to $5,000,000 as approved by the Safety and Insurance Office.

(D) **Certificate Continuity:** The contractor(s) shall be responsible for assuring that the insurance certificates required in conjunction with this Sub-Article remain in force throughout the performance of the contract and until the work has been accepted by the Master Concessionaire and approved by the Master Concessionaire and the Department. If insurance certificates are scheduled to expire during the contract period, the contractor(s) shall be responsible for submitting new or renewed insurance certificates to the Master Concessionaire at a minimum of thirty (30) Days before such expiration.

(E) **Insurance Company Rating Requirements:** All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "A- as to management, and no less than "Class VII" as to financial strength, according to the latest edition of

Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the Master Concessionaire.

(F) **Right to Examine:** The Department reserves the right, upon reasonable notice, to examine the original policies of insurance (including but not limited to: binders, amendments, exclusions, endorsements, riders and applications) to determine the true extent of coverage. The contractor shall be required by the Master Concessionaire to agree to permit such inspection at the offices of the Department.

(G) **Personal Property:** Any personal property of the contractor, or of others, placed in the Locations shall be at the sole risk of the contractor or the owners thereof, and the Department shall not be liable for any loss or damage thereto, irrespective of the cause of such loss or damage.

ARTICLE 12– DEFAULT AND TERMINATION BY COUNTY

12.01 EVENTS OF DEFAULT: A default shall mean a breach of this Agreement by the Master Concessionaire (an "Event of Default"). In addition to those defaults defined **in Sub-Article 12.02 "Payment Default", Sub-Article 12.03 "Other Defaults"**, and **Sub-Article 12.04 "Habitual Default"**, an Event of Default, may also include one (1) or more of the following occurrences:

(A) The Master Concessionaire or one of its Sub-tenant has violated the terms and conditions of this Agreement;

(B) The Master Concessionaire or one of its Sub-tenants has failed to make prompt payment to subcontractors or suppliers for any service or work provided for the design, installation, operation, or maintenance of the advertising concessions;

(C) The Master Concessionaire has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Master Concessionaire's creditors, or the Master Concessionaire has taken advantage of any insolvency statute or debtor/creditor law, or the Master Concessionaire's affairs have been put in the hands of a receiver;

(D) The occurrence of any act, which operates to deprive Master Concessionaire of the rights, power, licenses, permits or authorities necessary for the proper conduct and operation of the activities authorized herein;

(E) Abandonment or discontinuance of operations by Master Concessionaire of its business by any act(s) of Master Concessionaire;

(F) Any persistent violation on the part of Master Concessionaire, its agents or employees of the traffic rules and regulations of City at Airport or disregard of the safety of persons using the Airports, upon failure by Master Concessionaire to correct the same;

(G) Failure on the part of Master Concessionaire to maintain the quality of service required by the terms of this Agreement, including, but not limited to, any cessation or diminution of service by reason of Master Concessionaire being unable for any

reason to maintain in its employ the personnel necessary to keep its business in operation and available for public use, unless such use is due to strike, lockout, or bona fide labor dispute;

(H) Failure by Master Concessionaire or one of its Sub-tenants to maintain its other equipment in a manner satisfactory to the Director;

(I) The Master Concessionaire or its Sub-tenants has failed to obtain the approval of the Department where required by this Agreement;

(J) The Master Concessionaire or its Sub-tenants has failed to provide adequate assurances as required under **Sub-Article 12.09 "Adequate Assurances"**;

(K) The Master Concessionaire has failed to comply with any provision of **Sub-Article 14.07 "Airport Concession Disadvantaged Business Enterprise Participation Plan/Provision";**

(L) The Master Concessionaire has failed in a representation or warranty stated herein; or

(M) The Master Concessionaire has received three (3) notices of default, of any kind, within a twenty-four (24) month period.

12.02 PAYMENT DEFAULT: Failure of the Master Concessionaire to make MAG/MMG payments and Percentage Fee payments and other charges required to be paid herein when due and fails to cure the same within five (5) Days after written notice shall constitute a default, and the County may, at its option, terminate this Agreement after five (5) Days notice in writing to the Master Concessionaire.

12.03 OTHER DEFAULTS: The Department shall have the right, upon thirty (30) Days written notice to the Master Concessionaire to terminate this Agreement upon the occurrence of any one or more of the following unless the same shall have been corrected within thirty (30) Days after written notice; provided, however, that if it is not reasonably possible to cure such failure within such thirty (30) Day period, such cure period shall be extended for an additional period of such duration the Department shall deem appropriate without waiver of any of the Department's rights hereunder, if within the thirty (30) Days after such written notice the Master Concessionaire commences to cure such default and thereafter diligently and continuously continues to cure such default:

(A) Failure of the Master Concessionaire to comply with covenants of this Agreement other than those that constitute default pursuant to **Sub-Article 12.02 "Payment Default"**.

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

(C) Any Event of Default.

12.04 HABITUAL DEFAULT: Notwithstanding the foregoing, in the event that the Master Concessionaire has frequently, regularly or repetitively defaulted in the performance of or has breached any of the terms, covenants and conditions required herein, to be kept and performed by the Master Concessionaire, regardless of whether the Master Concessionaire

has cured each individual condition of breach or default as provided for in **Sub-Article 12.02 "Payment Default"** and **Sub-Article 12.03 "Other Defaults"** above, the Master Concessionaire may be determined by the Director to be an "habitual violator". At the time that such determination is made, the Director shall issue to the Master Concessionaire a written notice, advising of such determination and citing the circumstances thereof. Such notice shall also advise the Master Concessionaire 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 noncurable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, the Department may terminate this Agreement upon the giving of written notice of termination to the Master Concessionaire, such termination to be effective upon the seventh (7) Day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Master Concessionaire shall have no further rights hereunder. Immediately upon receipt of said notice of termination, the Master Concessionaire shall discontinue its operations at the Airport and proceed to remove all its personal property in accordance with **Sub-Article 12.10 "Actions at Termination"** hereof.

12.05 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE: If an Event of Default occurs, the Department shall notify the Master Concessionaire by sending a notice of default, specifying the basis for such Event of Default, and advising the Master Concessionaire that such default must be cured immediately or this Agreement with the Department may be terminated. The Master Concessionaire can cure and rectify the Event of Default, to the Department's satisfaction, within thirty (30) Days from Master Concessionaire's receipt of the Default Notice (the "Cure Period") or such other timeframe as delineated in the Agreement. The Department may extend the Cure Period and grant an additional period of such duration as the Department shall deem appropriate without waiver of any of the Department's rights hereunder, so long as, the Master Concessionaire has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) Day period or any other period which the Department prescribes. The notice of default shall specify the Termination Date by when the Master Concessionaire shall discontinue the services.

12.06 UNAMORTIZED INVESTMENT EXTINGUISHED: Termination of this Agreement based upon **Sub-Article 12.07 "Termination for Abandonment"**, **Sub-Article 12.02 "Payment Default"**, **Sub-Article 12.03 "Other Defaults"**, **Sub-Article 12.04 "Habitual Default"**, or **Sub-Article 12.08 "Termination for Cause"**, shall extinguish any unamortized investment amounts owed the Master Concessionaire by the Department, for the slippage in Location Turnover Dates.

12.07 TERMINATION FOR ABANDONMENT: This Agreement may be terminated in its entirety upon the abandonment by the Master Concessionaire of the Locations or the voluntary discontinuance of Master Concessionaire's services at the Airport for any period of time exceeding twenty-four (24) consecutive hours, unless such abandonment or discontinuance has been caused by civil disturbance, governmental order or Act of God that prevents the Master Concessionaire from providing services on the Locations for the

purposes authorized in **Article 2 "Use of Locations"**. The foregoing shall not include periodic Sub-tenant vacancies in individual Locations that may occur from time to time during the Term of this Agreement, including any Extension.

12.08 TERMINATION FOR CAUSE: The County may terminate this Agreement, effective immediately if: (i) the Master Concessionaire attempts to meet its contractual obligation(s) with the County through fraud, misrepresentation or material misstatement; or (ii) a principal of the Master Concessionaire is convicted of a felony during the Term or any Extensions thereof if applicable. The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or joint venture or other entity has with the County and that such individual, corporation or joint venture or other entity shall be responsible for all direct and indirect costs associated with such termination, including attorney's fees.

The foregoing notwithstanding, any individual, firm, corporation, joint venture, or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be disbarred from County contracting for up to five (5) years in accordance with the County's debarment procedures. The Master Concessionaire may be subject to debarment for failure to perform, and all other reasons set forth in § 10-38 of the Code of Miami-Dade County, Florida (the "Code").

12.09 ADEQUATE ASSURANCES: When, in the opinion of the Department, reasonable grounds for uncertainty exist with respect to the Master Concessionaire's ability to perform the work or any portion thereof, the Department may request that the Master Concessionaire, within the time frame set forth in the Department's request, provide adequate assurances to the Department, in writing, of the Master Concessionaire's ability to perform in accordance with terms of this Agreement. In the event that the Master Concessionaire fails to provide to the Department the requested assurances within the prescribed time frame, the Department may:

1. Treat such failure as a repudiation of this Agreement; and
2. Resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the work or any part thereof either by itself or through others.

12.10 ACTIONS AT TERMINATION: The Master Concessionaire shall, upon receipt of such notice to terminate, and as directed by the Department:

(A) Stop all work as specified in the notice to terminate;

(B) Take such action as may be necessary for the protection and preservation of the Locations and other Department materials and property;

(C) Vacate, quit and surrender, all Locations and storage/support spaces and account for all furnishings, fixtures, equipment, software, vehicles, records, funds, inventories, commodities, supplies and other property of the County on or before the date of termination.

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ARTICLE 13 – CLAIMS AND TERMINATION BY MASTER CONCESSIONAIRE

13.01 ADMINISTRATIVE CLAIM PROCEDURES: If the Master Concessionaire has any claim against the County arising under this Agreement, it will be made in writing within thirty (30) Days of the occurrence of the event to the Director. The exact nature of the claim, including sufficient detail to identify the basis for the claim and the amount of the claim shall be clearly stated. The dispute will be decided by the Director, who will mail or otherwise furnish a written copy of the decision to the Master Concessionaire at the address furnished in **Sub-Article 18.09 "Notices"**. The decision of the Director will be final and conclusive unless, within thirty (30) Days from the date of receipt of such copy, the Master Concessionaire mails or otherwise furnishes to the Department a written appeal addressed to the County Manager. The decision of the County Manager, or his duly authorized representative for the determination of such appeals, will be final and conclusive unless within thirty (30) Days of the Master Concessionaire's receipt of such decision, the Master Concessionaire files an action in a court of competent jurisdiction. In connection with any appeal proceeding under this provision, the Master Concessionaire shall be afforded an opportunity to be heard and to offer other evidence in support of the appeal. Pending final decision of a dispute hereunder, the Master Concessionaire shall proceed diligently with the performance of this Agreement and in accordance with the County's decision. Failure to perform in accordance with the decision of the Director or the County Manager shall be cause for termination of this Agreement in accordance with **Sub-Article 12.03 "Other Defaults"**. The failure of the Master Concessionaire to comply with this administrative claim procedure shall be cause for a waiver of claim and an abandonment of any claim arising out of the event.

13.02 TERMINATION: The Master Concessionaire shall have the right, upon thirty (30) Days written notice to the County to terminate this Agreement, without liability to the County, at any time after the occurrence of one or more of the following events:

(A) Issuance by any court of competent jurisdiction of any injunction substantially restricting the use of the Airport for airport purposes, and the injunction remaining in force for a period of more than one hundred eighty (180) Days.

(B) A breach by the County of any of the material terms, covenants or conditions contained in this Agreement required to be kept by the County and failure of the Department to remedy such breach for a period of one hundred eighty (180) Days after receipt of written notice from the Master Concessionaire of the existence of such breach.

(C) The assumption by the United States Government or any authorized agency thereof, or any other governmental agency, of the operation, control or use of the airport locations or any substantial part, or parts thereof, in such a manner as substantially to restrict the Master Concessionaire's provision of services for a period of one hundred eighty (180) Days.

ARTICLE 14 – VOLUNTARY AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE

I4.01 ACDBE PARTICIPATION:

It is the policy of the County that ACDBE's shall have the maximum practical opportunity to participate in the performance of County agreements. As used in the Bid Documents, the term "Airport Concession Disadvantaged Business Enterprises (ACDBE)" means a small business concern, which (a) is at least fifty-one percent (51%) owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least fifty-one percent (51%) of the stock which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it as set forth in 49 CFR Part 23, Code of Federal Regulations. **The Department has established an ACDBE concession specific goal for Package One (1) of thirty percent 30%, and an ACDBE goal for Package Two (2) of thirty percent 30% percent of gross revenues.** The ACDBE overall goal can be achieved either through the Proposer being an ACDBE itself, a partnership or joint venture, or subcontracting a percentage of gross revenues.

The Airport Concession Disadvantaged Business Enterprise (ACDBE) Plan must be submitted with the Proposal in accordance with **Appendix C, Section II** and its supporting documents. The Successful Proposer will be required to submit to the Department's Minority Affairs Division, Monthly Utilization Reports (MUR) reflecting ACDBE revenue and operational expenses, commencing 90 days after beneficial occupancy and monthly thereafter, on or before the 10th of every month.

14.02 COUNTING ACDBE PARTICIPATION:

When an ACDBE participates in a contract, only the value of the work actually performed by the ACDBE toward the ACDBE goal will be counted.

When an ACDBE performs as a participant in a joint venture a portion of the total dollar value of the contract **during the complete contract term,** equal to the clearly defined portion of the work of the contract that the ACDBE performs will be counted toward ACDBE goals.

Expenditures to an ACDBE contractor toward ACDBE goals will be counted only if the ACDBE is performing a commercially useful function as defined below:

(a) An ACDBE performs a commercially useful function when it is responsible for execution of specific quantifiable work of the contract and is carrying out its responsibilities by actually performing, or managing, or supervising the specific identified work.

MDAD will determine whether an ACDBE is performing a commercially useful function by evaluating the specific duties outlined in the Joint Venture Agreement; the subcontract agreement or other agreements in accordance with industry

practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and other relevant factors.

(b) An ACDBE does not perform a commercially useful function if its role is limited to that of an extra participant in a financial or other transaction, contract, or project through which funds are passed in order to obtain the appearance of ACDBE participation.

(c) If an ACDBE does not perform or exercise responsibility for at least their percentage of its participation or if the ACDBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that the ACDBE is not performing a commercially useful function.

(d) When an ACDBE is presumed not to be performing a commercially useful function as provided in paragraph (c) of this section, the ACDBE may present evidence to rebut this presumption. MDAD will determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

4. MDAD's decision on commercially useful function matters are final.

14.03 ACDBE PARTICIPATION ACHIEVED THROUGH JOINT VENTURE ("JV") PARTNERING:

Proposers may decide to satisfy a part of the ACDBE goal by Joint Venturing with an ACDBE. The ACDBE partner must meet the eligibility standards set forth in 49 CFR Part 23. A **"joint venture" or ("JV")** shall mean and may be referred to as an "association" of two or more businesses acting as a concessionaire and performing or providing services on a contract, in which each joint venture or association partner combines property, capital, efforts, skill, and/or knowledge. The Joint Venture agreement must specify the following:

(1) Each ACDBE joint venture **("JV")** partner must be responsible for a clearly defined portion of the work to be performed. The work should be detailed separately from the work performed by the non-ACDBE JV partner.

The work should be submitted as part of this solicitation and annually thereafter to the Aviation Department's Minority Affairs Division. The work to be performed by the ACDBE joint venture partner should be store specific with regards to tasks and locations.

The ACDBE Joint Venture partner will be required to spend the minimum amount of aggregate time on-site, focused on the operation of the concession. Such "minimum amount of aggregate time" is defined as ten hours per week.

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(2) Each joint venture partner must submit a notarized Monthly Utilization Report and a notarized Monthly Report of ACDBE Joint Venture Activity providing details of how the performance objectives were achieved and providing documentation of that achievement on the form. This information should include, but not limited to:

a. Details of training sessions, including class rosters and lesson plans.
b. Deliverables and work products.
c. Time sheets of partner employees used to fulfill objectives. Time sheets must accurately reflect hours worked and compensation earned.
d. Proof that employees of partner actually work for them (payroll, payroll tax returns and the like).

(3) Each ACBDE partner must share in the ownership, control, management, and administrative responsibilities, risks and profits of the JV in direct proportion to its stated level of JV participation.

(4) Each ACDBE JV partner must perform work that is commensurate with the Lease Agreement.

As described below, each Proposer must submit, as part of its Proposal, a plan for the achievement of ACDBE goal, including Schedule of Participation and the Letter of Intent from ACDBE's who are Certified or have applied for Certification to the Miami-Dade County, Department of Small Business Development (SBD) as required by Airport Concession Disadvantaged Business Enterprise Participation Plan (ACDBE).

Without limiting the requirements of the Agreement, the County will have the right to review and approve all agreements utilized for the achievement of these goals. Such agreements must be submitted with the Proposal.

14.04 CERTIFICATION-AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)

In order to participate as an ACDBE on this contract, an ACDBE must be certified or have applied for certification to the Miami-Dade County, Department of Small Business Development (SBD) or Florida Uniform Certification Program (FLUCP) at the time of Proposal submittal, but the ACDBE firm must be fully certified on or before the award date.

Application for certification as an ACDBE may be obtained by contacting the Miami-Dade County, Department of Small Business Development (SBD) located at 111 N.W. 1st Street, Stephen P. Clark Center, 19th Floor, Miami Florida 33128-1974 or by telephone at (305) 375-3111 or facsimile at (305) 375-3160, or visit their website at www.co.miami-dade.fl.us/SBA/.

The ACDBE Certification List is maintained and published at least every other week by the Miami-Dade County, Department of Small Business Development (SBD) and contains

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the names and addresses of currently certified Airport Concession Disadvantaged Business Enterprise (ACDBE's) certified by the agency.

The FLUCP (Florida Unified Certification Program) Directory is available at **http://www.bipincwebapps.com/biznetflorida/.** The Directory lists the firm's name, address, phone number, date of the most recent certification, certifying agency and type of work the firm has been certified to perform. The FLUCP updates the data every 24 hours and revises the Directory regularly. The address for Florida UCP is:

Florida Department of Transportation,
Equal Opportunity Office
605 Suwannee Street, MS 65
Tallahassee, Florida 32399-0450
Tel: (850) 414-4747 Fax: (850) 414-4879

14.05 AFFIRMATIVE ACTION AND AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PROGRAMS:

The Successful Proposer acknowledges that the provisions of 14 CFR Part 152, Affirmative Action Employment Programs, and 49 CFR Part 23, Airport Concession Disadvantaged Business Enterprise Programs, are applicable to the activities of the Successful Proposer under the terms of the Agreement, unless exempted by said regulations, and hereby agrees to 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 Airport Concession Disadvantaged Business Enterprise and/or Employment Affirmative Action participation goals, the keeping of certain records of good faith compliance efforts, which would be subject to review by the various agencies, the submission of various reports and, if directed by the Department, the contracting of specified percentages of goods and services contracts to Airport Concession Disadvantaged Business Enterprises. In the event it has been determined, in accordance with applicable regulations, that the Successful Proposer has defaulted in the requirement to comply with the provisions of this section and fails to comply with the sanctions and/or remedies then prescribed, the County shall have the right, upon written notice to the Concessionaire, to terminate this Agreement, pursuant to Default language referenced in the Agreement.

The Successful Proposer shall include the following nondiscrimination language in concession and management contracts with MDAD:

> *"This agreement is subject to the requirements of the US Department of Transportation's Regulations 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract,*

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purchase or lease agreement, or other agreement covered by 49 CFR Part 23".

"The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements".

14.06 ACDBE MENTORING, ASSISTANCE AND TRAINING PROGRAM:

Consistent with the goal of providing ACDBE's with hands-on participation and the responsibility for a clearly defined portion of the Airport Concession operations, subject to **Section 5 "Airport Concession Disadvantaged Business Enterprises"** hereof, each ACDBE shall have the duty and responsibility to operate certain areas of the concession(s) following a mentoring period, if needed, which shall include but not be limited to the following specific duties and responsibilities:

A. Shop Store Operations

(1) Passenger profile analysis
(2) Cash handling/sales audit
(3) Enhancing sales
(4) Selling to the customer
(5) Staffing to meet customer levels
(6) Opening and closing procedures

B. Personnel

(1) Employment practices
(2) Compliance with wage and hour laws
(3) Compliance with County and Airport requirements
(4) Designing compensation and benefits plans
(5) Management and staff training to enhance product knowledge and customer service
(6) Warehousing packaging and sales reporting of merchandise

C. Shop Design and Display

(1) Retail layout
(2) Merchandising techniques
(3) Visual display techniques

D. Loss Prevention

(1) External and internal theft

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(2) Shop security

E. Books, Records and Reports

(1) The books of account and supporting records of the joint venture(s) and the sub-concessionaire(s) shall be maintained at the principal office and shall be open for inspection by the MDAD or the ACDBE sub-concessionaire(s) or Joint Venture(s), upon reasonable prior written notice, during business hours.

(2) The books of account, for both financial and tax reporting purposes shall be maintained on the accrual method of accounting. The Successful Proposer shall provide to the sub-concessionaire(s) or joint venture(s), within an agreed upon time after the end of each month during the term of this agreement, an unaudited operating (*i.e.,* income) statement for the preceding month and for the year-to-date.

(3) Reports of the ACDBE Mentoring Program shall be submitted to the Department's Minority Affairs and Business Management Divisions, outlining the specific areas of training (i.e., components covered, total number of hours of training, training material covered, etc.).

14.07 AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN:

The Successful Proposer shall contract with those firm(s) as are listed on the Successful Proposer's ACDBE Participation Plan in the Proposal documents and approved by the Department, and shall thereafter neither (i) terminate such ACDBE firm(s), nor (ii) reduce the scope of the work to be performed, nor (iii) decrease the percentage of participation, nor (iv) decrease the dollar amount of participation by the ACDBE firm(s) without the prior written authorization of the Department.

The County shall monitor the compliance of the Successful Proposer with the requirements of this provision during the term of this agreement.

The County shall have access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records, records of expenditures, contracts between the Successful Proposer and the ACDBE Participant, and other records pertaining to ACDBE Participation Plan.

If at any time the County has reason to believe that the Successful Proposer are in violation of this provision, the County may, in addition to pursuing any other available legal remedy, impose sanctions which may include, but are not limited to, the termination or cancellation of the agreement in whole or in part, unless the Successful Proposer demonstrates, within a reasonable time, its compliance with the terms of this provision. No such sanction shall be imposed by the County upon the Successful Proposer except pursuant to a hearing conducted by the ACDBELO and/or Director.

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ARTICLE 15- RULES, REGULATIONS AND PERMITS

15.01 RULES AND REGULATIONS: The Master Concessionaire shall comply and cause its Sub-tenants to comply, with the Ordinances of the County including Chapter 25, Code of Miami-Dade County, Florida, as the same may be amended from time to time, Operational Directives issued thereunder by the Department, 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, and any County Administrative Orders and resolutions of the Board of County Commissioners which may be applicable to its operations or activities under this Agreement.

15.02 VIOLATIONS OF RULES AND REGULATIONS: The Master Concessionaire agrees to pay, on behalf of the County, any liquidated damage, assessment or fine issued against the County, or the Department 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 Master Concessionaire, its agents, employees, Sub-tenants or invitees, have violated any law, ordinance, regulation or rule described in **Sub-Article 15.01 "Rules and Regulations"** or any plan or program developed in compliance therewith. The Master Concessionaire further agrees that the substance of **Sub-Article 15.02 "Violations of Rules and Regulations"** and **Sub-Article 15.01 "Rules and Regulations"** shall be included in every Sub-Lease and other agreements which the Master Concessionaire may enter into related to its activities under this Agreement and that any such Sub-Lease and other agreement shall specifically provide that "Miami-Dade County, Florida is a third party beneficiary of this and related provisions." This provision shall not constitute a waiver of any other conditions of this Agreement prohibiting or limiting assignments, subletting or subleasing.

15.03 PERMITS AND LICENSES: The Master Concessionaire shall obtain, pay for and maintain on a current basis and make available to the Department upon request, all permits and licenses as required for the performance of its services. The Master Concessionaire shall cause its Sub-tenants to do the same.

ARTICLE 16 – GOVERNING LAW

16.01 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.

16.02 REGISTERED OFFICE/AGENT JURISDICTION: The Master Concessionaire, if a corporation, shall designate a registered office and a registered agent, as required by Section 48.091, Florida Statutes, and such designations to be filed with the Florida

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Department of State in accordance with Section 607.034, Florida Statutes. If the Concessionaire 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 the alleged breach of this Agreement. If Concessionaire is a joint venture and not a corporation, the parties to the joint venture hereby submit themselves to the jurisdiction of the Courts of this State for any cause of action based in whole or in part on the alleged breach of this Agreement.

16.03 LABOR PEACE REQUIREMENT: Pursuant to Resolution# R-148-07, the Concessionaire provided a signed copy of the labor peace agreement for their employees as part of their Proposal to assure that no labor dispute or unrest will disrupt their operations at Miami International Airport (MIA). See Appendix N. Furthermore, the County has the right, in the event of a labor disruption, to suspend the it's obligations under the contract while the labor disruption is ongoing and to use alternative means to provide the service that is affected by the labor disruption. In the event a Proposer is unable to reach an agreement with a labor organization regarding the terms of a labor peace agreement, the dispute between the Proposer and the labor organization shall be resolved by expedited binding arbitration in which the decision shall be rendered within ten (10) days of the request for arbitration but no later than five (5) days prior to the date the proposal is due. The Proposer and the labor organization shall equally share the costs of arbitration. The Proposer shall ensure that all sub-tenants also sign a labor peace agreement.

ARTICLE 17 – TRUST AGREEMENT

17.01 INCORPORATION OF TRUST AGREEMENT BY REFERENCE: Notwithstanding any of the terms, provisions and conditions of this Agreement, it is understood and agreed by the parties hereto that the provisions of the Amended and Restated Trust Agreement, dated as of the 15th day of December, 2002, as amended from time to time, by and between the County and JPMorgan Chase Bank, as Trustee, and Wachovia Bank, National Association, as Co-Trustee (the "Trust Agreement"), which Trust Agreement is incorporated herein by reference, shall prevail and govern in the event of any inconsistency with or ambiguity relating to the terms and conditions of this Agreement, including the rents, fees or charges required herein, and their modification or adjustment. A copy of the Trust Agreement may be examined by the Master Concessionaire at the offices of the Department during normal working hours.

17.02 ADJUSTMENT OF TERMS AND CONDITIONS: If at any time during the Term or any Extension thereto, as applicable, a court of competent jurisdiction shall determine that any of the terms and conditions of this Agreement, including the rentals, fees and charges required to be paid hereunder to the Department by the Master Concessionaire or by other Master Concessionaires under other agreements of the Department for the lease or use of locations 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 terms and conditions and the rentals fees and charges payable by the Master Concessionaire and others shall not thereafter be unjustly discriminatory to any user of like locations 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 upon the issuance of written notice from the County to the Master Concessionaire.

17.03 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 Locations and any storage/support spaces at all reasonable times for the purposes of inspection to determine compliance with the provisions of this Agreement or applicable law. The right of inspection shall impose no duty on the County to inspect and shall impart no liability on the county should it not make such inspection(s).

17.04 MIAMI-DADE COUNTY INSPECTOR GENERAL REVIEW: According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all Department contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit of any contract will be one quarter of one percent (0.25%) of the total contract amount. The audit cost will be deducted by the Department from payments from the Master Concessionaire. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter of one percent (0.25%) fee assessment shall not apply to the following contracts: (a) contracts for legal services; (b) contracts for financial advisory services; (c) auditing contracts; (d) facility rentals and lease agreements; (e) concessions and other rental agreements; (f) insurance contracts; (g) revenue-generating contracts; (h) professional service agreements under $1,000; (i) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order No. 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter of one percent (0.25%) in any exempted contract at the time of award.***

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

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ARTICLE 18 – OTHER PROVISIONS

18.01 PAYMENT OF TAXES: The Master Concessionaire shall pay all taxes lawfully assessed against its interests in the Locations and any support/storage spaces and its services hereunder, provided however, that the Master Concessionaire shall not be deemed to be in default of its obligations under this Agreement for failure to pay such taxes pending the outcome of any legal proceedings instituted in courts of competent jurisdiction to determine the validity of such taxes. Failure to pay same after the ultimate adverse conclusion of such contest shall constitute an Event of Default, pursuant to **Sub-Article 12.03 "Other Defaults**" hereof.

18.02 ALTERATIONS BY MASTER CONCESSIONAIRE: The Master Concessionaire shall not alter or modify the Locations and or any support/storage spaces, except in accordance with **Article 4 "Improvements to the Locations"** herein, without first obtaining written approval from the Department.

18.03 RIGHTS TO BE EXERCISED BY DEPARTMENT: Wherever in this Agreement rights are reserved to the County, such rights may be exercised by the Department.

18.04 ADMINISTRATIVE MODIFICATIONS: It is understood and agreed to that the Department, upon written notice to the Master Concessionaire, shall have the right to modify administratively and to revise Articles and the Exhibits to this Agreement, including the provisions of **Sub-Article 1.07 "Addition, Deletion and Modification of Locations", Sub-Article 18.02 "Alterations by Master Concessionaire", Sub-Article, 21.02 "Right to Amend"**, and **Sub-Article 21.04 "Right to Modify"**.

18.05 SECURITY: The Master Concessionaire acknowledges and accepts full responsibility for the security and protection of the Locations. The Master Concessionaire fully understands and acknowledges that any security measures deemed necessary by the Master Concessionaire for protection of the Locations shall be the sole responsibility of the Master Concessionaire and shall involve no cost to the Department.

18.06 RIGHTS OF DEPARTMENT AT AIRPORT: The Department shall have the absolute right, without limitation, to make any repairs, alterations and additions to any structures and locations at the Airport. The County shall, in the exercise of such right, be free from any, and all liability to the Master Concessionaire for business damages occasioned during the making of such repairs, alterations and additions except those occasioned by the sole acts of negligence or intentional acts of the County, its employees, or agents.

18.07 OTHER DEPARTMENT RIGHTS: The Master Concessionaire shall be liable for any physical damage caused to the Locations by the Master Concessionaire, its employees, agents, contractors, subcontractors, suppliers, or it's Sub-tenants. The liability shall encompass: (i) the Master Concessionaire's repair of the Locations, or if the Locations cannot be repaired, payment to the Department of the fair market value replacement cost of the Locations; and (ii) any other such damages to the Department arising from the physical damage caused by the Master Concessionaire or its Sub-tenants and its employees, agents, contractors, subcontractors or suppliers. The County may also initiate an action for

specific performance and/or injunctive relief.

18.08 FEDERAL SUBORDINATION: This Agreement shall be subordinate to the provisions of any existing or future agreements between the Department 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 the United States of America shall be suspended.

18.09 NOTICES: Any notices given under the provisions of this Agreement shall be in writing and shall be hand delivered or sent by facsimile transmission (providing evidence of receipt), nationally recognized overnight courier service, or Registered or Certified Mail, Return Receipt Requested, to:

To the County:
(Mailing Address)

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

or (physical address):

Miami International Airport
Terminal Building
Director's Office
Concourse E-5th floor
Miami, FL 33122

To the Master Concessionaire:

(Address Here)

with copies to:

(Address Here)

or to such other respective addresses as the parties may designate to each other in writing from time to time. Notices by: (i) facsimile shall be deemed tendered on the date indicated on the facsimile confirmation receipt; (ii) nationally recognized overnight courier service shall be deemed tendered on the delivery date indicated on the courier service receipt; and (iii) Registered or Certified Mail shall be deemed tendered on the delivery date indicated on the Return Receipt from the United States Postal Service or on the express mail service receipt.

18.10 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 shall be severable.

18.11 RIGHTS RESERVED TO DEPARTMENT: All rights not specifically granted the Master Concessionaire by this Agreement are reserved to the Department.

18.12 COUNTY LIEN: The County shall have a lien upon all personal property of the Master Concessionaire in the Locations to secure the payment to the Department of any unpaid monies accruing to the Department under the terms of this Agreement.

18.13 AUTHORIZED USES ONLY: The Master Concessionaire shall not use or permit the use of the Locations or the Airport for any illegal or unauthorized purpose or for any purpose which would increase the premium rates paid by the Department on or invalidate any insurance policies of the Department or any policies of insurance written on behalf of the Master Concessionaire under this Agreement.

18.14 NO WAIVER: There shall be no waiver of the right of the Department 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 the Master Concessionaire unless such waiver is explicitly made in writing by the Department. Any previous waiver or course of dealing shall not affect the right of the Department to demand strict performance of the provisions, terms and covenants of this Agreement with performance hereof by the Master Concessionaire.

18.15 SECURED AREAS/AIRFIELD OPERATIONS AREA (AOA) STERILE AREAS SECURITY: The Concessionaire acknowledges and accepts full responsibility for compliance with all applicable Federal, State, and Local laws, rules and regulations including those of the Transportation Security Administration (TSA), Homeland Security, FAA, CBP and MDAD as set forth from time to time relating to Contractor's activities at the Miami International Airport (MIA).

In order to maintain high levels of security at MIA, the Concessionaire must obtain MDAD photo identification badges for all the Concessionaire employees working in the Secured/AOA/Security Identification Display Area (SIDA) Sterile Areas or any other restricted areas of the Airport. All Concessionaire employees will be required to obtain photo identification badges and will be subject to fingerprint-based criminal history records checks.

The Concessionaire shall be responsible for requesting MDAD to issue identification badges to all employees who the Concessionaire requests to be authorized access to the Secured/AOA/SIDA/Sterile Areas and any other restricted areas of the airport and shall be further responsible for the immediate reporting of all lost or stolen ID badges and the immediate return of the ID badges of all personnel transferred from Airport assignment or terminated from the employer of the Concessionaire or upon final acceptance of the work or termination of this Agreement. The Concessionaire will be responsible for fees

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associated with lost and unaccounted for badges as well as the fee(s) for fingerprinting and ID issuance.

All employees of the Concessionaire who must work within MDAD Secured/AOA/SIDA/Sterile areas or any other restricted areas at MIA shall be supplied with MDAD identification badges as specified above, which must be worn at all times while within the referenced secured areas. Badges shall be worn on outer garments above the waist so as to be clearly visible in order to distinguish, on sight, employees assigned to a particular company area. Each employee must complete the SIDA training program conducted by MDAD and comply with all other TSA, Homeland Security, FAA, CBP and MDAD requirements as specified by the MDAD at the time of application for the ID badge before an ID badge is issued. At the present time, MDAD Security and Safety ID Section regularly provides SIDA Training.

Concessionaire Ramp Permits will be issued to the Concessionaire authorizing vehicle entrance to the Airfield Operations Area (AOA) through specified Miami-Dade Aviation Department guard gates for the term of any Project. These permits will be issued only for those vehicles that must have access to the site during the performance of the work. Theses permits will be only issued to company owned vehicles or company leased vehicles (leased from a commercial leasing company). AOA decals, passes, or permits to operate within the AOA will not be issued to privately owned or privately leased vehicles. All vehicles operating within the AOA must have conspicuous company identification signs (minimum of three inch lettering) displayed on both sides of the vehicles.

All vehicles operating within the AOA must be provided with the Automobile Liability Insurance required elsewhere in this Agreement. Proof of such insurance is provided to MDAD Airside Operations Division upon request.

Only Concessionaire staff with pictured MDAD ID badges shall be allowed to operate a motor vehicle on the AOA without a MDAD escort. The Concessionaire shall require such employee to have a current, valid, appropriate Florida driver's license and to attend and successfully complete the AOA Driver Training Course conducted periodically by the Department. The privilege of a person to operate a motor vehicle on the AOA may be withdrawn by the Department because of violation of AOA driving rules or loss of Florida driver's license.

The Concessionaire agrees that its personnel, vehicles, cargo, goods, and other personal property are subject to being searched when attempting to enter, leave or while on the AOA. It is further agreed that the MDAD has the right to prohibit an individual, agent, or employee of the Concessionaire 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, including repeated failure to comply with MDAD's or the TSA, Homeland Security, FAA, CBP, SIDA access control policies, rules and regulations. Any person denied access to the AOA or whose prior authorization has been revoked or suspended on such grounds shall be entitled to a review hearing before the Director or his/her authorized designee within a

reasonable time. Prior to such hearing, the person denied access to the AOA should be advised, in writing, of the reason for such denial.

The Concessionaire 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 and to maximize compliance with TSA, Homeland Security, FAA/Federal Inspection Services agencies and MDAD access control policies and procedures.

The Concessionaire understands and agrees that vehicle and equipment shall not be parked/stored on the AOA in areas not designated or authorized by MDAD nor in any manner contrary to any posted regulatory signs, traffic control devices, or pavement markings.

The Concessionaire 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 Concessionaire in areas under the jurisdiction or control of such agencies. Persons not approved or consented to by the Federal Inspection Services agencies who enter such areas are subject to fines, which shall be borne entirely by the persons and/or the Concessionaire.

Notwithstanding the specific provisions of this Article, the Owner shall have the right to add to, amend, or delete any portion hereof in order to meet reasonable security requirements of MDAD or of the TSA/Homeland Security/FAA/Federal Inspection Services agencies.

The Concessionaire shall ensure that all employees so required participate in such safety, security and other training and instructional programs, as MDAD or appropriate Federal agencies may from time to time require.

Concessionaire agrees that it will include in all contracts and subcontracts with its MIA sub-consultants, service providers, and suppliers an obligation by such parties to comply with all security requirements applicable to their operations at the Airport. The Concessionaire agrees that in addition to all remedies, liquidated damages, and sanctions that may be imposed by TSA, Homeland Security, FAA, Federal Inspection Services Agencies or MDAD upon Concessionaire sub-consultants, suppliers, and their individual employees for a violation of applicable security provisions. The Concessionaire shall be responsible to the Owner for all such violations and shall indemnify and hold the Owner harmless for all costs, fines and liquidated damages arising there from, such costs to include reasonable attorneys' fees.

18.16 INTENT OF AGREEMENT: This Agreement is for the benefit of the parties only and does not: (a) grant rights to third party beneficiaries or to any other person; or (b) authorize non-parties to the Agreement to maintain an action for personal injuries, professional liability, or property damage pursuant to the terms or provisions of the Agreement.

18.17 MODIFICATIONS: This Agreement may be modified and revised in writing and duly executed by the parties hereto. Such modification may be made unilateral by the Department only as permitted pursuant to **Sub-Article 18.04 "Administrative Modifications", Sub-Article 21.02 "Right to Amend"**, and **Sub-Article 21.04 "Right to Modify"**. Any oral representation or modification concerning this Agreement shall be of no force or effect. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with this Agreement.

18.18 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. When accumulated in a building in sufficient quantities, it 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."**

18.19 TRADEMARKS AND LICENSES: The Department may, from time to time, require the Master Concessionaire as part of its advertising and marketing program to utilize certain patents, copyrights, trademarks, trade names, logos, computer software and other intellectual property owned by the Department in the performance of this Agreement which patents, copyrights, trademarks, trade names, logos, computer software and intellectual property may have been created pursuant to the terms of this Agreement. Such permission, when granted, shall be evidenced by a nonexclusive license executed by the Master Concessionaire and the Department, on behalf of the Department granting the Master Concessionaire the right, license and privilege to use a specific patent, copyright, trademark, trade name, logo, computer software or other intellectual property without requiring payment of fees therefore. Failure of the parties to execute a formal license agreement shall not vest title or interest in such patent, copyright, trademark, trade name, logo computer software or intellectual property in the using party.

18.20 HEADINGS: The headings of the various Articles and Sub-Articles of this Agreement, and its Table of Contents are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.

18.21 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.

18.22 GOVERNMENTAL DEPARTMENT: 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.

18.23 INDEPENDENT CONTRACTOR: The Master Concessionaire shall perform all services described herein as an independent contractor and not as an officer, agent, servant, or employee of the Department. All personnel provided by the Master Concessionaire in the performance of this Agreement shall be considered to be, at all times, the sole employees of the Master Concessionaire under its sole discretion, and not employees or agents of the Department:

Except as provided in § 2-11.1(s) of the Code, the Master Concessionaire represents and warrants: (i) it has not employed or retained any company or person other than a bona fide employee working solely for the Master Concessionaire to solicit or secure this Agreement; and (ii) it has not paid, or agreed to pay any company or other person any fee, commission, gift, or other consideration contingent upon the execution of this Agreement. A breach of this warranty makes this Agreement voidable by the Department without any liability to the Contractor for any reason.

18.24 OTHER LIENS: Master Concessionaire shall not permit any mortgages, deeds of trust or similar liens to be imposed on the Locations, the leasehold, or the furniture, fixtures and equipment or any portion thereof. Master Concessionaire or its Sub-tenants shall not permit or suffer any liens, including mechanics', materialmen's and tax liens to be imposed upon the Locations, or any part thereof, without promptly discharging the same. Notwithstanding the foregoing, Master Concessionaire or its Sub-tenants may in good faith contest any such lien if Master Concessionaire provides a bond in an amount and form acceptable to Department in order to clear the record of any such liens. Master Concessionaire further agrees that it shall not sell, convey, mortgage, grant, bargain, encumber, pledge, assign or otherwise transfer its leasehold interest in the Locations or any personal property or trade fixtures in the Locations, including any furniture, fixtures and equipment or any part thereof or permit any of the foregoing to occur. Master Concessionaire shall assume the defense of and indemnify and hold harmless County against any and all liens and charges of any and every nature and kind which may at any time be established against said Locations and improvements, or any part thereof, as a consequence of any act or omission of Master Concessionaire or its Sub-tenants or as a consequence of the existence of Master Concessionaire's interest under this Lease.

ARTICLE 19 - SUB-LEASES

19.01 ASSIGNMENT OF SUB-LEASES BY DEPARTMENT: In the event this Agreement is terminated prior to the completion of the Term or Extension, the Department shall have the following rights and obligations regarding the Sub-tenant Agreements then in effect:

(A) in case of termination without cause by the County or if the Master Concessionaire terminates with cause, the County shall execute an agreement assigning to the County the Master Concessionaire's right and duties under all Sub-Lease agreements then in effect (Assignment Agreement); and

(B) in cases of termination with cause by the County or if the Master Concessionaire terminates without cause, refer to **Sub-Article 12.07 "Termination for Abandonment"**, the County reserves the right to not execute an Assignment Agreement to assume those Sub-tenant agreements that fail to satisfy any of the following criteria:

(i) Sub-tenant is not currently in non-monetary default, beyond all applicable notice and cure periods;

(ii) Sub-tenant has no outstanding uncured material defaults and no material defaults, cured or otherwise, within one (1) year before the proposed date of assignment;

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(iii) Sub-tenant has not had no more that three (3) accumulated defaults of any kind during the previous twelve (12) months under its Sub-Lease agreement;

(iv) Sub-tenant is current regarding all payments of any kind for which it is responsible under its Sub-Lease agreement; and

(v) Sub-tenant has no outstanding claims of default against the Master Concessionaire in its capacity as landlord under the Sub-Lease agreement or has waived any such claims.

In addition to the foregoing, the County has no obligation to assume any Sub-tenant agreement (i) which does not conform to the requirements of this Agreement unless each non-conforming provision was explained to the Department and specifically approved prior to execution of the Sub-Lease or even if not approved, the non-conforming provisions are not adverse to the Department's interests, as determined in the judgment of the Department, or (ii) the Master Concessionaire does not execute an Assignment Agreement which provides that the Master Concessionaire remains liable for and indemnifies and holds harmless the County for any claims arising out of the performance of the Sub-Lease agreement up to the effective date of the Assignment Agreement.

19.02 DEPARTMENT'S RIGHTS TO APPROVE SUB-LEASES: Master Concessionaire shall not Sub-Lease this Agreement or any of the rights and privileges hereunder, or contract for the performance of any of the services to be provided by the Master Concessionaire hereunder without the Department's prior written approval, which approval may be granted or withheld by Department in the exercise of its sole discretion.

19.03 MASTER CONCESSIONAIRE'S SUB-LEASE AGREEMENT REQUIREMENTS: The Master Concessionaire's Sub-Lease agreement(s) must not extend beyond the Term or, any Extension and must contain comparable terms and conditions, as may be applicable, to those contained herein.

Costs not directly related to a Location of a Sub-tenant shall not be imposed upon that Sub-tenant except for such costs required by the Department such as the marketing fee and/or common logistics fee.

19.04 SUB-TENANT MINIMUM QUALIFICATIONS REQUIREMENT: The Master Concessionaire must ensure that each Sub-tenant has a minimum of three (3) years continuous experience within the last five (5) years in managing or operating and maintaining one or more retain locations in an airport, transportation center, retail shopping center or marketplace generating a minimum of $300,000 in gross sales per year per location.

ARTICLE 20 - WAIVER OF CLAIMS

The Master Concessionaire hereby waives any and all claims it now has or may hereafter have against the County and the Department, and against any member, including, without limitation, all members of the Board of County Commissioners, officers, agents or employees of each, for any loss of anticipated profits caused by any suit or proceeding attacking directly or indirectly the

validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement or any part thereof, or by judgment or award in any suit or proceeding declaring this Agreement null and void or voidable, or delaying the same or any part thereof from being carried out. The Master Concessionaire hereby further waives any and all claims for compensation for any and all loss or damage sustained by reason of any delay in making the Locations available to the Master Concessionaire or by reason of any defects or deficiencies in the Locations or in the terminal building including any defect or deficiency in the Locations or in the terminal building which substantially impedes the Master Concessionaire's or its Sub-tenants' ability to operate a concession at the Location(s) or because of any interruption in any of the services thereto, including, but not limited to, power, telephone, heating, air conditioning or water supply systems, drainage or sewage systems, and Master Concessionaire hereby expressly releases the County and Department from any and all demands, claims, actions, and causes of action arising from any of such causes.

ARTICLE 21 - REQUIRED, GENERAL AND MISCELLANEOUS PROVISIONS

21.01 AGREEMENTS WITH STATE OF FLORIDA AND MIAMI-DADE COUNTY: This Agreement shall be subject to all restrictions of record affecting the Airport and the use thereof, all federal, State, County laws, and regulations affecting the same, and shall be subject and subordinate to the previsions of any and all existing agreements between the County and the State of Florida, or its boards, agencies or commissions, and to any future agreement between or among the foregoing relative to the operation or maintenance of the Airport, the execution of which may be required as a condition precedent to the expenditure of federal, State, County funds for the development of the Airport, or any part thereof. All provisions hereof shall be subordinate to the right of the United States to occupy or use the Airport, or any part thereof, during time of war or national emergency.

21.02 RIGHT TO AMEND: In the event that the Federal Aviation Administration or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of its approval or to the obtaining of funds for improvements at the Airport, Master Concessionaire hereby consents to any and all such modifications and changes as may be reasonably required.

21.03 MASTER CONCESSIONAIRE COVENANTS AND ASSURANCES:

A. Covenants Against Discrimination:

1. Master Concessionaire on behalf of itself, its Sub-tenants, successors in interest and its assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Locations or the Airport; (2) that in the installation of any equipment at the Airport and the furnishing or services in connection therewith, no person on the grounds or race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; and (3) that Master Concessionaire shall operate at the Airport in compliance with all other requirements imposed by or pursuant to Title

49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally assisted programs of the Department of Transportation-effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended. Likewise, Master Concessionaire shall comply with laws of the State of Florida, prohibiting discrimination because of race, color, religion, sex, national origin, age, handicap or marital status. Should Master Concessionaire authorize another person or entity, with Department's prior written consent, to provide services or benefits in or in connection with its rights or obligations under this Agreement, Master Concessionaire shall obtain from such person or entity a written agreement pursuant to which such person or entity shall, with respect to the services or benefits which it is authorized to provide, undertake for itself the obligations contained in this paragraph. Master Concessionaire shall furnish the original or a true copy of such agreement to Department.

2. Master Concessionaire will provide and cause its Sub-tenants to provide all information and reports required by said Code of Federal Regulations, or by directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its locations as may be determined by Department or the Federal Aviation Administration to be pertinent to ascertain whether there has been compliance with said Regulations and directives. Where any information required of Master Concessionaire is in the exclusive possession of another who fails or refuses to furnish this information, Master Concessionaire shall so certify to Department or the Federal Aviation Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

3. In the event of a breach of any of the above nondiscrimination covenants, Department shall have the right to impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate. Such rights shall include the right to terminate this Agreement and to reenter and repossess the Locations and the improvements thereto, and hold the same as if this Agreement had never been made. The rights granted to Department by the foregoing sentence shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

4. Master Concessionaire assures County that no person shall be excluded on the grounds or race, creed, color, national origin or sex from participating in or receiving the services or benefits of any program or activity covered by Title 14, Code of Federal Regulations, Part 152, Subpart E, Federal Aviation Administration, Nondiscrimination in Airport Aid Program, and that it will be bound by and comply with all other applicable provisions of such Subpart E, as it may be amended from time to time. Master Concessionaire also assures County that it will require its covered suborganizations to provide assurances to the same effect and provide copies thereof to the Department.

5. Master Concessionaire further assures County that it and its Sub-tenants will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall on the grounds of race, creed, color, national origin, sex, age or handicap be excluded from participating in any activity conducted at or in connection with its operations at the Locations. Master Concessionaire also assures County that it will require its contractors and Sub-tenants to provide assurances to the same effect and ensure that such assurances are included in contracts and Sub-Lease agreements at all tiers which are entered into in connection with Master Concessionaire's services hereunder.

6. a) This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23, Subpart F. Master Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement covered by 49 CFR Part 23, Subpart F.

   b) Master Concessionaire agrees to include the above statements in any subsequent concession agreements that it enters and cause those businesses to similarly include the statements in further agreements.

7. County may from time to time be required by the United States Government or one or more of its agencies, to adopt additional or amended provisions including nondiscrimination provisions concerning the use and operation of the Airport, and Master Concessionaire agrees that it will adopt such requirements as part of this Agreement.

21.04 RIGHT TO MODIFY: The parties hereto covenant and agree that, during the Term and/or Extension, if applicable, this Agreement may be unilaterally modified by the Department, upon advice of its legal counsel, in order to conform to judicial or Federal Trade Commission or FAA rulings or opinions. This Sub-Article shall not preclude Master Concessionaire from contesting said rulings or opinions, but the Master Concessionaire shall abide by the unilateral change while such a challenge is pending. Except as otherwise specifically provided in this Agreement, this Agreement may not be modified except by a written instrument signed by both parties.

21.05 TAX EXEMPT STATUS OF DEPARTMENT REVENUE BONDS: The Master Concessionaire agrees to comply promptly with any applicable provisions of any federal tax statute, and all regulations or other binding authority promulgated or decided hereunder, as required to permit the Department's capital expansion projects to be planned and constructed by the Department with revenue bonds the interest on which is generally exempt from federal income taxation, other than any applicable individual or corporate alternative minimum taxes (and other than during any period while such revenue bonds are held by a "substantial user" of the projects financed by such revenue bonds or a "related person" to a "substantial user"), including, without limitation, the execution by the Master Concessionaire and delivery to the Department of an election not to claim depreciation or

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any investment credit with respect to any portion of such capital expansion projects or any other portion of the Airport System.

21.06 REMEDIES: All remedies provided in this Agreement shall be deemed cumulative and additional, and not in lieu of or exclusive of each other or of any other remedy available at law or in equity arising hereunder.

21.07 NOT USED.

21.08 REGULATIONS OF DEPARTMENT: The rights and privileges granted to the Master Concessionaire hereunder and the occupancy and use by the Master Concessionaire and the Master Concessionaire's Sub-tenants of the Locations shall at all times be subject to reasonable rules and regulations of Department as the same are now or may hereafter be prescribed through the lawful exercise of its power, including, but not limited to, all applicable provisions of Department's Policy and Procedures Manual as the same may be amended from time to time.

21.09 INTEREST: Any sums payable to the Department by the Master Concessionaire under any provisions of this Agreement, which may be amended from time to time, which are not paid when due shall bear interest at the rate of one and one half percent (1 1/2%) per month (or, if less, the maximum rate of interest allowed by law) from the due date thereof until paid.

21.10 MISCELLANEOUS PROVISIONS: The Master Concessionaire, its Sub-tenants and its agents, contractors, sub-contractors and/or employees shall promptly observe and comply with applicable provisions of all federal, State, and local statutes, ordinances, regulations and rules which govern or apply to the Master Concessionaire or to its services or operations hereunder.

1. The Master Concessionaire shall, at its own cost and expense, procure and keep in force during the Term and any Extension thereto if applicable, all necessary licenses, registrations, certificates, bonds, permits, and other authorizations as are required by law in order for the Master Concessionaire to provide its services hereunder and shall pay all taxes, (including sales and use taxes), assessments including, without limitation, storm water utility fees and impact fees which may be assessed, levied, exacted or imposed by all governmental authorities having jurisdiction on Master Concessionaire's property, on its services, on its Gross Revenues, on its income, on this Agreement and the fees payable to the County hereunder, on the rights and privileges granted to the Master Concessionaire herein, on the Locations and on any and all equipment installed on the Locations and the Master Concessionaire shall make and file all applications, reports, and returns required in connection therewith.

2. The Master Concessionaire agrees to repair promptly, at its sole cost and expense and in a manner acceptable to the Department, any damage caused by the Master Concessionaire or any of its Sub-tenants, officers, agents, employees, contractors, subcontractors, licensees or invitees to the Airport or any equipment or property located thereon.

3. The Master Concessionaire is not authorized to act as the County's agent hereunder and shall have no authority, express or implied, to act for or bind the County hereunder and nothing contained in this Agreement shall be deemed or construed by the County or the Master Concessionaire or by any third party to create the relationship of partnership or of joint venture. No provision of this Agreement shall be deemed to make the County the joint employer of any employee of the Master Concessionaire.

4 The County shall have the right during the Master Concessionaire's normal business hours (and at any time during an emergency) to inspect the Locations and the property of the Master Concessionaire located thereon, in order to enforce this Agreement, to enforce applicable laws and regulations, and to protect persons and property.

5. The Article and paragraph headings herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision of this Agreement.

6. Time is expressed to be the essence of this Agreement.

7. This Agreement will inure to the benefit of and shall be binding upon the parties hereto and their authorized successors and assigns.

8. If any covenant, condition or provision of this Agreement is held to be invalid by any court of competent jurisdiction, such holding shall not affect the validity of any other covenant, condition or provision contain herein.

9. Except as otherwise provide herein, if certain action may be taken only with the consent or approval of the County, or if a determination or judgment is to be made by the County, such consent or approval may be granted or withheld, or such determination or judgment shall be made, in the sole discretion of the County or the County.

10. The County's Ethics Commission has also adopted rules delineating the responsibilities of lobbyists and County personnel in implementing the requirements of the lobbying section of the Conflict of Interest and Code of Ethics Ordinance. The Proposer shall comply with these requirements.

21.11 FORCE MAJEURE: Strictly in relation to the obligations of each party to the other under this Agreement, and not for any other purpose or for any benefit of a third party, each party shall be excused from the timely performance of their respective obligations or undertakings provided in this Agreement, if the performance of such obligations or undertakings is prevented or delayed, retarded or hindered by strikes, lockouts, boycotts, actions of labor unions, labor disputes, labor disruptions, work stoppages or slowdowns, unless involving employees of the Master Concessionaire, embargo's, general shortages of labor, equipment, locations, materials or supplies in the open market, acts of God, acts of the public enemy, acts of governmental authority, including, without limitation, the FAA, the DOT, the TSA, the EPA, the DOJ, or civil and defense authorities, extreme weather

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conditions, war (declared or undeclared), invasion, insurrection, terrorism, riots, rebellion or sabotage.

21.12 ENTIRE AGREEMENT: This Agreement, together with the Exhibits attached hereto, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and any prior agreements, representations or statements made with respect to such subject matter, whether oral or written, and any contemporaneous oral agreements, representations or statements with respect to such subject matter, are merged herein; provided, however, that Master Concessionaire hereby affirms the completeness and accuracy of the information provided by Master Concessionaire to County in their Proposal, and in all attachments thereto and enclosures therewith, submitted by Master Concessionaire to County in connection with the award of this Agreement. None of the provisions, terms or conditions contained in the Agreement may be modified or otherwise altered except as may be specifically authorized by **Sub-Article 18.04** or the Sub-Articles stated therein, or by written instrument executed by the parties hereto.

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

MASTER CONCESSIONAIRE

_____
(Legal Name of Corporation)

ATTEST:

Secretary_____ By: _____
(Signature and Seal) Master Concessionaire - Signature

_____ Name: _____
(Type Name & Title)

_____
(Type Name & Title)

INDIVIDUAL, PARTNERSHIP OR JOINT VENTURE

_____ _____
Legal Name Legal Name

By: _____ By: _____
Signature Signature

_____ _____
(Type Name & Title) (Type Name & Title)

Attest: _____

Name of Managing Joint Venturer:

_____ Witness: _____

By: _____
Signature of Authorized Representative of the Joint Venture

Corporate Seal

(ATTACH ADDITIONAL SHEETS FOR EACH JOINT VENTURER, AS NEEDED)

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BOARD OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

By: _____
County Manager

Approved for Form
and Legal Sufficiency

_____
Assistant County Attorney

Attest: Harvey Ruvin, Clerk

By: _____
Deputy Clerk

Resolution No.: _____

Date: _____

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LEASE AND CONCESSION

AGREEMENT

BY AND BETWEEN

MIAMI-DADE COUNTY, FLORIDA

AND

CONCESSIONAIRE

(PACKAGES 3, 4, 5)

FOR RETAIL CONCESSIONS PROGRAM 2008

AT

MIAMI INTERNATIONAL AIRPORT

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DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended.

The terms **"Agreement"** shall mean this Lease and Concession Agreement including all exhibits and attachments thereto and a part thereof entered into by the County and the Concessionaire.

The term **"Airport"** shall mean Miami International Airport.

The term "**Airport Concession Disadvantaged Business Enterprise" or "ACDBE"** shall have the meaning ascribed in Article 14 entitled "Airport Concession Disadvantaged Business Enterprise".

The term **"ACDBELO"** shall mean Airport Concession Disadvantaged Business Enterprise Liaison Officer, Associate Aviation Director, Minority Affairs Division, Miami-Dade County Aviation Department.

The term **"Approved Improvements"** are the improvements to the Location, which have been approved by the Department which may include the design, equipment, fixtures, flooring, and signage.

The term **"Base Building Work"** shall mean the sub-flooring, ceiling structure, demising walls, utilities infrastructure and other base building improvements, structures and fixtures which the County installs or causes to be installed in the terminal building. Base Building Work includes delivery of portions of the Location in Shell Condition.

The term **"Beneficial Occupancy"** shall mean the date when a Certificate of Occupancy or Temporary Certificate of Occupancy has been received.

The term **"Board"** shall mean Board of County Commissioners of Miami-Dade County.

The term **"Capital Improvement Program"** or **"CIP"** shall mean the Airport's construction program that will involve the refurbishment of terminal interiors, airline relocation, changes in access to the terminal and concourses, construction of new concession locations, and other improvements throughout the Airport.

The term **"Central Terminal"** shall mean the area of the terminal building and concourses, within the central part of the terminal area, landside or airside which is now known as Concourses E thru G.

The term **"Code"** shall mean the Code of Miami-Dade County, Florida.

The term **"Common Logistics Fee"** shall mean an amount to be invoiced as a separate line item and collected from Sub-tenants by the Concessionaire for the purpose of reimbursing, without profit or administrative markup, a County imposed or approved logistics program which the

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Concessionaire may be reimbursed for actual out-of-pocket expenses incurred excluding any administrative overhead in order to lease off-Airport properties for storage or operate on the Airport and operating a common logistical support service as may be necessary for the efficient operation of the Retail Program. The Concessionaire will implement an equitable and reasonable formula to calculate and allocate this fee among relevant Sub-tenants.

The term **"Common Logistics Program"** shall mean a program to offer logistics support either on or off Airport which may include leasing of Airport property for storage; delivery services or equipment necessary to the operation of a common logistics system.

The term **"Concessionaire"** shall mean the person, firm, or entity that enters into this Lease and Concession Agreement with the County.

The term **"Consumer Price Index"** or "**CPI**" shall mean that index published by the United States Department of Labor, Bureau of Labor Statistics known as the Consumer Price Index for all urban consumers ("CPI-U") in the U.S. Cities Average: All items.

The term "**County**" shall mean Miami-Dade County, Florida, a political subdivision of the State of Florida.

The term **"Days"** shall mean calendar days, unless specifically stated as other.

The term "**Department**" or **"MDAD"** shall mean the Miami-Dade Aviation Department.

The term **"Director"** shall mean the Director of the Miami-Dade Aviation Department or the Director's designee.

The term **"Extension"** shall mean the addition of one (1) separate two (2) year term following the Term.

The term **"Gross Revenues",** as used in this Agreement, shall mean all monies paid or payable to and consideration of determinable value received by the Concessionaire or its Sub-tenants in operation under the Agreement, regardless of when or where the order therefor is received, or the goods delivered, or services rendered, whether paid or unpaid, whether on a cash, credit or rebate basis or in consideration of any other thing of value; provided, however, that the term "Gross Revenues" shall not include: (i) any refund given to the customer because of a customer satisfaction issue which must be documented and auditable, or (ii) promotional discount and coupon offers issued to customers as a result of a Departmental approved marketing plan, or (iii) any sums collected for any federal, state, County and municipal taxes imposed by law upon the sale of merchandise or services.

The term **"Gross Receipts"** shall mean Gross Revenues received by Concessionaire as a result of operations pursuant to Concessionaire's Sub-Lease of the Location to an approved Sub-tenant.

The term **"Lease Effective Date"** shall mean the tenth (10th) business day after the date of execution by the County Manager and attestment by the Clerk of the Board of the Lease and Concession Agreement.

The term **" Local Business"** shall mean a business, including but not limited to a sole proprietorship, partnership or corporation, whose majority (at least fifty-one percent (51%) owned) stockholders, partners, owners or local franchisee (meaning a franchise originating in Miami Dade County and not an international, national or regional branded franchise) are residents of Miami-Dade County and whose principal place of business originated and is currently in the Primary Miami-Dade Statistical Area (Miami PMSA) at least one year prior to the advertisement of any solicitation for which a response may be constructed. Evidence of a legitimate business presence in Miami-Dade County shall be verified by a Proposer's valid Occupational License issued by Miami-Dade County and proof of ownership. A joint venture may be a Local Business, but only if all parts of that Joint Venture are Local Businesses. Additionally, it is intended that the Local Business proposer represent a sense of place of the Miami-Dade area and, as such, is reflected in both the store design and merchandising concept.

The term **"Location"** shall mean the concession locations as depicted on Exhibit A, "Concession Location".

The term **"Location Commencement Date"** shall mean for the Location, the earlier of the date of Beneficial Occupancy or 120 Days after the Turnover Date (180 days for food & beverage).

The term "**Master Concessionaire**" shall mean the Concessionaire that will operate certain Locations and will Sub-Lease others.

The term "**Minimum Annual Guarantee" or "MAG"** shall mean as ascribed in Sub-Article 3.01 of this Agreement.

The term **"Minimum Monthly Guarantee"** shall mean as ascribed in Sub-Article 3.01 of this Agreement.

The term "**Non-exclusivity**" shall mean as ascribed in Sub-Article 1.10 of this Agreement.

The term **"Market Basket "** shall mean that MIA concession store prices shall not exceed by more than 10% stated market basket of a selection of three (3) Greater Miami Area locations where visitors may purchase similar product categories excluding stadiums, arenas, amusement and entertainment venues and hotels.

The term "**North Terminal**" shall mean the area of the terminal building and concourses, within the north part of the terminal area, landside or airside now known as Concourses A-D.

The term "**Proposal**" shall mean a Proposer's written response to RFP MDAD-04-07.

The term **"Refurbishment of Location"** shall mean the refurbishment and expenditure by the Concessionaire or its Sub-tenants of not less than fifty dollars per square foot ($50psf) for

Approved Improvements to begin no earlier than the sixth (6^{th}) Term year of the Agreement and be completed no later than the last day of the sixth (6^{th}) Term year of this Agreement.

The term **"Request for Proposal" or "RFP"** shall mean this RFP MDAD-04-07 and all associated Addenda, Exhibits, Forms, Affidavits and Attachments.

The term **"Retail"** when used in this Agreement shall mean the retail, haircare and food & beverage Locations as depicted in Exhibit A of the Lease and Concession Agreement.

The term **"Retail Concession Design Guidelines"** shall mean MIA's distinct design guidelines in the North, Central, and South Terminals as set forth in Exhibit E.

The term **"Shell Condition"** shall mean smooth concrete floors, demising studs and walls, and the utility services listed below (conduits, lines, pipes, etc.) stubbed to the lease lines of the Location or area immediately adjacent thereto for electric, telephone and data communications, heating ventilating and air conditioning systems including ducts ("HVAC"), fire alarm system and fire sprinkler system.

The term "**South Terminal**" shall mean the area of the terminal building and concourses, within the south part of the terminal area, landside or airside which is now known as Concourse H, and a new J Concourse and connecting concession and public locations.

The term **"State"** shall mean the State of Florida.

The term **"Sub-Lease"** shall mean the contractual agreement between the Concessionaire and its Sub-tenant.

The term **"Sub-tenant"** shall mean any person, firm, entity or organization, entering into an agreement with Concessionaire for sale of retail products to the public at the Airport at the Location as depicted on Exhibit A, Concession Location.

The term "**Term" shall** mean the County hereby leases to the Master Concessionaire the Locations depicted in Exhibit A commencing upon the Lease Effective Date of this Agreement and expiring at 11:59 P.M. on the last day of the eighth (8) year thereafter unless sooner terminated. In no event shall this Agreement afford Master Concessionaire or any other party any right to use or occupy the Locations (or any part thereof) after the expiration, termination of the Agreement.

The term **"TSA"** shall mean the United States Transportation Security Administration, and any successor agency, office or department thereto.

The term "**Turnover Date**" shall mean the date approved by the Department for the Concessionaire to commence construction of the Location.

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LEASE AND CONCESSION AGREEMENT FOR A NON-EXCLUSIVE CONCESSIONAIRE FOR RETAIL CONCESSION PROGRAM AT MIAMI INTERNATIONAL AIRPORT

THIS LEASE AND CONCESSION AGREEMENT is made and entered into as of this _____ day of _____, 200__, by and between MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida and _____ ("Concessionaire"), a _____Corporation authorized to business in the State of Florida.

RECITALS:

WHEREAS, the County is the owner of and operates Miami International Airport through the County's Miami-Dade Aviation Department; and

WHEREAS, the Department desires to create a retail concessions program in conjunction with the development program for the North, and South Terminal projects; and

WHEREAS, the concessions program is designed to provide a locally, nationally, and internationally recognized themed tenant base; and

WHEREAS, the retail concessions program will enhance the accommodations and conveniences of airline passengers and Airport patrons, and project a positive image of the Airport, the Department, and the County to visitors, as further described herein; and

WHEREAS, Request for Proposal RFP No. MDAD-04-07 for this project was issued by the County and in response to the Request for Proposal, the County received proposals and an award has been made to the Concessionaire,

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

ARTICLE 1 – TERM, EXTENSION AND LOCATION

1.01 TERM: The County hereby leases to the Master Concessionaire the Locations depicted in Exhibit A commencing upon the Lease Effective Date of this Agreement and expiring at 11:59 P.M. on the last day of the eighth (8) year thereafter unless sooner terminated. In no event shall this Agreement afford Master Concessionaire or any other party any right to use or occupy the Locations (or any part thereof) after the expiration, termination of the Agreement.

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1.02 EXTENSION: At the sole discretion of the County, the initial eight (8) year Term may be extended for a maximum of one (1) two (2) year term provided the extension is mutually agreed to by the County and the Concessionaire in writing.

In the event the County elects to extend the Agreement, the Concessionaire shall be notified, in writing, no less than one hundred and twenty (120) Days prior to the expiration of the Term. The Concessionaire may elect not to agree to the extension, and, if so, must notify the Department thirty (30) Days after receipt of written notification by the Department to extend the Agreement. In the event the Department does not give such notice, the Agreement shall expire accordingly.

In the event the Concessionaire is in default, pursuant to **Article 12, Default and Termination by County**, of the Lease and Concession Agreement beyond applicable grace and cure periods, the County shall not exercise its rights to extend the Agreement.

1.03 LOCATION: The Department hereby identifies to the Concessionaire the Location as depicted in Exhibit A, Concession Location.

1.04 SUPPORT SPACE: In addition to the Location provided to the Concessionaire in **Sub-Article 1.03, Location,** the Department may provide administrative and support space, if available, to the Concessionaire.

The Concessionaire shall pay monthly rental payments for the Concessionaire's administrative and support space is at the rate applicable for terminal rental payments and annual adjustments as provided for in **Sub-Article 3.06, Annual Rental**.

1.05 STORAGE SPACE: The Department may make available to the Concessionaire storage space outside of the Location, if available.

1.06 COMMON WAREHOUSE SYSTEM: Due to the fact that storage space is limited in this Agreement and such space is separate from the Location, should the Concessionaire determine, in its sole discretion, the need to use off-Airport properties for storage space, the Concessionaire shall be entitled through itself, or through an independent third-party contractor, to operate a common logistical support service with respect to the delivery and storage of Sub-tenants' merchandise, inventory, equipment and supplies to a central commissary warehouse location off of the Airport and the re-delivery of Sub-tenants' merchandise, inventory, equipment and supplies to the Sub-tenants' Location (if a Sub-tenant is used) at the Airport as may be approved by the Department. The Department may elect to initiate a Common Logistics Program to assist in storage, delivery equipment and supplies in which case a Common Logistics Fee may be assessed to Concessionaire.

In the event of a Department initiated Common Logistics Program, the actual costs incurred to rent any such off-Airport properties for storage and/or the actual costs incurred in the operation of the common logistical support service program (including the purchase or renting of equipment needed to operate such program), as may be determined by the Department from time to time, shall be included in the Common Logistics Fee. The

Common Logistics Fee shall be reimbursed to the Concessionaire by its Sub-tenants on a non-discriminatory basis for all similarly situated Sub-tenants. The Concessionaire shall not be entitled to charge Sub-tenants for any of the Concessionaire's internal administrative expenses in managing the common logistical support service program as part of the Common Logistics Fee. All funds received by Concessionaire as part Common Logistics Fee shall not be included in Concessionaire's Gross Revenues for any and all purposes of this Agreement. It is recognized by the Department that any such payments by Sub-tenants to the Concessionaire shall not be included in the calculation of the Percentage Fee, if any, from Concessionaire to the Department as provided for in **Sub-Article 3.03, Percentage Fee to the County**. The Department reserves the right to approve such program and review the basis of the actual costs and allocation thereof should the Concessionaire elect to implement a common logistics support service program. The Department also reserves the right to require that the Concessionaire impose the Common Logistics Fee in a non-discriminatory manner.

1.07 ADDITION, DELETION AND MODIFICATION OF LOCATION:

A. ADDITION OF LOCATION: If at any time after the Lease Effective Date, the Department, at its sole discretion, identifies any additional location for concession development comparable to the concept categories in this Agreement, the Department may, but is not required to, offer such additional location to the Concessionaire upon written notification. The Concessionaire will have thirty (30) Days to submit a written response accepting or rejecting the additional location. Acceptance of any additional location will require the Department and the Concessionaire to mutually agree upon an applicable retail category as described in Exhibit L at the applicable category percentage fee, **Sub-Article 3.05, Concession Category Percentage Fee**, prior to final approval.

B. ADDITION OF TEMPORARY LOCATION: The Department reserves the right to require the Concessionaire to provide, and cause to be operated, a temporary location. A temporary location will be required to provide passenger services in locations where airlines are offering service. Any rent for the Location is subject to the terms of this Agreement. The square footage for the temporary location shall not be included in the calculation of the Minimum Annual Guarantee pursuant to **Sub-Article 3.01, Minimum Annual Guarantee**. All such concepts, plans, fixtures, equipment and merchandising are subject to review and approval by the Department and, to the extent necessary, other County agencies.

C. DELETION OR MODIFICATION OF LOCATION: The Department reserves the right, at its sole discretion, to delete or modify any of the Location, or any administrative support and storage space due to Airport development/construction, operational necessity, and security or safety considerations. In the event of such deletion or modification the Concessionaire shall be given no less than: (i) thirty (30) Days written notice, for such deletion or modification due to operational necessity, and security or safety considerations; and (ii) sixty (60) Days written notice, for such deletion or modification due to development/construction.

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The Department shall not be held liable to the Concessionaire or its Sub-tenants (except for reimbursement of the unamortized costs, pursuant to **Sub-Article 4.10, Amortization Schedule**) for any inconvenience or loss of business as a result of the deletion or modification of any Location or other space pursuant to this Sub-Article.

D. **ADMINISTRATIVE REVISIONS:** This Agreement shall be administratively revised to reflect any additions, deletions or modifications to the Locations pursuant to the provisions herein. Such revision will include revised exhibits and appropriate changes to the Locations in **Sub-Articles 1.03 "Location", 1.04, "Support Space", and 1.05 "Storage Space"** and total payments due the Department in accordance with **Article 3, Rentals, Payments and Reports** and **Article 2 Use of Locations.**

1.08 **NON-EXCLUSIVITY:** This Agreement is nonexclusive in character and in no way prevents the Department from entering into an agreement with any other parties for the sale or offering of competitive services, products or items by other concessionaires and/or others in other locations at the Airport during the Term, or any Extension thereto of this Agreement.

1.09 **CONDITION OF THE LOCATION: CONCESSIONAIRE SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE DEPARTMENT IS LEASING THE LOCATION TO THE CONCESSIONAIRE ON AN "AS IS" BASIS AND THAT THE CONCESSIONAIRE IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM THE DEPARTMENT OR ITS AGENTS, AS TO ANY MATTERS CONCERNING THE LOCATION** including: (i) the quality, nature, adequacy and physical condition and aspects of the Location, including utility systems; (ii) the existence, quality, nature, adequacy and physical condition of utilities serving the Location; (iii) the development potential of the Location, the use of the Location, and the habitability, merchantability, or fitness, suitability, value or adequacy of the Location for any particular purpose; (iv) the zoning or other legal status of the Location or any other public or private restrictions on use of the Location; (v) the compliance of the Location or its operation with any applicable laws, regulations, statutes, ordinances, codes, covenants, conditions, and restrictions of any governmental or quasi-governmental entity or of any other person or entity; (vi) the presence of hazardous materials or industrial wastes on, under or about the Location; (vii) the quality of any labor and materials used in any improvements on the Location; (viii) the condition of title to the Location; (ix) the agreements affecting the Location; and (x) the Proposal submitted by Concessionaire to the Department, including any statements relating to the potential success or profitability of such Proposal. Concessionaire represents and warrants that it has made an independent investigation of all aspects of its Proposal contemplated by this Agreement. Except as specifically provided in this Agreement, the Concessionaire has satisfied itself as to such suitability and other pertinent matters by the Concessionaire's own inquiries and tests into all matters relevant in determining whether to enter into this Agreement. The Concessionaire accepts the Location in their existing condition, and hereby expressly agrees that if any remediation or restoration is required in order to conform the Location to the requirements of applicable law, the Concessionaire assumes sole responsibility for any such work.

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1.10 CAPITAL IMPROVEMENT PROGRAM: The Capital Improvement Program (CIP) is currently underway and will involve the refurbishment of terminal interiors, airline relocation, changes in access to the terminal and concourses, construction of new concession locations, and other improvements that may affect concession operations in the terminal building and on the concourses and access at the curbside or on the airfield. The CIP may affect the operation of the Location, and **THE DEPARTMENT NEITHER MAKES NOR IMPLIES ANY WARRANTIES AS TO THE EFFECT OF SUCH CAPITAL IMPROVEMENT PROGRAM ON SAID OPERATIONS DURING THE TERM AND ANY EXTENSION OF THIS AGREEMENT.** The Department shall use reasonable good faith efforts to the extent possible, so as to mitigate any adverse impact on the business operations of the Location that will not be demolished by the CIP.

1.11 REQUEST FOR PROPOSAL INCORPORATED: The Concessionaire acknowledges that it has submitted to the County a Proposal, in response to a RFP, that was the basis for the award of this Agreement and upon which the County relied. The RFP for this project and the proposal received in response to the advertisement for this project are incorporated into this Agreement. **IN THE EVENT THERE ARE ANY CONFLICTS BETWEEN THIS LEASE AND CONCESSION AGREEMENT AND THE RFP OR THE PROPOSAL, THE TERMS OF SAID AGREEMENT SHALL GOVERN.**

ARTICLE 2 – USE OF LOCATION

2.01 LOCATION: The Location as referenced in Exhibit A, Concession Location shall be used solely for their assigned and approved concept category unless otherwise modified pursuant to **Sub-Article 2.04, New Concepts**. Failure to maintain the concept category pursuant to **Article 2, Use of Location**, may result in liquidated damages as indicated in **Sub-Article 3.24, Liquidated Damages.**

2.02 USE OF LOCATION: The Concessionaire shall have the right, privilege, and obligation to finance, design and construct, lease, manage, operate, and maintain the Location, depicted in Exhibit A, Concession Location, for the purpose of establishing high quality, state of the art retail concessions as approved by the Department.

2.03 CONCESSIONAIRE SERVICES AND SALES RIGHTS: The Concessionaire shall not allow any services or the sale of any item or product not specifically covered by the categories approved in this Agreement. Any such sales by the Concessionaire or Concessionaire's Sub-tenants of services, products, or items not specifically approved herein, in writing by the Department, may constitute a violation. In the event of such violation, the Concessionaire shall discontinue or cause its Sub-tenants to discontinue the sale or service of the unapproved product immediately, upon written notice from the Department. Failure by Concessionaire or its Sub-tenants to discontinue such sales within 24 hours shall subject the Concessionaire to liquidated damages pursuant to **Sub-Article 3.24, Liquidated Damages**. Upon the assessment of thirty (30) Days of liquidated damages as to the Location for the Location operated by a Sub-tenant, the Concessionaire shall tender a notice of default to the Sub-tenant(s) in violation, with copies of said default notice to the Director and pursue all remedies available in law and equity to cease such

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actions. Failure of the Concessionaire to: (i) notify the Sub-tenant(s) of the default, (ii) pursue all remedies available to cease the unauthorized sales or services shall be an event of default and grounds for termination of this Agreement. Upon the assessment of thirty (30) Days of liquidated damages against a Concessionaire for violation committed by such Concessionaire, a notice of default will be tendered.

2.04 NEW CONCEPTS: The Concessionaire and the Department may modify, by mutual agreement, certain concepts within the established categories and among the Location through an Administrative Modification. The proposed new concept as agreed to by the Department and the Concessionaire will be reflected in a revised Exhibit A, a revised Percentage Fee as applicable for the category as provided for in **Article 3, Rentals, Payments and Reports**, and a revised **Article 2, Use of Location.**

2.05 SCOPE OF SERVICES: The Concessionaire hereby agrees that it will finance, design and construct, lease, manage, operate and maintain the Location depicted in Exhibit A, Concession Location, for the purpose of establishing high quality, state of the art retail concessions as approved by the Department. Its responsibilities are further defined but not limited to the following:

A. Financing:

Be capable of financing the design, construction and build out of the Location depicted on Exhibit A, Concession Location.

Develop a financial plan indicating the source of funding for capital investment and continued maintenance and operation of the Location.

B. Developing:

Design a concession location and layout for the concept category in concert with the appropriate MIA Concession Design Guidelines.

C. Design and Construction Coordination:

Design and Construction Coordination requirements are detailed in **Article 4, Improvements to the Location**.

D. Leasing:

The Concessionaire shall be responsible for subleasing as follows:

1. Coordinate its leasing process with the Department, obtaining approval of each Sub-Lease agreement prior to subleasing.
2. Develop, subject to review and approval by the Department, a standard Sub-tenant Lease Agreement, including Exhibits, if subleasing is conducted, in accordance

with **Article 19, "Sub-Leases"** of the Lease and Concession Agreement no later than thirty (30) Days from the Lease Effective Date of the Lease and Concession Agreement. Sub-Lease agreements shall not extend beyond the expiration date or termination date of the Lease and Concession Agreement, contain comparable terms and conditions as may be applicable to those contained in the Lease and Concession Agreement and are to be provided to the Department no longer than 90 days from the effective date of this agreement.

3. Perform background checks and investigate all prospective sub-tenants, including partners, joint ventures, and other key participants. Prepare and make available to the Department, if requested, background check summaries.
4. Negotiate Sub-Leases with potential Sub-tenants to include, but not be limited to:

    a. Negotiating financial terms with potential Sub-tenants in accordance with the Department's approved key business terms and baseline pro-forma.

    b. Preparing term sheets of potential Sub-tenant deals, outlining all business terms for the Department's approval.

    c. List of use and products for each concept.

E. ACDBE Participation

1. Maximize ACDBE and local participation by meeting or exceeding the ACDBE goal under this Lease and Concession Agreement.
2. Develop, implement, manage, and monitor a program to identify and include Local/Small/ACDBE businesses in the concession programs.
3. Describe the extent and type of ACDBE subleasing in the Program.
4. Submit a ACDBE community and local business opportunities outreach program for concession opportunities, subject to the Department's approval.

F. Managing

The Concessionaire shall, if applicable:

1. Design a concession program fulfilling the concept category and submit a merchandising plan initially and for annual review until expiration of the Agreement identifying the product categories for the Location. The Concessionaire will review the store layout plan no less than annually and update the store layout as necessary throughout the Agreement.
2. Manage the Location in a way that maximizes the highest and best use and financial return to the Department.
3. Monitor and enforce compliance with the terms and conditions of the Lease and Concession Agreement and any sub-lease concession agreements, including but not limited to, use clauses, customer service, insurance, pricing, capital expenditures, quality of merchandise, hours of operation, detailed reporting of sales, payment of fees, rent, and signage.

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4. Function as operations liaison between the Department, governmental agencies, Sub-tenants and others.
5. Maintain permanent records for the Location leased.
6. Maintain computerized records on a commercially available property management software program acceptable to the Department. Programs and all data collected should be available to the Department on-line (digital and electronic).
7. Establish and maintain for the Department a potential Sub-tenant database, including correspondence with potential Sub-tenants.
8. Develop, maintain and make available, if requested, all files, including those of any Sub-tenants, to include copies of licenses, permits, insurance certificates, and letters of credit.
9. Provide from time to time, as requested by the Department, annual financial statements demonstrating its financial capacity to perform its obligations under the terms of the Agreement.

G. Operating

The Concessionaire shall:

1. Provide quality control audits and reports, including maintenance of the street pricing requirements covering compliance with contract requirements, cleanliness of the Location, timeliness of service, quality of the product
2. Generate monthly reports to the Department, including sales by unit, concept and Location.
3. Develop annual revenue projections by month, by Sub-tenant, if applicable, by Location, concession category, and product category to be updated on a regular basis.
4. Generate and provide the Department monthly airport revenue reports, and such other financial and management reports as are usual and customary in sophisticated airport concession management programs. Prepare other reports and analyses as may be requested periodically by the Department, including number of transactions per hour, average sales per transaction, and sales per product category.
5. Provide on-site staff to perform daily functions as required by the Scope of Services and the Standards of Operations identified in this Lease and Concession Agreement, subject to acceptance by the Department
6. Ensure compliance, or cause Sub-tenants to comply with the Department and other governmental agency ID Badging requirements.
7. Implement any new policies, and procedures, and operational directives as issued from time to time by the Department.
8. Ensure payment is submitted with the Monthly Report of Gross Revenues to the Department.
9. Respond to customer/passenger complaints on a timely basis. Ensure customer

service program compliance. The Concessionaire and/or its Sub-tenants will submit its/their customer service-training program within thirty (30) Days of the Lease Effective Date of the Agreement, for the Department's review and approval.

10. Coordinate and implement regular employee customer service training programs, to include employees from both the Concessionaire and its Sub-tenants, if applicable.

11. Participate and shall cause any Sub-tenant to participate in an airport-wide customer service program implemented by the Department.

H. Maintaining

The Concessionaire shall:

1. Maintain or cause to maintain the Location pursuant to Department standards, which may be promulgated from time to time.
2. Coordinate and maintain general oversight of deliveries of goods and products for the concession operations from any designated on or off-Airport storage area.
3. Shall take such corrective action as necessitated to maintain Location in acceptable condition as required by the Department.

2.06 ANNUAL PLAN SUBMISSION: The Concessionaire shall prepare a marketing plan. The marketing plan shall be submitted to the Department on or before ninety (90) Days prior upcoming fiscal year for the Department (October 1 – September 30). The Department shall have forty-five (45) Days after receipt of the foregoing plan to approve or disapprove the same in its discretion. If MDAD disapproves the plan, the Concessionaire shall operate in substantial conformity with all such plans approved by the Department as may be modified from time to time.

The Department reserves the right to request at any time any further submission of plans.

2.07 PROHIBITED ACTIVITIES: Without limiting any other provision herein, Concessionaire or its Sub-tenants shall not, without the prior written consent of the Department which may be withheld in its sole and absolute discretion: (a) advertise or hold any distress, fire, or bankruptcy sales, (b) cause or permit anything to be done, in or about the Location, or bring or keep anything thereon which might (i) increase in any way the rate of fire insurance on the MIA Terminal Building or any of its contents, (ii) create a nuisance or annoyance or safety hazard, or (iii) obstruct or interfere with the rights of others in the MIA Terminal Building; (c) commit or suffer to be committed any waste upon the Location; (d) use, or allow the Location to be used, for any improper or unlawful purpose; (e) do or permit to be done anything in any way tending to injure the reputation of the Department, the County, the Board of County Commissioners, or the appearance of the Airport; or (f) construct any improvement on or attach any equipment to the roof of the Airport. Except as required to permit Concessionaire or its Sub-tenants to perform its maintenance and repair obligations under this Agreement, Concessionaire or its Sub-tenants shall not gain access to the roof of the MIA terminal building without the consent of the Department, which may be withheld in the Department's sole and absolute

discretion.

ARTICLE 3 – RENTALS, PAYMENTS AND REPORTS

3.01 MINIMUM ANNUAL GUARANTEE (MAG): As consideration for the privilege to engage in business at Miami International Airport, Concessionaire shall pay the Department the amount of $_____ annually as may be adjusted by the prorated amount stated below and subject to recalculation pursuant to **Sub-Article 3.03, Recalculation of the Minimum Annual Guarantee**, inclusive of Location rent.

The Minimum Annual Guarantee ("MAG") payment shall be in U.S. funds, prorated and payable in twelve equal monthly payments ("Minimum Monthly Guarantee" or "MMG") on or before the first day of each month, in advance, without billing or demand, plus applicable taxes as may be required by law.

3.02 NO NEGOTIATIONS OR ADMINISTRATIVE MODIFICATIONS: The Concessionaire understands and agrees, as a condition precedent to the County's consideration of the proposal, that the terms and conditions of **Sub-Article 3.01, Minimum Annual Guarantee**, and **Sub-Article 3.04, Percentage Fee to the Department**, are not subject to negotiation or adjustment for any reason, including, but not necessarily limited to, airport construction, airline relocation, airline bankruptcies, change in airline service, and the like, except in the event of an act of God or an event of force majeure as such term is defined in **Sub-Article 22.11, Force Majeure**. Nor shall the County be liable for any reduction in sales or disruptions or delays caused in whole or in part by any of the foregoing at any time during the Term and any Extension of this Agreement. If the Concessionaire's Location is so damaged as to significantly impact the Concessionaire's operations for a period in excess of seventy two (72) hours, the Department shall provide a proportionate abatement of the MMG for that portion of the Location rendered unusable for that period of time that the County is unable to make repairs required by **Sub-Article 6.01, Department Services**.

3.03 RECALCULATION OF THE MINIMUM ANNUAL GUARANTEE: The Minimum Annual Guarantee shall be recalculated as of the first day of the month immediately following the anniversary of the Lease Effective Date and every year thereafter. An appropriate adjustment will be made to reflect the change in the Consumer Price Index ("CPI") for all urban consumers ("CPI-U") in the U.S. Cities Average: All Items, for the published, preceding twelve-month period.

3.04 PERCENTAGE FEE TO THE DEPARTMENT: The Concessionaire shall pay the Department the total percentage fee of Gross Revenues or the Minimum Monthly Guarantee; whichever is greater, for the Location. The monthly percentage fee shall be due on the tenth (10^{th}) Day of the month following the month during which the monthly gross revenues were received or accrued.

The Monthly Percentage Fee payments to the Department shall commence upon the Beneficial Occupancy for the Location.

Monthly Percentage Fee payments to the Department payable on any unreported Gross Revenues, determined by the annual audit required pursuant to **Sub-Article 3.19, Annual Audit**, are considered as having been due on the tenth (10^{th}) Day of the month following the month during which the unreported Gross Revenues were received or accrued.

To the extent the Concessionaire and the Department mutually agree to change a concept category for the Location, then the corresponding percentage fee, as listed per category in **Sub-Article 3.05, Retail Category Percentage Fee**, will be adjusted accordingly.

3.05 CONCESSION CATEGORY PERCENTAGE FEE: The Concessionaire shall pay the Department the Percentage Fee for the corresponding category. The Concessionaire percentage will be paid for the Location operated by the Concessionaire and Sub-tenant percentage for the Location, if sub-leased.

The following is the applicable "Percentage Fee per Category" acceptable for the concept category.

CONCEPT CATEGORY	APPLICABLE PERCENTAGE
RETAIL	
Bookstores	12%
News & Gifts 19% for Gifts 16% for News	 16% 19%
Newsstands (Gifts 19%)	16% 19%
Entertainment & Electronics	11%
Fashion Apparel & Accessories	14%
Gift Specialty Shops	16%
Jewelry, Watches & Accessories	17%
Sundries, Personal Care	17%
Travel Accessories	17%
Coffee Shop/Café - Food Coffee Shop/Café - Liquor	15% 19%

3.06 ANNUAL RENTAL: The Concessionaire shall be required to pay rent at the prevailing terminal class rates for the lease of support and storage spaces provided by **Sub-Articles 1.04 "Support Space"** and **1.05 "Storage Space"**, prorated and payable in equal monthly installments in U.S. funds, on the first day of each and every month, in advance and without billing or demand, at the offices of the Department as set forth in **Article 3.17, Address for Payments**.

3.07 NOT USED

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Concessionaire

3.08 ANNUAL RENTAL RATE ADJUSTMENT: On October 1st of each year of the Agreement, the rental rates, pursuant to **Article 3.06, Annual Rental**, shall be subject to recalculation and adjustment in accordance with the policies and formulae approved by the Board of County Commissioners, as may be amended from time to time. When such adjusted rental rates are established, this Agreement shall be considered and deemed to have been administratively amended to incorporate such adjusted rental rates, effective as of such October 1st date. Payments for any retroactive rental adjustments shall be due upon billing by the Department and payable within ten Days of same.

3.09 COMMON WAREHOUSE LOGISTICS FEE: In the event the Department initiates a Common Logistics Program, the actual costs incurred to rent any such off-Airport properties for storage and the actual costs incurred in the operation of the common logistical support service program (including the purchase or renting of any equipment needed to operate such program), as may be determined by the Department and/or the Concessionaire from time to time, shall be included in the Common Logistics Fee. The Common Logistics Fee shall be reimbursed to the Concessionaire by its Sub-tenants on a non-discriminatory basis for all similarly situated Sub-tenants. The Concessionaire shall not be entitled to charge Sub-tenants for any of the Concessionaire's internal administrative expenses in managing the common logistical support service program as part of the Common Logistics Fee. All funds received by Concessionaire as part of the Common Logistics Fee shall not be included in Concessionaire's Gross Revenues for any and all purposes of this Agreement, it being recognized by the Department that any such payments by Sub-tenants to the Concessionaire shall not be included in the calculation of the Percentage Fee, if any, due from Concessionaire to the Department as provided for in **Sub-Article 3.04, Percentage Fee to the County**. The Department reserves the right to approve and review the basis of the actual costs and allocation thereof should the Concessionaire elect to implement a common logistics support service program. The Department also reserves the right to either itself impose or require that the Concessionaire impose the Common Logistics Fee in a non-discriminatory manner within store categories.

3.10 CONCESSION MARKETING FEE: A concession marketing fee of one half (1/2) of one percent (1%) of Gross Revenues will be assessed annually to be paid to the Department monthly, beginning the month following the opening of the Location on the twentieth (20^{th}) of each month to be used for marketing the concessions at the Airport.

3.11 MAG PERFORMANCE BOND: Within thirty (30) Days of the Lease Effective Date of this Agreement, the Concessionaire shall provide the Department a Performance Bond to guarantee payment of the MAG and rental for the lease of support and storage spaces. Concessionaire shall keep such Performance Bond in full force and effect during the Term and any Extension of this Agreement, as applicable, and thereafter until all financial obligations, reports or other requirements of this Agreement are satisfied. The Performance Bond shall be a surety bond. In the alternative, an irrevocable letter of credit, or other form of security acceptable to the Department may be furnished. Any such form of security instrument shall be endorsed as to be readily negotiable by the Department for

the payments required hereunder. The Performance Bond or other security instrument shall be effective for the current year of operation with automatic renewal for each of the remaining years under this Agreement, including any extensions naming the County as obligee and issued by a surety company or companies in such form as approved by the County Attorney. The amount of the Performance Bond or other security instrument shall initially be in an amount equal to seventy-five percent (75%) of the MAG amount provided for in **Sub-Article 3.01**, which is equal to $_____ Dollars and seventy-five percent (75%) of any annual rental and applicable taxes for the lease of support and storage spaces set forth in **Sub-Article 3.06**. Thereafter, the amount shall be adjusted as necessary to reflect any increases in the MAG and lease of support and storage spaces.

The Department may draw upon such form of security instrument, if the Concessionaire fails to pay any monies or perform any obligations required hereunder following applicable notice and cure periods specified herein. Upon notice of any such draw, Concessionaire shall immediately replace the Performance Bond with a new Performance Bond in the full amount of the Performance Bond required hereunder. A failure to renew the Performance Bond, or increase the amount of the Performance Bond, or other forms of security instrument, if required due to such draw, shall (i) entitle the Department to draw down the full amount of such Performance Bond, and (ii) be a default of this Agreement entitling Department to all available remedies. Provided Concessionaire is not in default and fully complies with all the payment requirements of this Agreement, the payment security instrument will be returned to Concessionaire within one hundred eighty (180) Days after the end of the Term or any Extension of the Term.

3.12 TAXES: The Concessionaire shall be solely responsible for the payment of all applicable taxes, levied upon the fees and other charges payable by the Concessionaire to the Department hereunder, whether or not the same shall have been billed or collected by the Department, together with any and all interest, liquidated damages and charges levied thereon. The Concessionaire hereby agrees to indemnify the County and Department and hold it harmless from and against all claims by any taxing authority that the amounts, if any, collected from the Concessionaire and remitted to the taxing authority by the Department, or the amounts, if any, paid directly by the Concessionaire to such taxing authority, were less than the total amount of taxes due, and for any sums including interests and liquidated damages payable by the Department as a result thereof. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.

3.13 REPORTS OF GROSS REVENUES: On or before the tenth (10^{th}) calendar day following the end of each month throughout the Term and any Extension of this Agreement, the Concessionaire shall furnish to the Department, a Statement of Monthly Gross Revenues, using Exhibit I "Monthly Report of Gross Revenues". The report shall report the Location under this Agreement, together with any percentage fee due to the Department pursuant to **Sub-Article 3.04, Percentage Fee to the Department**. The Concessionaire shall certify as to the accuracy of such Gross Revenues in such form as shall be prescribed by the Department. The Department may modify from time to time, the form of reporting upon not less than thirty (30) Days written notice to the Concessionaire. The statement must be signed by an officer (if the Concessionaire is a corporation), partner (if a partnership), or owner (if a sole proprietorship) of the Concessionaire, and identify the

Gross Revenues for the Location reported to the Concessionaire during such month. Failure to comply within ten (10) Days following the due date of the report shall result in a late fee liquidated damage of fifty dollars ($50.00) per Day, as provided in **Sub-Article 3.24, Liquidated Damages**.

3.14 OTHER REPORTS: The Concessionaire shall provide the Department with financial data and operating statistics in a format and frequency specified by the Department, and the Department shall provide no less than thirty (30) Days written notice of the format and frequency required for said financial data and operating statistics.

3.15 LATE PAYMENT: In the event the Concessionaire fails to make any payments as required to be paid under the provisions of this Agreement within ten (10) business days of the due date, delinquency charges established by the Board will be imposed. Such rate is currently 1½% delinquency charge per month.

3.16 DISHONORED CHECK OR DRAFT: In the event the Concessionaire delivers a dishonored check or draft to the Department in payment of any obligation arising under this Agreement, the Concessionaire shall incur and pay a service fee of TWENTY-FIVE DOLLARS ($25.00), if the face value of the dishonored check or draft is fifty dollars ($50.00) or less, THIRTY DOLLARS ($30.00) if the face value of the dishonored check or draft is more than fifty dollars ($50.00) and less than three hundred dollars ($300.00), or FORTY DOLLARS ($40.00), if the face value of the dishonored check is three hundred dollars ($300.00) or more, or five percent (5%) of the face value of such dishonored check or draft, whichever is greater, plus liquidated damages imposed by law. Further, in such event, the Department may require that future payments required pursuant to this Agreement be made by cashier's checks or other means acceptable to the Department.

3.17 ADDRESS FOR PAYMENTS: The Concessionaire shall pay all monies payable and identify the Lease and Concession Agreement for which payment is made, as required by this Agreement, to the following:

In Person: Miami-Dade Aviation Department
Finance Division
4200 N.W. 36th Street
Building 5A, Suite 300

During normal business hours, 8:30 A.M. to 5:00 P.M., Monday through Friday

By Mail: Miami-Dade Aviation Department
Finance Division
P.O. Box 526624
Miami, Florida 33152-6624

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

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

3.18 REVENUE CONTROL PROCEDURES: Notwithstanding anything to the contrary contained herein, the Concessionaire shall comply with such revenue control procedures as may be established from time to time by the Department. The Department shall provide the Concessionaire with at least thirty (30) Days prior written notice together with a copy of such revenue control procedures prior to requiring the Concessionaire to implement any such revenue control procedures.

3.19 ANNUAL AUDIT: Within ninety (90) Days of each anniversary of the Lease Effective Date of this Agreement and within ninety (90) Days following expiration or earlier termination of this Agreement, the Concessionaire shall, at its sole cost and expense, provide to the Department on an annual basis, an audited report of monthly Gross Revenues and percentage fees separately stating its and each Sub-tenants Gross Revenues, containing an opinion, prepared and attested to by an independent certified public accounting firm, licensed in the State of Florida. The audited report, as detailed in Exhibit G "Independent Auditor Report", shall include a schedule of monthly Gross Revenues and percentage fees paid to the Department under this Agreement, prepared in accordance with Generally Accepted Auditing Standards. The report shall also be accompanied by a management letter containing the findings discovered during the course of the examination, recommendations to improve accounting procedures, revenue and internal controls, as well as significant matters under this Agreement. In addition, the audit shall also include as a separate report, a comprehensive compliance review of procedures to determine whether the books of accounts, records and reports were kept in accordance with the terms of this Agreement for the period of examination. Each audit and examination shall cover the period of this Agreement. The last such report shall include the last day of operation. There shall be no changes in the scope of the reports and letters required hereunder without the specific prior written approval of the Department.

3.20 RIGHT TO AUDIT/INSPECT: The Department and the auditors of the County shall have the right, without limitation, at any time during normal working hours, to enter into any location on or off the Airport, which the Concessionaire may use as administrative, maintenance and operational locations, in connection with its operations pursuant to this Agreement, to: (1) verify, check and record data used in connection with operation of this Agreement; (2) inspect, review, verify and check all or any portion(s) of the procedures of the Concessionaire for recording or compiling Gross Revenues information and (3) audit, check, inspect and review all books of account, records, financial reports, financial statements, operating statements, inventory records, and state sales tax returns, and work papers relating to operation of this Agreement, and other pertinent information as may be determined to be needed or desirable by the Department. Prior to entering the Location located on the Airport, the Department shall give advance notice to the Concessionaire.

If it is established that the percentage fees have been underpaid to the Department, the Concessionaire shall forthwith, pay the difference with interest thereon at the rate set forth in **Sub-Article 3.15, Late Payment**, from the date such amount or amounts should have been paid.

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Further, if such examination establishes that Concessionaire has underpaid percentage fees for any period examined by three percent (3%) or more, then the entire expense of such examination shall be borne by Concessionaire.

In the event of any conflict between any provisions of this Agreement and generally accepted accounting principles or generally accepted auditing standards, the provisions of this Agreement shall control even where this Agreement references such principles or standards. In particular, without limitation, the Concessionaire shall maintain all records required under this Agreement to the full extent required hereunder, even if some or all of such records would not be required under such general principals or standards.

In addition to the foregoing, the Department reserves the right to review any and all fees imposed by the Concessionaire to each Sub-tenant and the basis of such fee and allocation to each Sub-tenant.

3.21 RECORDS AND REPORTS: The Concessionaire shall, at all times during the Term of this Agreement, or any Extension hereof, hereof and in accordance with applicable law, maintain at the Concessionaire's principal corporate office located in the United States and make available to the Department in Miami-Dade County, Florida, complete and accurate books and records of all receipts and disbursements from its operations on the Location, in a form consistent with good accounting practice. In addition, Concessionaire shall install or cause to be installed for use at all times in the Location such devices and forms as are reasonably necessary to record properly, accurately and completely all merchandise sales and services from the Location. The form of all such books of account records and reports shall be subject to the approval of the Department and/or the auditors of the County (one or more of the following: the designated external auditing firm or other certified public accounting firm selected by the Department, or the Audit and Management Services Department of the County) prior to commencement of operations hereunder.

The Concessionaire shall account or shall cause its Sub-tenants to account for all revenues of any nature related to transactions in connection with this Agreement in a manner which segregates in detail those transactions from other transactions of the Concessionaire (and of the Sub-tenants, as the case may be) and which supports the amounts reported to the Department in the Concessionaire's monthly schedules. At a minimum, the Concessionaire's accounting for such receipts shall include the following:

1. Concessionaire's bank account statements (separate bank accounts shall be maintained for receipts from Sub-tenants' payments to the Concessionaire and no receipts from any other source shall be deposited in such accounts);
2. A compiled report of transactions by Location showing all Gross Revenues and all exclusions from Gross Revenues by category, which report shall be subtotaled by day and totaled by month. The monthly total shall correspond with the amounts reported to the Department on the Concessionaire's monthly "Revenue Reports"; and
3. Such other records, if any, which would normally be examined by an independent certified public accountant in performing an examination of the Concessionaire's Gross

Revenues in accordance with generally accepted auditing standards and the provisions of this Agreement.

Such records may be in the form of (a) electronic media compatible with the computers available to the Department, or (b) a computer run hard copy. The Department may require other records necessary in its determination to enable the accurate audit of Concessionaire's Gross Revenues hereunder. Upon ten (10) business days written notice from the Department, all such books and records, including the general ledger and bank statements and all federal, state and local tax returns relating to Sub-tenant's sales, shall be made available, either at the Location, or at the Department's option, at the offices of the Department, for inspection by Department through its duly authorized representatives at any time for up to three (3) years subsequent to final termination of the period to be examined to which such books and records relate (and the Concessionaire shall not be obligated to retain such books and records subsequent to the termination of such three (3) year period); provided, however, that any such inspection on the Location will be conducted during reasonable business hours and in such a manner and at such time as not to interfere unduly with the conduct of the Concessionaire's business.

3.22 ADDITIONAL FEES DUE: If the Department has paid any sum or has incurred any obligation or expense for which the Concessionaire agreed to pay or reimburse the Department, or if the Department is required or elects to pay any sum or incur any obligation or expense because of the failure, neglect or refusal of the Concessionaire to perform or fulfill any of the terms or conditions of this Agreement, then the same shall be deemed due and subject to an additional administrative fee of twenty-five percent (25%) of such payment, obligation, or expense.

3.23 UTILITIES: The cost of all utilities used or consumed on the Location shall be borne by the Concessionaire; provided, however, except with respect to the Concessionaire's support and storage space as defined in **Sub-Articles 1.04 Support Space"** and **1.05 "Storage Space"** at the Airport, the Concessionaire shall be entitled to pass the cost of all utilities used or consumed to the Sub-tenants at the same rates as billed to the Concessionaire without any administrative mark-up or profit. The Department requires the Concessionaire where such capability exist, to provide and install or cause the Sub-tenants to provide and install meters for utilities used at the Concessionaire's or its Sub-tenant's expense. If the Location is not provided with separate electric, gas, and/or water meters, the Concessionaire agrees to pay for such utilities in the Location as a monthly charge, plus any applicable taxes, upon billing by the Department, or utility companies. If billed by the Department, the Department at its sole discretion, will base this monthly charge on (i) a survey of consumption by the Department and current non-discriminatory rates charged others in the Terminal Building or (ii) at the option and expense of the Concessionaire on actual usage measured by temporary meters, arranged and paid for by the Concessionaire. This monthly charge may also be adjusted on a non-discriminatory basis and billed retroactively from time to time based on changes in consumption and rates. Concessionaire hereby agrees to pay the same within thirty (30) Days after it has received Department's invoice thereof. The Concessionaire shall pay for all other utilities used by it

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including telephones and telephone service hook-up, data lines and additional electrical and communications services required.

3.24 LIQUIDATED DAMAGES: If the Concessionaire or its Sub-tenants are at fault under any of the covenants or terms and conditions of this Agreement, the Department shall impose the financial liquidated damages described below, as a result of the violation(s), on a daily basis, in addition to any other liquidated damages permissible by law and/or pursuant to the provisions of this Agreement, until said violations are remedied:

Violation	Fee
Violation of Permitted Use of a Location	$ 100 per Day/per Location
Failure to Maintain Required Hours of Operation	$ 25 per hour/per Location
Failure to Submit Required Documents and Reports	$ 50 per Day/per Location
Unauthorized Advertising	$ 50 per Day/per Location
Failure to Maintain Location Clean	$ 50 per Day/per Location
Failure to Maintain Market Basket Pricing or to conduct the surveys as required	$ 50 per Day/per Location
Installation of Unapproved Items in Location	$ 50 per Day/per Location
Violations of Other Terms and Conditions	$ 75 per Day/per Location

The foregoing is due and payable from the Concessionaire; however, it shall not be construed as prohibiting the Concessionaire from imposing the financial liquidated damages described above, as a result of the Sub-tenant's violation(s), on a daily basis, on the applicable Sub-tenants, in addition to any other liquidated damages permissible by law and/or pursuant to the provisions of the Sub-Lease agreements, until said violations are remedied by the applicable Sub-tenants.

3.25 PAYMENT SECURITY: The Concessionaire shall provide the County with an irrevocable standby letter of credit in the format approved by the Department or cash for the payments required by this Sub-Article in an initial amount equal to twenty-five percent (25%) of the MAG amount provided for in **Sub-Article 3.01, Minimum Annual Guarantee** which is equal to $_____ Dollars and twenty-five percent (25%) of any annual rental for the lease of support and storage spaces set forth in **Sub-Article 3.06, Annual Rental** and any applicable taxes. Thereafter the amount shall be adjusted as necessary to reflect any increases in the MAG and lease of support and storage spaces. This requirement shall be met no later than thirty (30) Days after the Lease Effective Date of this Agreement. The payment security shall be kept in full force throughout Term and any Extension of this Agreement thereof. The Department may draw upon such payment security instrument if the Concessionaire fails to make the payments secured by this Sub-Article. Upon notice of any such draw, Concessionaire shall immediately replace the payment security with a new payment security in the full amount of the payment security required hereunder. A failure to renew the payment security, or increase the amount of the payment security, if required pursuant hereto, shall (i) entitle the Department to draw down the full amount of such payment security, and (ii) be a default of this Agreement entitling Department to all available remedies."

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ARTICLE 4 – IMPROVEMENTS TO THE LOCATION

4.01 IMPROVEMENTS TO LOCATION: The Concessionaire shall be required to invest a minimum of two hundred twenty dollars per square foot ($220.00 psf), for Approved Improvements for the design, construction, furniture, fixtures and equipment excluding interior signage and inventory for the Location listed in Exhibit A and any additional location taken by the Concessionaire pursuant to **Sub-Article 1.07(A), Addition of Location**. Notwithstanding the actual amount of design and engineering costs incurred with respect to improvements for the Location, the maximum proportion of soft costs permitted to be included as Approved Improvements shall be no more than fifteen percent (15%) of the total design and engineering cost. All improvements shall be subject to review and approval by the Department. The Department may, with mutual agreement, fund certain improvements needed to support the concession space and allow the Concessionaire to build such improvements in compliance with MDAD TAC procedures.

It is the intent of the parties that Approved Improvements may include but are not limited to the décor, remodeling of the wall and floor coverings, ceiling, lighting, millwork, HVAC, fire detection and fire suppression or such other improvements as are approved by the Department. Such improvements shall be shown in the design detail in the Final Plans, as such term is defined in **Sub-Article 4.02, Design of Improvements**.

Improvements not constituting Approved Improvements shall include improvements that (i) are non-fixed, (ii) have not been reimbursed by the Department pursuant to **Sub-Article 4.09, Cost Documentation**, and (iii) can be removed without damage to the premises. The Concessionaire is liable and shall indemnify the Department for any damage to the Location which results from the removal of said improvements. This provision shall survive the termination or expiration of this Agreement.

Off-Airport properties used as storage space will not be considered as a location, as stated in **Article 4, Improvements to the Location**, or as an extension of this Agreement, and costs incurred by either the Concessionaire or its Sub-tenants to provide such storage space shall not constitute Approved Improvements.

4.02 DESIGN OF IMPROVEMENTS: Plans for the design of improvements will be in accordance with Exhibit E "Retail Concessions Design Guidelines", Exhibit F "Tenant Airport Construction Non-Reimbursable Projects (TAC-N) Design and Construction Procedures" or Exhibit F "Tenant Airport Construction Reimbursable Projects (TAC-R) Design and Construction Procedures", as applicable, the "MDAD Life Safety Master Plan" and the "MDAD Design Guidelines Manual" (www.Miami-Airport.com) as may be established for the Terminal Retail Program. As plans for the improvement the Location or common area improvements are completed, the Concessionaire shall submit to the Department for review, approval or modification detailed final plans ("Final Plans") and specifications (including materials, colors, textures and fixtures), construction cost estimates and schedules for the construction of the improvements. The Final Plans shall be

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prepared by an architectural interior design and/or engineering firm registered in the State of Florida and in accordance with the Florida Building Code and all applicable State and local laws, ordinances, and regulations.

4.03 REFURBISHMENT OF LOCATION: The Concessionaire shall refurbish the Location or cause its Sub-tenants to refurbish their Location to begin no earlier than the sixth (6^{th}) Term year of the Agreement and be completed no later than the last day of the sixth (6^{th}) Term year of this Agreement.

Approved Improvements for the refurbishment of the Location shall not be less than fifty dollars per square foot ($50 psf). There will be no reimbursement or amortization of these costs for refurbishment.

4.04 NOT USED

4.05 CERTAIN CONSTRUCTION CONTRACT TERMS: All contracts entered into by the Concessionaire and/or its Sub-tenants for the construction of the Improvements shall require completion of the improvements within the schedules submitted pursuant to **Sub-Article 4.02, Design of Improvements**, and shall contain reasonable and lawful provisions for the payment of actual or liquidated damages to the Department in the event the contractor fails to complete the construction on time. The Concessionaire agrees that it will use its best efforts and shall also require the Sub-tenants to take all necessary action available under such construction contracts to enforce the timely completion of the work covered thereby.

Prior to the commencement of any installation work by the Concessionaire, the Concessionaire shall provide or cause to be provided to the Department copies of a fixed price contract or contracts for all work to be performed at the Location. The work to be performed under such contract(s) shall be insured by an Exhibit B, "Performance and Payment Bond" provided by Concessionaire to the Department in the form contained in Exhibit B "Performance and Payment Bond" in the Lease and Concession Agreement. The Performance and Payment bond shall be in full force throughout the term of the installation contract.

4.06 IMPROVEMENTS FREE AND CLEAR: The improvements, upon completion, shall immediately become the property of the Department, free and clear of any liens or encumbrances whatsoever, other than the Department's obligation to reimburse the Concessionaire for the un-amortized value of the Approved Improvements as provided in this Agreement. The Concessionaire agrees that any contract for construction, alteration or repairing of the improvements or the Location or for the purchase of material to be used, or for work and labor to be performed, shall be in writing and shall contain provisions to protect the Department (and the Concessionaire for contracts entered into by Sub-tenants) from the claims of any laborers, subcontractors or material men against the Location or improvements.

4.07 OTHER REQUIREMENTS: The Concessionaire shall or shall cause the Sub-tenants to apply for and obtain a building permit from the Department for all appropriate inspections

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and a Certificate of Occupancy upon completion. Within sixty (60) Days following the completion of construction of the improvements, the Concessionaire shall furnish or shall cause the Sub-tenants to furnish to the Concessionaire and the Department three complete sets each of legible prints (black line), photo mylars and 35 mm aperture card microfilm of construction drawings, and auto cad files revised to "as built", including all pertinent shop and working drawings, copies of all releases of all claims and a copy of the Certificate of Occupancy provided the Concessionaire does not disseminate such information, refer to Transportation Security Regulations (TSR), 49 C.F.R. 1520, et al., Protection of Sensitive Security Information.

No Facility will be allowed to open without obtaining a Temporary Certificate of Occupancy or a Certificate of Occupancy.

Any change in the Location, concept or tenant proposed in response to the Request for Proposals must be approved in writing by the Department. The Sub-tenant occupying the Location submitted in response to the Request for Proposal shall be given notice of the proposed change in writing with a copy to the Department and an opportunity to respond in writing to the Department and have an opportunity to be heard by the Department.

4.08 REVIEW OF CONSTRUCTION: The Department shall have the right, but not obligation, to periodically observe the construction to ensure conformity with the Final Plans and any changes thereof requested by the Concessionaire or the Sub-tenant and approved by the Department.

4.09 COST DOCUMENTATION: Within one hundred eighty (180) Days from the date of Beneficial Occupancy, specifically including those improvements described in **Sub-Articles 4.01, Improvements to Location,** and **4.03, Refurbishment of Location.** the Concessionaire shall submit to the Department a certified audit of the monies actually expended in the design and construction of the Approved Improvements by Location in accordance with the Final Plans, prepared by an independent certified public accounting firm ("Auditor"), approved in advance by the Department (the "Certified Audit"). The Concessionaire or the Sub-tenants, as the case may be, shall be responsible for documenting for the Auditor that the monies that were expended are true and correct. The costs of design and construction, in accordance with the Final Plans and any changes thereto requested by the Concessionaire or the Sub-tenants and approved by the Department, including the costs of required bonds, construction insurance and the construction audit, shall not include the cost of any other consultant or accountant fees, financing or legal fees and personal property of the Concessionaire or the Sub-tenants, as the case may be. No non-receipted expenditures will be credited. Concessionaires not submitting certified audits within the allotted time may be billed a liquidated damage of fifty dollars ($50.00) per Day. Upon reconciliation, any difference due the Department shall also include an administrative fee of ten percent (10%) of the monies due the Department on the build-out of the Location. In the event of any disputes between the Department and the Concessionaire as to whether certain costs are to be included in the audit, said dispute shall be submitted to the consulting engineer named pursuant to the Trust Agreement, as defined in **Sub-Article 17.01, Incorporation of Trust Agreement by**

Reference. The decision of said consulting engineer, acting in good faith, shall be final and binding upon the parties hereto.

The Department shall notify the Concessionaire in writing that it has approved or disapproved the certified costs for the Location and the common area improvements detailed in the Certified Audit within sixty (60) Days from the date of its receipt of the Certified Audit. If the Concessionaire fails to submit the Certified Audit within the time prescribed above for the Location, then a liquidated damage will be assessed as noted in **Sub-Article 3.24, Liquidated Damages**. The Approved Improvement cost for purposes of calculating the County's obligation to reimburse the Concessionaire for un-amortized improvement costs for such Location pursuant to **Sub-Article 4.10, Amortization Schedule**, shall equal the lesser of two hundred twenty ($220) per square foot or the square footage rate of improvement costs for such Location certified by the Auditor.

If the approved total receipted amount is below the Concessionaire or its Sub-tenant's minimum investment and is depicted as such in the results of the Certified Audit, the Concessionaire shall be required to pay to the Department the difference between the expended amount and the minimum investment, within one hundred eighty (180) Days from the date of Beneficial Occupancy of the corresponding Location.

If the approved total receipted amount for Refurbishment of the Location is below the Concessionaire's or its Sub-tenant's investment, the Concessionaire shall be required to pay the Department the difference between the expended amount and the refurbishment amount within one hundred eighty (180) Days from the date of completion of refurbishment.

The Concessionaire shall be entitled to obtain reimbursement of such payments made to the Department from the applicable Sub-tenant(s) who fails to spend the minimum investment or the refurbishment amount for their specific Location.

4.10 AMORTIZATION SCHEDULE: The Concessionaire shall amortize its capital investment for a period not to exceed (60) months using the straight-line depreciation method. If, at any time during the Term of the Agreement, excluding any extension, the Department requires the deletion and/or modification of the Location, the Department may designate a new location at its sole discretion and reimburse the Concessionaire the unamortized balance of Approved Improvements for the deleted or modified location.

Investment subject to such reimbursement shall include the following items only:

1. Directly contracted costs of construction.
2. Stores displays more than $500 per display, furniture, fixture, equipment and signage purchased and installed for direct use in the facility.
3. Design and engineering costs not to exceed fifteen percent (15%) of the total approved construction, installation, store displays, furniture, fixture, equipment and signage cost.

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There will be no other reimbursement.

A certified audit of monies for the above expenditures performed at the expense of the Concessionaire will be required to confirm the minimum investment within one hundred twenty (120) Days of Beneficial Occupancy for the Location. No non-receipted expenditures will be credited. If the approved total receipted amount is below the $220/psf minimum investment, the Concessionaire will be required to pay the Department the difference between the minimum investment amount and the actual receipted expenditure within ninety (90) Days after billing by the Department.

Concessionaires not submitting a certified audit within the allotted time may be billed a liquidated damage of fifty dollars ($50.00) per Day. Upon reconciliation, any difference due the Department shall also include an administrative fee of twenty-five percent (25%) of the monies due the Department on the build-out of the Location.

Prior to the commencement of any construction installation or work by the Concessionaire, the Concessionaire shall provide or cause to be provided to the Department copies of a fixed price contract or contracts for all work to be performed at the Location. The work to be performed under such contract(s) shall be insured by a Performance and Payment Bond provided by Concessionaire to the Department in the form contained in Exhibit B "Performance and Payment Bond" in the Agreement. The Performance and Payment Bond shall be in full force throughout the term of the installation / construction contract.

4.11 CONSTRUCTION PERMIT FEE: The Concessionaire shall pay a permit fee to the Department for improvements which would customarily be paid to the County's Building Department as a condition to issuance of a permit. The permit fee payable by the Concessionaire to the Department is an amount equal to one per cent (1%) of the estimated construction cost of the improvements. Such fee shall be used to reimburse the Department its costs of maintaining on-site Building Department staff to review Concessionaire's and Sub-tenant's plans/specifications. Such fee shall be non-refundable. The Concessionaire shall be entitled to require the Sub-tenants to pay their proportionate share for the construction costs for the improvements to be made by the Sub-tenants in the Location.

4.12 CONSTRUCTION SERVICES: The Concessionaire shall provide at a minimum, but not limited to, the following design and construction services:

1) Concessionaire Improvements

Pursuant to the terms of this Agreement, the Concessionaire shall construct or cause to be constructed certain improvements. The Department shall provide the Concessionaire with the scope of such improvements and within a reasonable time period to be mutually agreed to by the Concessionaire and the Department, the Concessionaire shall provide the Department with a preliminary estimate of hard and soft costs for such improvements. Once the Department and the Concessionaire have mutually agreed on the scope of the improvements and the preliminary estimates, the Concessionaire shall proceed to design and construct the improvements in accordance with the provisions of this Agreement.

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2) Design and Construction Coordination

a. Concessionaire shall:

1. Be responsible for construction management and coordination of all improvements to the Location and authorized administrative support space including those of Sub-tenants.
2. Coordinate meetings with Sub-tenants and Sub-tenant's architects, if applicable, MDAD's architects, consultants and others, to review procedures, scheduling site surveys and develop build-out schedules.
3. Coordinate the processing and review of improvement submittals. Design and construction shall be in accordance with the MDAD Design Guidelines Manual, Life Safety Master Plan, MDAD Retail Concessions Design Guidelines, Florida Building Code and the TAC-N or TAC-R Procedures, as well as all other applicable codes and regulations.
4. Provide Sub-tenants, if applicable, with required information such as, but not limited to, leasehold outline or as-built drawings provided by the Department's Technical Support Division.
5. Provide and coordinate access to Location as necessary.
6. Purchase materials and services, and coordinate the fabrication and installation of the Concessionaire development requirement, whereby such elements are the designated responsibility of the Concessionaire, if so implemented.

3) Construction

Concessionaire shall:

1. Attend or cause Sub-tenants to attend pre-construction meetings, construction meetings, coordinate construction with Sub-tenants if applicable, monitor schedule, and coordinate the Location's development with the Department as required, pursuant to the TAC-N procedures.
2. Adhere to and or cause Sub-tenants to adhere to MDAD's TAC-N or TAC-R Design and Construction procedures and requirements.
3. Ascertain that MDAD's TAC-N or TAC-R Design and Construction procedures and requirements, as applicable, are adhered to by all.
4. Monitor and coordinate the construction start, project timetable schedule and completion date for the Location, including those of any Sub-tenants.
5. Monitor and report to the Department on on-site activities and progress for improvement work. The Architect/Engineer of record is responsible for day-to-day field observation of all construction activities including, but not limited to inspections, delivery, coordination and reporting.

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6. Monitor construction progress with regard to the schedule and procedures established and make recommendations to the Department for maintaining and improving construction progress as necessary.
7. Establish a uniform system for the timely processing and control of drawings.
8. Review status of drawings with contractor(s) and architect(s) at progress meetings.
9. Review and advise the Department on all changes to the work with regard to cost and impact on the project pro-forma and construction schedule.
10. Monitor punch list completion and review testing and inspection reports for the Location.
11. Organize and have available upon request completed project files.
12. Coordinate access to the Location to allow staff training and equipment testing.
13. Obtain Certificate of Occupancy for the Location.
14. Submit Record Drawings (as-built drawings) as per the TAC-N or TAC-R requirements within sixty (60) Days from the issuance date of the Certificate of Occupancy, and deliver them to the Department pursuant to the TAC-N or TAC-R procedures.

ARTICLE 5 – STANDARDS OF OPERATION

5.01 STANDARDS OF OPERATION: The Concessionaire shall comply with the Department's "Commercial Operations Tenant Handbook", Exhibit K; the "Standards of Operations", Exhibit L, the "Standards of Operation " available on **www.miami-airport.com,** and all revisions to same promulgated from time to time by the Department.

The Department shall have the right to adopt and enforce reasonable and non-discriminatory rules and regulations and operating performance standards with respect to the use of the Location, which the Concessionaire agrees to observe and obey and cause its Sub-tenants to observe and obey. The Department may amend such rules or regulations and operating performance standards from time to time and shall provide copies thereof to the Concessionaire. The Concessionaire shall distribute such rules and regulations and operating performance standards to its Sub-tenants. The Department shall provide the Concessionaire with reasonable prior written notice, not less than thirty (30) Days, prior to the implementation of any such amendment to the rules or regulations and operating performance standards. Those rules include, but are not limited to, any rules and regulations imposed upon the Department by any governmental agency.

The Concessionaire shall implement and comply with all amended requirements, within fifteen (15) Days of receipt of an amendment to Exhibit L "Standards of Operation". The Concessionaire shall immediately implement and comply and shall cause its Sub-tenants to immediately implement and comply with any rules and regulations promulgated for safety or security reasons.

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The Concessionaire acknowledges the desire of the Department, as part of its obligation to ensure the highest level of public service, to provide the public and air traveler an adequate range and quality of service. The Department may monitor, test or inspect the Location at any time through the use of its own personnel, and/or the use of a shopping service, and/or by any other reasonable means that do not unduly interfere with the operation of the business. The results of such service audits may be employed by the Department to enforce the obligations in this Agreement.

The Department shall retain the right, in accordance with the provisions of this Agreement, to make reasonable objections to the quality of articles sold, the character of the service rendered to the public, the prices charged, and the appearance and condition of the Location, pursuant to Exhibit L "Standards of Operation", as may be amended from time to time.

5.02 MARKET BASKET PRICING POLICY: The Department has instituted a Market Basket pricing policy to ensure that Airport prices are comparable to retail in the Miami Dade County, Florida area to reinforce the objective of making the Airport a more "passenger friendly" airport, pursuant to Exhibit L "Standards of Operation."

The Concessionaire or its Sub-tenants who are not in compliance with the provisions of this Sub-Article shall be given seven (7) Days after notice of such non-compliance pursuant to **Sub-Article 18.09 Notices** to bring all products into compliance. Failure to do so shall subject the Concessionaire to liquidated damages pursuant to **Sub-Article 3.24, Liquidated Damages**, and shall constitute a default under this Agreement.

ARTICLE 6 – OBLIGATIONS OF THE DEPARTMENT

6.01 DEPARTMENT SERVICES:

A. Department's Maintenance Obligation: The Department shall clean, maintain and operate in good condition the terminal building, excluding the Location. This obligation includes, but is not limited to, all structural (including, but not limited to, the roof and base floor of the terminal building) and all base building work, maintenance of main electrical and mechanical systems, maintenance of walls and ceilings, and repair/maintenance of the roof. The Department shall maintain the public areas in the terminal building furnished and will provide adequate light, cold water and conditioned air. The Department agrees to make all necessary structural repairs to the Location at its own expense; provided, however, that for purposes of this Agreement such structural repairs shall not include any repairs to any equipment installed by the Concessionaire or its Sub-tenants, and further provided that the Concessionaire shall or shall cause its Sub-tenants to reimburse the Department, within ten (10) Days of receipt of written demand for such reimbursement, for the cost and expense of all structural repairs required as a result of the negligent or intentional acts of the Concessionaire, its officers, partners, employees, agents, contractors, subcontractors, licensees, Sub-tenants or invitees. The Concessionaire

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shall give the Department written notice (or verbal notice in the event of any emergency conditions which may result in harm to the patrons of the Airport, which verbal notice shall be followed by written notice within twenty-four (24) hours) describing any repair, which is the responsibility of the Department. The Department shall commence the repair process promptly after its receipt of such written notice if the Department agrees that such repair is required and is the Department's responsibility hereunder.

B. The Concessionaire must ascertain the extent of the existing utility capacities, before designing any new loads to be connected to existing systems and piping. The Department agrees to cooperate in providing access to the Location.

Such maintenance by the Department may be subject to interruption caused by repair, strikes, lockouts, labor controversies, inability to obtain fuel, power or parts, accidents, breakdowns, catastrophes, national or local emergencies, and other conditions beyond the control of the Department. If the Concessionaire's or Sub-tenant's Location are of such a condition as to significantly impact the Concessionaire's or a Sub-tenant's operations for a period in excess of seventy two (72) hours and such damage is not insurable under an insurance policy of the type required to be maintained by the Concessionaire pursuant to this Agreement or the Sub-tenant pursuant to the Sub-Lease or license agreement, the Department may provide a rent abatement for that portion of the Location rendered unusable for that period of time that the Department is unable to make repairs required by **Sub-Article 6.01, Department Services.**

C. No Other Obligation of Department: The Concessionaire acknowledges that the Department has made no representations or warranties concerning the suitability of the Location for the Concessionaire's or its Sub-tenant's use or for any other use, and that except as expressly provided in this Agreement, the Department shall have no obligations whatsoever to repair, maintain, renovate or otherwise incur any cost or expense with respect to the Location or any improvements, furnishings, fixtures, trade fixtures, signage or equipment constructed or used on or in the Location by the Concessionaire or its Sub-tenants.

1. The Concessionaire hereby confirms that it has made its own investigation of all the costs of doing business under this Agreement, including the costs of furnishings, fixtures, trade fixtures, inventory, signs and equipment needed for Sub-tenants to operate from the Location hereunder, that it has done its own projections of the volume of business expected to be generated, that it is relying on its own business judgment concerning its prospects for providing the services required under this Agreement on a profitable basis, and that the Department has not made any representations or warranties with respect to any such matters.

2. The Department does not warrant the accuracy of any statistics or projections relating to the Airport and its operations, which have been provided to the Concessionaire by the Department or anyone on its behalf and the Department

shall not be responsible for any inaccuracies in such statistics or their interpretation.

3. All statements contained in this Agreement or otherwise made by the Department or anyone on its behalf concerning any measurement relating to the Location or any other area of the Airport are approximate only, and any inaccuracy in such statements of measurements shall not give rise to any claim by the Concessionaire under or in connection with this Agreement.

4. The Department shall not be liable to the Concessionaire for any loss of business or damages sustained by the Concessionaire as a result of any change in the operation or configuration of, or any change in any procedure governing the use of, the construction improvements of the terminal building.

ARTICLE 7–FURNITURE, FIXTURES AND EQUIPMENT

7.01 FURNITURE, FIXTURES, AND EQUIPMENT: Any equipment, furnishings, fixtures and signs installed in the Location by the Concessionaire or its Sub-tenant shall be in keeping with the decor of the terminal building and must be approved in advance by the Department. Any such equipment, furnishings, fixtures and signs so installed by the Concessionaire or its Sub-tenant, as provided in **Sub-Article 4.01, Improvements to Location**, shall, except as provided in **Sub-Article 7.03(B), Disposal of Furniture, Fixtures, and Equipment**, be removed from the Location within five (5) Days following the expiration or earlier termination of this Agreement.

7.02 AMERICANS WITH DISABILITIES ACT REQUIREMENTS: The Concessionaire will be responsible, at its cost, for ensuring that the Location and all equipment therein, and all functions it performs therein as part of the concession, conform in all respects to the requirements of the Americans with Disabilities Act (the "ADA"), including without limitation, the accessibility guidelines promulgated pursuant thereto. The ADA imposes obligation on both public entities, like the Department and those private entities that offer services for the convenience of users of the public entities' Location. In some circumstances, the public entity must ensure that the operations of the private entity comply with the public entity's ADA obligations. In most cases the ADA obligations of the Department and the Concessionaire will be the same. However, the Department reserves the right to require the Concessionaire to modify its or its Sub-tenant's operations or its physical Location to comply with the Department's ADA obligations with respect to the Location, as the Department in its sole discretion deems reasonably necessary.

7.03 DISPOSAL OF FURNITURE, FIXTURES, AND EQUIPMENT: At least thirty (30) Days prior to the expiration of this Agreement, or upon termination pursuant to **Article 12, Default and Termination by County**, or **Article 13, Claims and Termination by Concessionaire**, hereof, the Department shall exercise, at its sole discretion, one (1) of the following options as to any equipment, furnishings, fixtures, signs, or carts installed in the Location by the Concessionaire or any Sub-tenant:

(A) Require the Concessionaire to remove such equipment, furnishings, fixtures, signs, or carts from the Location within five (5) Days following the expiration or earlier

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termination of this Agreement, subject to the provisions of **Sub-Article 4.01, Improvements to Location**; or

(B) Retain any portion of the equipment, furnishings, fixtures, signs, or carts of the Concessionaire or any Sub-tenant (personal property as referred to in **Sub-Article 4.01, Improvements to Location**;) in accordance with the provisions of this Agreement; provided however, the Department shall have no right to use or display any proprietary signs or logos (e.g., brand names owned by, or licensed or franchised to Concessionaire or any Sub-tenant).

ARTICLE 8 – MAINTENANCE

8.01 CLEANING: The Concessionaire shall, at its cost and expense, keep or cause its Sub-tenants to keep the Location clean, neat, orderly, sanitary and presentable at all times. If the Location are not kept clean as provided in the Exhibit L, "Standards of Operation", the Concessionaire will be so advised and shall take immediate corrective action. Failure to take immediate corrective action may result in liquidated damages being assessed pursuant to **Sub-Article 3.24, Liquidated Damages.**

8.02 REMOVAL OF TRASH: The Concessionaire shall, at its cost and expense, remove or cause to be removed from the Location and properly disposed of in Department provided containers, all trash and refuse of any nature whatsoever which might accumulate and arise from the operations hereunder. If the Concessionaire enters into agreements for the janitorial and trash removal or any Sub-tenant service within the Location, such service providers must have permits issued by the Department to do business at the Airport. Trash shall not be stored in any area visible to the public nor cause a private or public hazard through its means of storage. All edible items must be contained so as to minimize exposure to pests. The Concessionaire shall have the right to charge Sub-tenants for a proportionate share of any such costs and expenses incurred to remove and properly dispose of all trash, refuse, and pest control as a result of inactions or actions by the Concessionaire and/or its Sub-tenants of any nature whatsoever. Any trash left or stored in any area visible to the public or edible items not properly contained may result in Liquidated Damages being assessed pursuant to **Sub-Article 3.24, Liquidated Damages**.

The Department reserves the right to charge the Concessionaire retroactively non-discriminatory proportionate share for waste disposal which may be imposed either indirectly through rental rates or directly by a Department generated bill for actual usage. Such charges shall not exceed the Department's actual costs.

8.03 MAINTENANCE AND REPAIR: Except with respect to the Department's maintenance and repair obligations as set forth in **Sub-Article 6.01, Department Services**, the Concessionaire shall maintain and repair or cause to be maintained and repaired the interiors and exterior storefronts of the Location. Such maintenance and repairs shall include, but not be limited to, painting, ceiling, walls, floors, laminating doors, windows, equipment, furnishings, fixtures, appurtenances, replacement of ceiling light bulbs, ballast and the replacement of all broken glass, which repairs shall be in quality and class equal to

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or better than the original work to preserve the same in good order and condition. Maintenance for all equipment furnished by the Concessionaire or its Sub-tenants specifically as a result of their operation shall remain the obligation of the Concessionaire or its Sub-tenants. The Concessionaire shall repair or cause to be repaired, at or before the end of the Term or Extension, if applicable, of this Agreement, all injury done by the installation or removal of furniture and personal property so as to restore the Location to the state they were at the commencement of this Agreement, reasonable wear and tear excluded. The Department may, at any time during normal business hours, enter upon the public areas of the Location, or with appropriate notice, enter upon the non-public areas of the Location, to determine if maintenance is being performed satisfactorily. The Department may enter the Location when the Location is not open for business if the Department provides the Concessionaire notice no less than two (2) hours in advance so that a representative of either the Concessionaire and/or a representative of the applicable Sub-tenant may be present, except in the case of real or perceived emergencies where no such representatives shall be required to be present. If it is determined that said maintenance is not satisfactory, the Department shall so notify Concessionaire in writing. If said maintenance is not performed by Concessionaire (or if the Concessionaire fails to cause the Sub-tenant to perform such maintenance) to the satisfaction of the Department within seven (7) Days after receipt of such written notice, Department shall have the right to enter the Location and perform such maintenance and charge Concessionaire for such services, as provided by **Sub-Article 8.04**.

8.04 FAILURE TO MAINTAIN: Upon failure of the Concessionaire or its Sub-tenants to maintain the Location as provided in this Article 8, Maintenance, the Department may enter upon the Location and perform all cleaning, maintenance and repairs which may be necessary and the cost thereof plus twenty-five percent (25%) for administrative costs, shall constitute additional rental, and shall be billed to and paid by the Concessionaire, in addition to any liquidated damages imposed by the Department pursuant to **Sub-Article 3.24, Liquidated Damages.**

Failure to pay said costs upon billing by the Department will cause this Agreement to be in default as stated in **Sub-Article 12.02, Payment Default**.

8.05 ENVIRONMENTAL RECYCLING: The Department is actively engaging in the development of environmental programs. A recycling program is planned at the Airport to include the participation of all Airport Concessionaires. Participation in this program, once established, will be mandatory. The Concessionaire and/or its Sub-tenants shall agree to bear any reasonable and actual costs associated with the implementation and continued operation of this recycling program, or propose for approval by the Department an alternative environmental recycling plan which such approval shall not be unreasonably withheld.

Proper disposal of contaminated and/or regulated materials generated by the Concessionaire or its Sub-tenants is the sole responsibility of the Concessionaire. Disposal must be through the use of a licensed vendor regulated by the State of Florida and/or any other federal or local regulatory agency.

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8.06 FIRE PROTECTION AND SAFETY EQUIPMENT: The Concessionaire and its Sub-tenants must provide and maintain all fire protection and safety equipment and all other equipment of every kind and nature required by any applicable law, rule, ordinance, resolution or regulation, for the Term and any Extension of this Agreement or any insurance carrier providing insurance covering any portion of the Location.

ARTICLE 9 – ASSIGNMENT AND OWNERSHIP

9.01 NO ASSIGNMENT: The Concessionaire shall not assign, transfer, pledge or otherwise encumber this Agreement nor shall the Concessionaire allow others to use the Location, without the prior written consent of the Department.

9.02 OWNERSHIP OF THE CONCESSIONAIRE: Since the ownership, control, and experience of the Concessionaire were material considerations to the County in the award of this concession and the entering into of this Agreement, the Concessionaire shall take no actions which shall serve to transfer or, sell majority ownership or control of the Concessionaire without the prior written consent of the Department.

9.03 CHANGE OF CONTROL: If Concessionaire is a corporation the issuance or sale, transfer or other disposition of a sufficient number of shares of stock (deemed to mean more than fifty percent (50%) of the stock) in the Concessionaire to result in a change of control of Concessionaire shall be deemed an assignment of this Agreement for purposes of this **Article 9, Assignment and Ownership**. If the Concessionaire is a partnership, transfer of any interest in the partnership, which results in a change in control of such Concessionaire, shall be deemed an assignment of this Agreement for purposes of this **Article 9, Assignment and Ownership.**

9.04 HOLDOVER:

A. With the Department's Permission:

If the Concessionaire (or anyone claiming through Concessionaire) shall by written agreement executed by the Department, remain in possession of the Location, or of no less than seventy percent (70%) of the square footage of the Location, after the termination of this Agreement, the person or entity remaining in possession shall be deemed a tenant at sufferance otherwise subject to all of the provisions of this Agreement.

B. Without Department Permission:

If the Concessionaire (or anyone claiming through Concessionaire) shall remain in possession of the Location or any part thereof after the termination of this Agreement, without a written agreement executed by the Department, then without limiting the Department's other rights and remedies, the person or entity remaining in possession shall be deemed a tenant at sufferance otherwise subject to all of the provisions of this Agreement. The Concessionaire shall thereafter pay on account of

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its holdover use and occupancy of the Location a sum, at a rate equal to two times (2x) the amount payable monthly as MMG PLUS Percentage Fee PLUS monthly installment of the support space annual lease rental pursuant to **Sub-Article 3.06, Annual Rental**, and with all additional rent also payable as provided in this Agreement (the "Holdover Charges"). Imposition of Holdover Charges, extinguishes any un-amortized investment amounts owed the Concessionaire by the Department, for the slippage in Location turnover. The Holdover Charges shall be payable weekly in advance. Notwithstanding the above, the Concessionaire shall remain liable to the Department for all damages resulting from such breach, with the amount of any Holdover Charges accepted by the Department on account of the holdover considered as mitigation of such damages. The covenant in this Sub-Article shall survive the expiration or the termination of this Agreement.

ARTICLE 10 – INDEMNIFICATION

10.01 INDEMNIFICATION REQUIRED OF CONCESSIONAIRE: The Concessionaire shall indemnify, defend, and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and cost 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 by the Concessionaire or its employees, agents, servants, partners, principles or any other persons. The Concessionaire 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 all costs, judgments, and attorney's fees which may issue thereon.

The Concessionaire expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Concessionaire 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.

ARTICLE 11 – INSURANCE

11.01 INSURANCE REQUIRED OF CONCESSIONAIRE: Prior to execution of this Agreement by the County and commencement of the Term of this Agreement, the Concessionaire shall obtain all insurance required under this Article and submit it to the Department, c/o Risk Management, P.O. Box 025504, Miami, Florida 33102-5504 for approval. All insurance shall be maintained throughout the Term and any Extension of this Agreement.

The limits for each type of insurance may be revised upon review and approval of the Concessionaire's operations. Additional types of insurance coverage or increased limits

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may be required if, upon review of the operations, the Department determines that such coverage is necessary or desirable.

Certificate(s) of insurance from the Concessionaire and its Sub-tenants must show coverage has been obtained that meets the requirements as outlined below during the construction and operation phase of this Agreement:

A. Workers' Compensation as required by Chapter 440, Florida Statutes.

B. Commercial General Liability Insurance on a comprehensive basis including Contractual Liability, Broad Form Property Damage and Products and Completed Operations in an amount not less than $1,000,000 per occurrence for Bodily Injury and Property Damage combined. This policy shall include Miami-Dade County as an additional insured with respect to this coverage.

   The Commercial General Liability Insurance coverage shall include those classifications, as listed in Standard Liability Insurance Manuals, which are applicable to the operations of the Concessionaire in the performances of this Agreement.

C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this Agreement in an amount not less than $500,000* per occurrence for Bodily Injury and Property Damage combined.

   *Under no circumstances is the Concessionaire or its Sub-tenants allowed on the Airside Operation Area (AOA) without increasing automobile coverage to $5,000,000 as approved by the Risk Management Office.

11.02 CERTIFICATE CONTINUITY: The Concessionaire shall be responsible for assuring that the insurance certificates required in conjunction with Article 11, Insurance, remain in force for the duration of this Agreement, including the Extension, if applicable. If insurance certificates are scheduled to expire during the lease period, the Concessionaire shall be responsible for submitting new or renewed insurance certificates for its and its Sub-tenants' operations to the Department's Risk Management Unit at a minimum of thirty (30) Days before such expiration.

Certificates will show that no modification or change in insurance shall be made without thirty (30) Days written advance notice to the certificate holder.

11.03 INSURANCE COMPANY RATING REQUIREMENTS: All insurance policies required above from the Concessionaire and its Sub-tenants shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength, according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick,

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New Jersey, or its equivalent, subject to the approval of the Department's Risk Management Office.

11.04 CONCESSIONAIRE LIABLE: Compliance with the requirements as to carrying insurance in **Article 11, Insurance**, shall not relieve the Concessionaire and its Sub-tenants from liability under any other provision of this Agreement.

11.05 CANCELLATION OF INSURANCE OR BONDS: Cancellation of any insurance or bonds, or non-payment by the construction contractors of any premiums for any insurance policies or bonds required by this Agreement shall constitute a breach of this Agreement.

11.06 RIGHT TO EXAMINE: The Department reserves the right, upon reasonable notice and at the County's sole cost and expense, to examine the original policies of insurance of the Concessionaire and its Sub-tenants (including but not limited to: binders, amendments, exclusions, endorsements, riders and applications) to determine the true extent of coverage. The Concessionaire agrees to permit or cause its Sub-tenants to permit such inspection at the offices of the Concessionaire and/or its Sub-tenants, as may be applicable. In addition, upon request (but no later than five (5) Days from the date of request, unless such longer period is agreed to by the Department) the Concessionaire and/or its Sub-tenant agree to provide copies to the Department, at the Concessionaire's or Sub-tenant's sole cost and expense.

11.07 PERSONAL PROPERTY: Any personal property of the Concessionaire or its Sub-tenants, or of others, placed in the Location and support/storage spaces shall be at the sole risk of the Concessionaire or the owners thereof, and the County shall not be liable for any loss or damage thereto, irrespective of the cause of such loss or damage.

11.08 SURVIVAL OF PROVISIONS: The provisions of **Article 11, Insurance**, shall survive the expiration or earlier termination of this Agreement.

11.09 INSURANCE REQUIRED OF SUB-TENANTS: The limits for each type of insurance may be revised upon review and approval of the Sub-tenant's operations. Additional types of insurance coverage or increased limits may be required if, upon review of the operations, the Department determines that such coverage is necessary or desirable.

The Concessionaire shall cause its Sub-tenant to provide certificates of insurance indicating the following types of insurance coverage prior to any occupation of the premises:

A. Commercial General Liability Insurance on a comprehensive basis including Contractual Liability, Broad Form Property Damage and Products and Completed Operations in an amount not less than $1,000,000 per occurrence for Bodily Injury and Property Damage combined. Miami-Dade County must be shown as an additional insured with respect to this coverage.

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The Commercial General Liability Insurance coverage shall include those classifications, as listed in Standard Liability Insurance Manuals, which are applicable to the operations of the contractor(s) in the performances of the construction contract.

B. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this Agreement in an amount not less than $500,000* per occurrence for Bodily Injury and Property Damage combined.

*Under no circumstances is the Concessionaire or a Sub-tenant allowed on the Airside Operation Area (AOA) without increasing automobile coverage to $5,000,000 as approved by the Safety and Insurance Office.

C. **Certificate Continuity:** The Concessionaire and its Sub-tenants shall be responsible for assuring that the insurance certificates required in conjunction with this Sub-Article remain in force for the duration of the lease, including any and all option years, if applicable. If insurance certificates are scheduled to expire during the contract period, the Sub-tenant shall be responsible for submitting new or renewed insurance certificates to the Concessionaire at a minimum of thirty (30) Days before such expiration.

D. **Insurance Company Rating Requirements:** All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength, according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the MDAD's Safety and Insurance Office.

Certificates will show that no modification or change in insurance shall be made without thirty (30) Days written advance notice to the certificate holder.

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

11.10 INDEMNIFICATION, CONSTRUCTION BONDS AND INSURANCE REQUIRED:

A. Indemnification, Bonds and Insurance Required from Construction Contractor: The following language, including the indemnification clause, shall be included in all construction contracts between the Concessionaire and its general contractor(s) and subcontractors and shall also be included in all construction contracts between the Sub-tenants and their respective general contractors and subcontractors:

Indemnification: The Contractor shall defend, indemnify, and save harmless the County, the Consulting Engineers, the Architect/Engineer, the Field Representative, the Lessee of the Location, and their officers (elected or otherwise), employees, and agents (collectively "Indemnitees"), from any and all claims, demands, liability, losses, expenses and causes of actions, arising from personal injury (including death), property damage (including loss of use thereof), economic loss, or any other loss or damage, due in any manner to the negligence, act, or failure to act of the Contractor or its contractors, subcontractors, sub-subcontractors, materialmen or agents of any tier or their respective, employees arising out of or relating to the performance of the work covered by the Contract Documents except as expressly limited herein. The Contractor shall pay all claims and losses of any nature whatsoever in connection therewith and shall defend all suits in the name of the County, when applicable, including appellate proceedings, and shall pay all costs and judgments which may issue thereon, provided however, that the Contractor's obligation to indemnify or hold harmless the Indemnitees for damages to persons or property caused in whole or in part by any act, omission, or default of any Indemnitee arising from the contract or its performance shall be limited to the greater of $1 million or the Contract Amount. Further, this indemnification requirement shall not be construed so as to require the Contractor to indemnify any of the above-listed Indemnities to the extent of such indemnities' own gross negligence, or willful, wanton, or intentional misconduct of the Indemnitee or its officers, directors, agents, or employees, or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused in whole or in part by or result from the acts or omissions of the indemnitor or any of the indemnitor's contractors, subcontractors, sub-subcontractors, materialmen, or agents of any tier or their respective employees. This indemnification provision is in addition to and cumulative with any other right of indemnification or contribution which any Indemnitee may have in law, equity, or otherwise.

B. Surety Performance and Payment Bonds: Pursuant to and in accordance with Section 255.05, Florida Statutes, the Concessionaire or each contractor performing any part of the work for the Concessionaire or its Sub-tenants shall obtain and thereafter at all times during the performance of the work maintain a combined performance bond and labor and material payment bond for the work (referred to herein as the "Bond") in an amount equal to one hundred percent (100%) of the cost of the improvements, as it may be amended from time to time, and in the form attached hereto as Exhibit "B", Performance and Payment Bond". Within ten (10) Days of issuance, Concessionaire shall record all bonds required by this Agreement in the Department of Public Records of Miami-Dade County. Prior to performing any portion of the Work, the

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Concessionaire shall deliver to County the Bonds required to be provided by Concessionaire or each contractor as set forth in this Agreement.

All bonds shall be written through surety insurers authorized to do business in the State of Florida as Surety, with the following qualifications as to management and financial strength according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey:

Bond (Total Contract) Amount	Best's Rating
$ 500,001 to $1,500,000	B V
1,500,001 to 2,500,000	A VI
2,500,001 to 5,000,000	A VII
5,000,000 to 10,000,000	A VIII
Over $10,000,000	A IX

For contracts of $500,000 or less, the bond provisions of Section 287.0935, Florida Statutes (1985) shall be in effect and surety companies not otherwise qualifying with this paragraph may optionally qualify by:

a) Providing evidence that the surety has twice the minimum surplus and capital required by the Florida Insurance Code at the time the Request for Proposals is issued.

b) Certifying that the surety is otherwise in compliance with the Florida Insurance Code, and

c) Providing a copy of the currently valid Certificate of Authority issued by the United States Department of Treasury under Section 31 U.S.C. 9304-9308.

d) Surety insurers shall be listed in the latest Circular 570 of the U.S. Department of the Treasury entitled "Surety Companies Acceptable on Federal Bonds", published annually. The bond amount shall not exceed the underwriting limitations as shown in this circular.

e) For contracts in excess of $500,000 the provision of this Sub-Article must be adhered to, plus the surety insurer must have been listed on the United States Treasury list for at least three (3) consecutive years, or currently hold a valid Certificate of Authority of at least 1.5 million dollars and listed on the Treasury list.

f) Surety bonds guaranteed through U.S. Government Small Business Administration or Contractors Training and Development Inc. will also be acceptable.

g) The attorney-in-fact or other officer who signs a Exhibit B, "Performance and Payment Bond" for a surety company must file with such bond a certified copy of his/her power of attorney authorizing him/her to do so.

The required Bond shall be written by or through and shall be countersigned by, a licensed Florida agent of the surety insurer, pursuant to Section 624.425 of the Florida Statutes.

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The Bond shall be delivered to the Department upon execution of the contract between the Concessionaire and its contractor or the Sub-tenant and its contractor, as the case may be.

C. **Insurance Required of Construction Contractor(s):** The limits for each type of insurance may be revised upon review and approval of the construction plans. Additional types of insurance coverage may be required if, upon review of the construction plans, the Department reasonably determines that such coverage is necessary or desirable.

The Concessionaire shall cause its contractor(s) and the Sub-tenants' respective contractor(s) to provide certificates of insurance and copies of original policies, if requested, which shall clearly indicate that the construction contractor has obtained insurance in the type, amount and classifications as required for strict compliance with this Sub-Article. Evidence of such coverage must be submitted prior to any construction:

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

(b) Commercial General Liability Insurance on a comprehensive basis including Contractual Liability, Broad Form Property Damage and Products and Completed Operations in an amount not less than $1,000,000 per occurrence for Bodily Injury and Property Damage combined. The County and the Concessionaire must be shown as an additional insured with respect to this coverage.

(c) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this Agreement in an amount not less than $500,000* per occurrence for Bodily Injury and Property Damage combined.

* Under no circumstances is the contractor allowed on the Airside Operation Area (AOA) without increasing automobile coverage to $5,000,000 as approved by the Safety and Insurance Office.

(D) **Certificate Continuity:** The contractor(s) shall be responsible for assuring that the insurance certificates required in conjunction with this Sub-Article remain in force throughout the performance of the contract and until the work has been accepted by the Concessionaire and approved by the Concessionaire and the Department. If insurance certificates are scheduled to expire during the contract period, the contractor(s) shall be responsible for submitting new or renewed insurance certificates to the Concessionaire at a minimum of thirty (30) Days before such expiration.

(E) **Insurance Company Rating Requirements:** All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength, according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the Concessionaire.

(F) **Right to Examine:** The Department reserves the right, upon reasonable notice, to examine the original policies of insurance (including but not limited to: binders, amendments, exclusions, endorsements, riders and applications) to determine the true extent of coverage. The contractor shall be required by the Concessionaire to agree to permit such inspection at the offices of the Department.

(G) **Personal Property:** Any personal property of the contractor, or of others, placed in the Location shall be at the sole risk of the contractor or the owners thereof, and the Department shall not be liable for any loss or damage thereto, irrespective of the cause of such loss or damage.

ARTICLE 12– DEFAULT AND TERMINATION BY COUNTY

12.01 EVENTS OF DEFAULT: A default shall mean a breach of this Agreement by the Concessionaire (an "Event of Default"). In addition to those defaults defined in **Sub-Article 12.02, Payment Default, Sub-Article 12.03, Other Defaults, and Sub-Article 12.04, Habitual Default**, an Event of Default, may also include one (1) or more of the following occurrences:

(A) The Concessionaire or its Sub-tenant has violated the terms and conditions of this Agreement;

(B) The Concessionaire or its Sub-tenant has failed to make prompt payment to subcontractors or suppliers for any service or work provided for the design, installation, operation, or maintenance of the advertising concessions;

(C) The Concessionaire has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Concessionaire's creditors, or the Concessionaire has taken advantage of any insolvency statute or debtor/creditor law, or the Concessionaire's affairs have been put in the hands of a receiver;

(D) The occurrence of any act, which operates to deprive Concessionaire of the rights, power, licenses, permits or authorities necessary for the proper conduct and operation of the activities authorized herein;

(E) Abandonment or discontinuance of operations by Concessionaire of its business by any act(s) of Concessionaire;

(F) Any persistent violation on the part of Concessionaire, its agents or employees of the traffic rules and regulations of City at Airport or disregard of the safety of persons using the Airports, upon failure by Concessionaire to correct the same;

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(G) Failure on the part of Concessionaire to maintain the quality of service required by the terms of this Agreement, including, but not limited to, any cessation or diminution of service by reason of Concessionaire being unable for any reason to maintain in its employ the personnel necessary to keep its business in operation and available for public use, unless such use is due to strike, lockout, or bona fide labor dispute;

(H) Failure by Concessionaire or its Sub-tenants to maintain its other equipment in a manner satisfactory to the Director;

(I) The Concessionaire or its Sub-tenants has failed to obtain the approval of the Department where required by this Agreement;

(J) The Concessionaire or its Sub-tenants has failed to provide adequate assurances as required under **Sub-Article 12.09, Adequate Assurances;**

(K) The Concessionaire has failed to comply with any provision of **Sub-Article 14.07, Airport Concession Disadvantaged Business Enterprise Participation Plan;**

(L) The Concessionaire has failed in a representation or warranty stated herein; or

(M) The Concessionaire has received three (3) notices of default, of any kind, within a twenty-four (24) month period.

12.02 PAYMENT DEFAULT: Failure of the Concessionaire to make MAG/MMG payments and Percentage Fee payments and other charges required to be paid herein when due and fails to cure the same within five (5) Days after written notice shall constitute a default, and the County may, at its option, terminate this Agreement after five (5) Days notice in writing to the Concessionaire.

12.03 OTHER DEFAULTS: The Department shall have the right, upon thirty (30) Days written notice to the Concessionaire to terminate this Agreement upon the occurrence of any one or more of the following unless the same shall have been corrected within thirty (30) Days after written notice; provided, however, that if it is not reasonably possible to cure such failure within such thirty (30) Day period, such cure period shall be extended for an additional period of such duration the Department shall deem appropriate without waiver of any of the Department's rights hereunder, if within the thirty (30) Days after such written notice the Concessionaire commences to cure such default and thereafter diligently and continuously continues to cure such default:

(A) Failure of the Concessionaire to comply with covenants of this Agreement other than those that constitute default pursuant to **Sub-Article 12.02, Payment Default**.

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

(C) Any Event of Default.

12.04 HABITUAL DEFAULT: Notwithstanding the foregoing, in the event that the Concessionaire has frequently, regularly or repetitively defaulted in the performance of or has breached any of the terms, covenants and conditions required herein, to be kept and

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performed by the Concessionaire, regardless of whether the Concessionaire has cured each individual condition of breach or default as provided for in **Sub-Article 12.02, Payment Default, and Sub-Article 12.03, Other Defaults**, above, the Concessionaire may be determined by the Director to be an "habitual violator". At the time that such determination is made, the Director shall issue to the Concessionaire a written notice, advising of such determination and citing the circumstances thereof. Such notice shall also advise the Concessionaire 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 noncurable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, the Department may terminate this Agreement upon the giving of written notice of termination to the Concessionaire, such termination to be effective upon the seventh (7) Day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Concessionaire shall have no further rights hereunder. Immediately upon receipt of said notice of termination, the Concessionaire shall discontinue its operations at the Airport and proceed to remove all its personal property in accordance with **Sub-Article 12.10, Actions at Termination**, hereof.

12.05 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE: If an Event of Default occurs, the Department shall notify the Concessionaire by sending a written notice of default, specifying the basis for such Event of Default, and advising the Concessionaire that such default must be cured immediately or this Agreement with the Department may be terminated. The Concessionaire can cure and rectify the Event of Default, to the Department's satisfaction, within thirty (30) Days from Concessionaire's receipt of the Default Notice (the "Cure Period") or such other timeframe as delineated in the Agreement. The Department may extend the Cure Period and grant an additional period of such duration as the Department shall deem appropriate without waiver of any of the Department's rights hereunder, so long as, the Concessionaire has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) Day period or any other period which the Department prescribes. The notice of default shall specify the Termination Date by when the Concessionaire shall discontinue the services.

12.06 UNAMORTIZED INVESTMENT EXTINGUISHED: Termination of this Agreement based upon **Sub-Article 12.07, Termination for Abandonment, Sub-Article 12.02, Payment Default, Sub-Article 12.03, Other Defaults, Sub-Article 12.04, Habitual Default, or Sub-Article 12.08, Termination for Cause**, shall extinguish any unamortized investment amounts owed the Concessionaire by the Department, for the slippage in Location Turnover Dates.

12.07 TERMINATION FOR ABANDONMENT: This Agreement may be terminated in its entirety upon the abandonment by the Concessionaire of the Location or the voluntary discontinuance of Concessionaire's services at the Airport for any period of time exceeding twenty-four (24) consecutive hours, unless such abandonment or discontinuance has been caused by civil disturbance, governmental order or Act of God that prevents the Concessionaire from providing services on the Location for the purposes authorized in **Article 2, Use of Location**. The foregoing shall not include periodic Sub-tenant vacancies

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in individual Location that may occur from time to time during the Term of this Agreement including any Extension term.

12.08 TERMINATION FOR CAUSE: The County may terminate this Agreement, effective immediately if: (i) the Concessionaire attempts to meet its contractual obligation(s) with the County through fraud, misrepresentation or material misstatement; or (ii) a principal of the Concessionaire is convicted of a felony during the Term or any Extensions thereof if applicable. The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or joint venture or other entity has with the County and that such individual, corporation or joint venture or other entity shall be responsible for all direct and indirect costs associated with such termination, including attorney's fees.

The foregoing notwithstanding, any individual, firm, corporation, joint venture, or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be disbarred from County contracting for up to five (5) years in accordance with the County's debarment procedures. The Concessionaire may be subject to debarment for failure to perform, and all other reasons set forth in § 10-38 of the Code of Miami-Dade County, Florida (the "Code").

12.09 ADEQUATE ASSURANCES: When, in the opinion of the Department, reasonable grounds for uncertainty exist with respect to the Concessionaire's ability to perform the work or any portion thereof, the Department may request that the Concessionaire, within the time frame set forth in the Department's request, provide adequate assurances to the Department, in writing, of the Concessionaire's ability to perform in accordance with terms of this Agreement. In the event that the Concessionaire fails to provide to the Department the requested assurances within the prescribed time frame, the Department may:

1. Treat such failure as a repudiation of this Agreement; and
2. Resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the work or any part thereof either by itself or through others.

12.10 ACTIONS AT TERMINATION: The Concessionaire shall, upon receipt of such notice to terminate, and as directed by the Department:

(A) Stop all work as specified in the notice to terminate;

(B) Take such action as may be necessary for the protection and preservation of the Location and other Department materials and property; and

(C) Vacate, quit and surrender, the Location and storage/support spaces and account for all furnishings, fixtures, equipment, software, vehicles, records, funds, inventories, commodities, supplies and other property of the County, on or before the date of termination.

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ARTICLE 13 – CLAIMS AND TERMINATION BY CONCESSIONAIRE

13.01 ADMINISTRATIVE CLAIM PROCEDURES: If the Concessionaire has any claim against the County arising under this Agreement, it will be made in writing within thirty (30) Days of the occurrence of the event to the Director. The exact nature of the claim, including sufficient detail to identify the basis for the claim and the amount of the claim shall be clearly stated. The dispute will be decided by the Director, who will mail or otherwise furnish a written copy of the decision to the Concessionaire at the address furnished in **Sub-Article 18.09, Notices**. The decision of the Director will be final and conclusive unless, within thirty (30) Days from the date of receipt of such copy, the Concessionaire mails or otherwise furnishes to the Department a written appeal addressed to the County Manager. The decision of the County Manager, or his duly authorized representative for the determination of such appeals, will be final and conclusive unless within thirty (30) Days of the Concessionaire's receipt of such decision, the Concessionaire files an action in a court of competent jurisdiction. In connection with any appeal proceeding under this provision, the Concessionaire shall be afforded an opportunity to be heard and to offer other evidence in support of the appeal. Pending final decision of a dispute hereunder, the Concessionaire shall proceed diligently with the performance of this Agreement and in accordance with the County's decision. Failure to perform in accordance with the decision of the Director or the County Manager shall be cause for termination of this Agreement in accordance with **Sub-Article 12.03, Other Defaults**. The failure of the Concessionaire to comply with this administrative claim procedure shall be cause for a waiver of claim and an abandonment of any claim arising out of the event.

13.02 TERMINATION: The Concessionaire shall have the right, upon thirty (30) Days written notice to the County to terminate this Agreement, without liability to the County, at any time after the occurrence of one or more of the following events:

(A) Issuance by any court of competent jurisdiction of any injunction substantially restricting the use of the Airport for airport purposes, and the injunction remaining in force for a period of more than one hundred eighty (180) Days.

(B) A breach by the County of any of the material terms, covenants or conditions contained in this Agreement required to be kept by the County and failure of the Department to remedy such breach for a period of one hundred eighty (180) Days after receipt of written notice from the Concessionaire of the existence of such breach.

(C The assumption by the United States Government or any authorized agency thereof, or any other governmental agency, of the operation, control or use of the airport Location or any substantial part, or parts thereof, in such a manner as substantially to restrict the Concessionaire's provision of services for a period of one hundred eighty (180) Days.

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ARTICLE 14 – VOLUNTARY AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)

14.01 ACDBE PARTICIPATION:

It is the policy of the County that ACDBEs shall have the maximum practical opportunity to participate in the performance of County agreements. As used in the Bid Documents, the term "Airport Concession Disadvantaged Business Enterprises (ACDBE)" means a small business concern, which (a) is at least fifty-one percent (51%) owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least fifty-one percent (51%) of the stock which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it as set forth in 49 CFR Part 23, Code of Federal Regulations. ACDBE participation is voluntary, but not required for this Lease and Concession Agreement. ACDBE participation can be achieved either through the Proposer being an ACDBE itself, a partnership or joint venture, or subcontracting a percentage of gross revenues.

Airport Concession Disadvantaged Business Enterprise (ACDBE) Participation must be submitted with the Proposal in accordance with the requirements of Appendix C and its supporting documents. The Successful Proposer will be required to submit to the Department's Minority Affairs Division, Monthly Utilization Reports (MUR) reflecting ACDBE revenue and operational expenses, commencing 90 days after beneficial occupancy and monthly thereafter, on or before the 10th of every month.

14.02 COUNTING ACDBE PARTICIPATION:

1. When an ACDBE participates in a contract, only the value of the work actually performed by the ACDBE toward the ACDBE participation will be counted.

2. When an ACDBE performs as a participant in a joint venture, count a portion of the gross receipts equal to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces toward ACDBE participation.

3. Expenditures to an ACDBE contractor will be counted only if the ACDBE is performing a commercially useful function as defined below:

   (a) An ACDBE performs a commercially useful function when it is responsible for execution of specific quantifiable work of the contract and is carrying out its responsibilities by actually performing, or managing, or supervising the specific identified work.

   MDAD will determine whether an ACDBE is performing a commercially useful function by evaluating the specific duties outlined in the Joint Venture Agreement; the subcontract agreement or other agreements in accordance with industry practices,

whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and other relevant factors.

(b) An ACDBE does not perform a commercially useful function if its role is limited to that of an extra participant in a financial or other transaction, contract, or project through which funds are passed in order to obtain the appearance of ACDBE participation.

(c) If an ACDBE does not perform or exercise responsibility for at least their percentage of its participation or if the ACDBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that the ACDBE is not performing a commercially useful function.

(d) When an ACDBE is presumed not to be performing a commercially useful function as provided in paragraph (c) of this section, the ACDBE may present evidence to rebut this presumption. MDAD will determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

4. MDAD's decision on commercially useful function matters are final.

14.03 ACDBE PARTICIPATION ACHIEVED THROUGH JOINT VENTURE ("JV") PARTNERING:

Proposers may decide to satisfy a part of the ACDBE participation by Joint Venturing with an ACDBE. The ACDBE partner must meet the eligibility standards set forth in 49 CFR Part 23. A "joint venture" or ("JV") means an association of an ACDBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the ACDBE is responsible for a distinct, clearly defined portion of the work of the contract and whose shares in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest. Joint Venture entities are not certified as ACDBEs. The joint venture agreement must specify the following:

(1) Each ACDBE Joint Venture ("JV") partner must be responsible for a clearly defined portion of the work to be performed. The work should be detailed separately from the work performed by the non-ACDBE JV partner.

The work should be submitted as part of this solicitation and annually thereafter to the Aviation Department's Minority Affairs Division. The work to be performed by the ACDBE joint venture partner should be store specific with regards to tasks and location.

The ACDBE Joint Venture partner will be required to spend the minimum amount of aggregate time on-site, focused on the operation of the concession. Such "minimum amount of aggregate time" is defined as ten hours per week.

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(2) Each Joint Venture partner must submit the Monthly Utilization Reports (MURs), in addition to the ACDBE Appendix 4 form, Monthly reports providing details of how the performance objectives were achieved and providing documentation of that achievement on the ACDBE Appendix 4 form. This information should include, but not be limited to:

a. Details of training sessions, including class rosters and lesson plans.

b. Deliverables and work products.

c. Time sheets of employees used to fulfill objectives. Time sheets must accurately reflect hours worked and compensation earned.

d. Proof that employees actually work for them (payroll, payroll tax returns and the like).

As described below, each Proposer must submit, as part of its Proposal, a plan for the achievement of ACDBE participation, including Schedule of Participation and the Letter of Intent from ACDBEs who are Certified or have applied for Certification to the Miami-Dade County, Department of Small Business Development (SBD) as required by Airport Concession Disadvantaged Business Enterprise Participation Plan (ACDBE).

Without limiting the requirements of the Agreement, the County will have the right to review and approve all agreements utilized for the achievement of participation. Such agreements must be submitted with the Proposal.

14.04 CERTIFICATION-AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE):

In order to participate as an ACDBE on this contract, an ACDBE must be certified or have applied for certification to the Miami-Dade County, Department of Small Business Development (SBD) at the time of Proposal submittal.

Application for certification as an ACDBE may be obtained by contacting the Miami-Dade County, Department of Small Business Development (SBD) located at 111 N.W. 1st Street, Stephen P. Clark Center, 19th Floor, Miami Florida 33128-1974 or by telephone at (305) 375-3111 or facsimile at (305) 375-3160, or visit their website at www.co.miami-dade.fl.us/DBD/.

The ACDBE Certification List is maintained and published at least every other week by the Miami-Dade County, Department of Small Business Development (SBD), and contains the names and addresses of currently certified Airport Concession Disadvantaged Business Enterprise (ACDBEs) certified by them.

The FLUCP Directory is available at www.bipincwebapps.com/biznetflorida/. The Directory lists the firm's name address, phone number, date of the most recent certification, certifying agency and type of work the firm has been certified to perform.

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The FLUCP updates the data every 24 hours and revises the Directory regularly. The address for Florida UCP is:

Florida Department of Transportation,
Equal Opportunity Office
605 Suwannee Street, MS 65
Tallahassee, Florida 32399-0450
Tel: (850) 414-4747 Fax: (850) 414-4879

14.05 AFFIRMATIVE ACTION AND AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PROGRAMS:

The Successful Proposer acknowledges that the provisions of 14 CFR Part 152, Affirmative Action Employment Programs, and 49 CFR Part 23, Airport Concession Disadvantaged Business Enterprise Programs, are applicable to the activities of the Successful Proposer under the terms of the Agreement, unless exempted by said regulations, and hereby agrees to comply with all requirements of the Department, the Federal Aviation Administration and the U.S. Department of Transportation.

These requirements may include, but not limited to, the compliance with Airport Concession Disadvantaged Business Enterprise and/or Employment Affirmative Action participation, the keeping of certain records of good faith compliance efforts, which would be subject to review by the various agencies, the submission of various reports and, if directed by the Department, the contracting of specified percentages of goods and services contracts to Airport Concession Disadvantaged Business Enterprises. In the event it has been determined, in accordance with applicable regulations, that the Successful Proposer has defaulted in the requirement to comply with the provisions of this section and fails to comply with the sanctions and/or remedies then prescribed, the County shall have the right upon written notice to the Concessionaire, to terminate this Agreement, pursuant to Default language referenced in the Agreement.

The Successful Proposer shall include the following nondiscrimination language in concession related contracts with MDAD:

> *"This agreement is subject to the requirements of the US Department of Transportation's Regulations 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23".*
>
> *"The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause*

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those businesses to similarly include the statements in further agreements".

The Successful Proposer agrees to include the above statements in any subsequent lease and concession agreements.

14.06 ACDBE MENTORING, ASSISTANCE AND TRAINING PROGRAM:

Consistent with the goal of providing ACDBEs with hands-on participation and the responsibility for a clearly defined portion of the Airport Concession operations, subject to Section 4 "Airport Concession Disadvantaged Business Enterprises" hereof, each ACDBE shall have the duty and responsibility to operate certain areas of the concession(s) following a mentoring period, if needed, which shall include but not be limited to the following specific duties and responsibilities:

A. Shop Store Operations

(1) Passenger profile analysis
(2) Cash handling/sales audit
(3) Enhancing sales
(4) Selling to the customer
(5) Staffing to meet customer levels
(6) Opening and closing procedures

B. Personnel

(1) Employment practices
(2) Compliance with wage and hour laws
(3) Compliance with County and Airport requirements
(4) Designing compensation and benefits plans
(5) Management and staff training to enhance product knowledge and customer service
(6) Warehousing packaging and sales reporting of merchandise

C. Shop Design and Display

(1) Retail layout
(2) Merchandising techniques
(3) Visual display techniques

D. Loss Prevention

(1) External and internal theft
(2) Shop security

E. Books, Records and Reports

(1) The books of account and supporting records of the joint venture(s) and the sub-concessionaire(s) shall be maintained at the principal office and shall be open for inspection by the MDAD or the ACDBE sub-concessionaire(s) or Joint Venture(s), upon reasonable prior written notice, during business hours.

(2) The books of account, for both financial and tax reporting purposes shall be maintained on the accrual method of accounting. The Successful Proposer shall provide to the sub-concessionaire(s) or joint venture(s), within an agreed upon time after the end of each month during the term of this agreement, an unaudited operating (*i.e.,* income) statement for the preceding month and for the year-to-date.

(3) Reports of the ACDBE Mentoring Program shall be submitted to the Department's Minority Affairs and Business Management Divisions, outlining the specific areas of training (i.e., components covered, total number of hours of training, training material covered, etc.).

14.07 AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTEPRISE PARTICIPATION:

The Successful Proposer shall contract with those firm(s) as are listed within the Successful Proposer's ACDBE Participation Proposal documents and approved by the Department, and shall thereafter neither (i) terminate such ACDBE firm(s), nor (ii) reduce the scope of the work to be performed, nor (iii) decrease the percentage of participation, nor (iv) decrease the dollar amount of participation by the ACDBE firm(s) without the prior written authorization of the Department.

The County shall monitor the compliance of the Successful Proposer with the requirements of this provision during the term of this agreement.

The County shall have access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, contracts between the Successful Proposer and the ACDBE Participant, and other records pertaining to ACDBE Participation.

If at any time the County has reason to believe that the Successful Proposer are in violation of this provision, the County may, in addition to pursuing any other available legal remedy, impose sanctions which may include, but are not limited to, the termination or cancellation of the agreement in whole or in part, unless the Successful Proposer demonstrates, within a reasonable time, its compliance with the terms of this provision. No such sanction shall be imposed by the County upon the Successful Proposer except pursuant to a hearing conducted by the MDAD Compliance Monitor and/or Director.

ARTICLE 15- RULES, REGULATIONS AND PERMITS

15.01 RULES AND REGULATIONS: The Concessionaire shall comply and cause its Sub-

tenants to comply, with the Ordinances of the County including Chapter 25, Code of Miami-Dade County, Florida, as the same may be amended from time to time, Operational Directives issued thereunder by the Department, 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, and any County Administrative Orders and resolutions of the Board of County Commissioners which may be applicable to its operations or activities under this Agreement.

15.02 VIOLATIONS OF RULES AND REGULATIONS: The Concessionaire agrees to pay, on behalf of the County, any liquidated damage, assessment or fine issued against the County, or the Department 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 Concessionaire, its agents, employees, Sub-tenants or invitees, have violated any law, ordinance, regulation or rule described in **Sub-Article 15.01, Rules and Regulations**, or any plan or program developed in compliance therewith. The Concessionaire further agrees that the substance of **Sub-Article 15.02, Violations of Rules and Regulations,** and **Sub-Article 15.01, Rules and Regulations**, shall be included in every Sub-Lease and other agreements which the Concessionaire may enter into related to its activities under this Agreement and that any such Sub-Lease and other agreement shall specifically provide that "Miami-Dade County, Florida is a third party beneficiary of this and related provisions." This provision shall not constitute a waiver of any other conditions of this Agreement prohibiting or limiting assignments, subletting or subleasing.

15.03 PERMITS AND LICENSES: The Concessionaire shall obtain, pay for and maintain on a current basis and make available to the Department upon request, all permits and licenses as required for the performance of its services. The Concessionaire shall cause its Sub-tenants to do the same.

ARTICLE 16 – GOVERNING LAW

16.01 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.

16.02 NOTICE OF COMMENCEMENT OF CIVIL ACTION: In the event that the County or the Concessionaire commence a civil action in the state or federal courts for Miami-Dade County, where such action is based in whole or in part upon an alleged breach of this Agreement, the County and the Concessionaire agree to waive the procedures for initial service of process mandated by Chapters 48 and 83 of the Florida Statues, by Rule 1.070 of the Florida Rules of Civil Procedure, and by Rule 4(c) of the Federal Rules of Civil Procedures. In such event, the County and the Concessionaire agree to submit to the jurisdiction of the court in which the action has been filed when initial service has been made either by personal service or by certified mail, returned receipt requested upon the representatives of the parties indicated in **Sub-Article 18.09, Notices**, of this Agreement,

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with a copy provided to the County Attorney and the attorney, if any, which the Concessionaire has designated in writing. Notwithstanding the foregoing, and in addition thereto, the Concessionaire, if a corporation, shall designate a registered agent and a registered office and file such designation with the Florida Department of state in accordance with Chapters 48 and 607 of the Florida Statues.

16.03 LABOR PEACE REQUIREMENT: Pursuant to Resolution# R-148-07, the Concessionaire provided a signed copy of the labor peace agreement for their employees as part of their Proposal to assure that no labor dispute or unrest will disrupt their operations at Miami International Airport (MIA). See Appendix N. Furthermore, the County has the right, in the event of a labor disruption, to suspend it's obligations under the contract while the labor disruption is ongoing and to use alternative means to provide the service that is affected by the labor disruption. In the event a Proposer is unable to reach an agreement with a labor organization regarding the terms of a labor peace agreement, the dispute between the Proposer and the labor organization shall be resolved by expedited binding arbitration in which the decision shall be rendered within ten (10) days of the request for arbitration but no later than five (5) days prior to the date the proposal is due. The Proposer and the labor organization shall equally share the costs of arbitration. The Proposer shall ensure that all sub-tenants also sign a labor peace agreement.

ARTICLE 17 – TRUST AGREEMENT

17.01 INCORPORATION OF TRUST AGREEMENT BY REFERENCE: Notwithstanding any of the terms, provisions and conditions of this Agreement, it is understood and agreed by the parties hereto that the provisions of the Amended and Restated Trust Agreement, dated as of the 15th day of December, 2002, as amended from time to time, by and between the County and JPMorgan Chase Bank, as Trustee, and Wachovia Bank, National Association, as Co-Trustee (the "Trust Agreement"), which Trust Agreement is incorporated herein by reference, shall prevail and govern in the event of any inconsistency with or ambiguity relating to the terms and conditions of this Agreement, including the rents, fees or charges required herein, and their modification or adjustment. A copy of the Trust Agreement may be examined by the Concessionaire at the offices of the Department during normal working hours.

17.02 ADJUSTMENT OF TERMS AND CONDITIONS: If at any time during the Term or any Extension thereto, as applicable, a court of competent jurisdiction shall determine that any of the terms and conditions of this Agreement, including the rentals, fees and charges required to be paid hereunder to the Department by the Concessionaire or by other Concessionaires under other agreements of the Department for the lease or use of the Location 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 terms and conditions and the rentals fees and charges payable by the Concessionaire and others shall not thereafter be unjustly discriminatory to any user of like locations 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

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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 upon the issuance of written notice from the County to the Concessionaire.

17.03 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 Location and any storage/support spaces at all reasonable times for the purposes of inspection to determine compliance with the provisions of this Agreement or applicable law. The right of inspection shall impose no duty on the County to inspect and shall impart no liability on the County should it not make such inspection(s).

17.04 MIAMI-DADE COUNTY INSPECTOR GENERAL REVIEW: According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all Department contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit of any contract will be one quarter of one percent (0.25%) of the total contract amount. The audit cost will be deducted by the Department from payments from the Concessionaire. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter of one percent (0.25%) fee assessment shall not apply to the following contracts: (a) contracts for legal services; (b) contracts for financial advisory services; (c) auditing contracts; (d) facility rentals and lease agreements; (e) concessions and other rental agreements; (f) insurance contracts; (g) revenue-generating contracts; (h) professional service agreements under $1,000; (i) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order No. 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter of one percent (0.25%) in any exempted contract at the time of award.***

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

ARTICLE 18 – OTHER PROVISIONS

18.01 PAYMENT OF TAXES: The Concessionaire shall pay all taxes lawfully assessed against its interests in the Location, any storage/support spaces and its services hereunder, provided however, that the Concessionaire shall not be deemed to be in default of its obligations under this Agreement for failure to pay such taxes pending the outcome of any legal proceedings instituted in courts of competent jurisdiction to determine the validity of such taxes. Failure to pay same after the ultimate adverse conclusion of such contest shall constitute an Event of Default, pursuant to **Sub-Article 12.03, Other Defaults**, hereof.

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18.02 ALTERATIONS BY CONCESSIONAIRE: The Concessionaire shall not alter or modify the Location or any storage/support spaces, except in accordance with Article 4, Improvements to the Location, herein, without first obtaining written approval from the Department.

18.03 RIGHTS TO BE EXERCISED BY DEPARTMENT: Wherever in this Agreement rights are reserved to the County, such rights may be exercised by the Department.

18.04 ADMINISTRATIVE MODIFICATIONS: It is understood and agreed to that the Department, upon written notice to the Concessionaire, shall have the right to modify administratively and to revise Articles and the Exhibits to this Agreement, including the provisions of **Sub-Article 1.07, Addition, Deletion and Modification of Location**, **Sub-Article 18.02, Alterations by Concessionaire**, **Sub-Article, 21.02, Right to Amend**, and **Sub-Article 21.04, Right to Modify**.

18.05 SECURITY: The Concessionaire acknowledges and accepts full responsibility for the security and protection of the Location. The Concessionaire fully understands and acknowledges that any security measures deemed necessary by the Concessionaire for protection of the Location shall be the sole responsibility of the Concessionaire and shall involve no cost to the Department.

18.06 RIGHTS OF DEPARTMENT AT AIRPORT: The Department shall have the absolute right, without limitation, to make any repairs, alterations and additions to any structures and locations at the Airport. The County shall, in the exercise of such right, be free from any, and all liability to the Concessionaire for business damages occasioned during the making of such repairs, alterations and additions except those occasioned by the sole acts of negligence or intentional acts of the County its employees, or agents.

18.07 OTHER DEPARTMENT RIGHTS: The Concessionaire shall be liable for any physical damage caused to the Location by the Concessionaire, its employees, agents, contractors, subcontractors, suppliers, or it's Sub-tenants. The liability shall encompass: (i) the Concessionaire's repair of the Location, or if the Location cannot be repaired, payment to the Department of the fair market value replacement cost of the Location; and (ii) any other such damages to the Department arising from the physical damage caused by the Concessionaire or its Sub-tenants and its employees, agents, contractors, subcontractors or suppliers. The County may also initiate an action for specific performance and/or injunctive relief.

18.08 FEDERAL SUBORDINATION: This Agreement shall be subordinate to the provisions of any existing or future agreements between the Department 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 the United States of America shall be suspended.

18.09 NOTICES: Any notices given under the provisions of this Agreement shall be in writing and shall be hand delivered or sent by facsimile transmission (providing evidence of receipt), nationally recognized overnight courier service, or Registered or Certified Mail, Return Receipt Requested, to:

To the County:
(Mailing Address)

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

or (physical address):

Miami International Airport
Terminal Building
Director's Office
Concourse E-5th floor
Miami, FL 33122

To the Concessionaire:

or to such other respective addresses as the parties may designate to each other in writing from time to time. Notices by: (i) facsimile shall be deemed tendered on the date indicated on the facsimile confirmation receipt; (ii) nationally recognized overnight courier service shall be deemed tendered on the delivery date indicated on the courier service receipt; and (iii) Registered or Certified Mail shall be deemed tendered on the delivery date indicated on the Return Receipt from the United States Postal Service or on the express mail service receipt.

18.10 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 shall be severable.

18.11 RIGHTS RESERVED TO DEPARTMENT: All rights not specifically granted the Concessionaire by this Agreement are reserved to the Department.

18.12 COUNTY LIEN: The County shall have a lien upon all personal property of the

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Concessionaire in the Location to secure the payment to the Department of any unpaid monies accruing to the Department under the terms of this Agreement.

18.13 AUTHORIZED USES ONLY: The Concessionaire shall not use or permit the use of the Location or the Airport for any illegal or unauthorized purpose or for any purpose which would increase the premium rates paid by the Department on or invalidate any insurance policies of the Department or any policies of insurance written on behalf of the Concessionaire under this Agreement.

18.14 NO WAIVER: There shall be no waiver of the right of the Department 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 the Concessionaire unless such waiver is explicitly made in writing by the Department. Any previous waiver or course of dealing shall not affect the right of the Department to demand strict performance of the provisions, terms and covenants of this Agreement with performance hereof by the Concessionaire.

18.15 SECURED AREAS/AIRFIELD OPERATIONS AREA (AOA) STERILE AREAS SECURITY: The Concessionaire acknowledges and accepts full responsibility for compliance with all applicable Federal, State, and Local laws, rules and regulations including those of the Transportation Security Administration (TSA), Homeland Security, FAA, CBP and MDAD as set forth from time to time relating to Contractor's activities at the Miami International Airport (MIA).

In order to maintain high levels of security at MIA, the Concessionaire must obtain MDAD photo identification badges for all the Concessionaire employees working in the Secured/AOA/Security Identification Display Area (SIDA) Sterile Areas or any other restricted areas of the Airport. All Concessionaire employees will be required to obtain photo identification badges and will be subject to fingerprint-based criminal history records checks.

The Concessionaire shall be responsible for requesting MDAD to issue identification badges to all employees who the Concessionaire requests to be authorized access to the Secured/AOA/SIDA/Sterile Areas and any other restricted areas of the airport and shall be further responsible for the immediate reporting of all lost or stolen ID badges and the immediate return of the ID badges of all personnel transferred from Airport assignment or terminated from the employer of the Concessionaire or upon final acceptance of the work or termination of this Agreement. The Concessionaire will be responsible for fees associated with lost and unaccounted for badges as well as the fee(s) for fingerprinting and ID issuance.

All employees of the Concessionaire who must work within MDAD Secured/AOA/SIDA/Sterile areas or any other restricted areas at MIA shall be supplied with MDAD identification badges as specified above, which must be worn at all times while within the referenced secured areas. Badges shall be worn on outer garments above the waist so as to be clearly visible in order to distinguish, on sight, employees assigned to a particular company area. Each employee must complete the SIDA training program

conducted by MDAD and comply with all other TSA, Homeland Security, FAA, CBP and MDAD requirements as specified by the MDAD at the time of application for the ID badge before an ID badge is issued. At the present time, MDAD Security and Safety ID Section regularly provides SIDA Training.

Concessionaire Ramp Permits will be issued to the Concessionaire authorizing vehicle entrance to the Airfield Operations Area (AOA) through specified Miami-Dade Aviation Department guard gates for the term of any Project. These permits will be issued only for those vehicles that must have access to the site during the performance of the work. Theses permits will be only issued to company owned vehicles or company leased vehicles (leased from a commercial leasing company). AOA decals, passes, or permits to operate within the AOA will not be issued to privately owned or privately leased vehicles. All vehicles operating within the AOA must have conspicuous company identification signs (minimum of three inch lettering) displayed on both sides of the vehicles.

All vehicles operating within the AOA must be provided with the Automobile Liability Insurance required elsewhere in this Agreement. Proof of such insurance is provided to MDAD Airside Operations Division upon request.

Only Concessionaire staff with pictured MDAD ID badges shall be allowed to operate a motor vehicle on the AOA without a MDAD escort. The Concessionaire shall require such employee to have a current, valid, appropriate Florida driver's license and to attend and successfully complete the AOA Driver Training Course conducted periodically by the Department. The privilege of a person to operate a motor vehicle on the AOA may be withdrawn by the Department because of violation of AOA driving rules or loss of Florida driver's license.

The Concessionaire agrees that its personnel, vehicles, cargo, goods, and other personal property are subject to being searched when attempting to enter, leave or while on the AOA. It is further agreed that the MDAD has the right to prohibit an individual, agent, or employee of the Concessionaire 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, including repeated failure to comply with MDAD's or the TSA, Homeland Security, FAA, CBP, SIDA access control policies, rules and regulations. Any person denied access to the AOA or whose prior authorization has been revoked or suspended on such grounds shall be entitled to a review hearing before the Director or his/her authorized designee within a reasonable time. Prior to such hearing, the person denied access to the AOA should be advised, in writing, of the reason for such denial.

The Concessionaire 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 and to maximize compliance with TSA, Homeland Security, FAA/Federal Inspection Services agencies and MDAD access control policies and procedures.

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The Concessionaire understands and agrees that vehicle and equipment shall not be parked/stored on the AOA in areas not designated or authorized by MDAD nor in any manner contrary to any posted regulatory signs, traffic control devices, or pavement markings.

The Concessionaire 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 Concessionaire in areas under the jurisdiction or control of such agencies. Persons not approved or consented to by the Federal Inspection Services agencies who enter such areas are subject to fines, which shall be borne entirely by the persons and/or the Concessionaire.

Notwithstanding the specific provisions of this Article, the Owner shall have the right to add to, amend, or delete any portion hereof in order to meet reasonable security requirements of MDAD or of the TSA/Homeland Security/FAA/Federal Inspection Services agencies.

The Concessionaire shall ensure that all employees so required participate in such safety, security and other training and instructional programs, as MDAD or appropriate Federal agencies may from time to time require.

Concessionaire agrees that it will include in all contracts and subcontracts with its MIA sub-consultants, service providers, and suppliers an obligation by such parties to comply with all security requirements applicable to their operations at the Airport. The Concessionaire agrees that in addition to all remedies, liquidated damages, and sanctions that may be imposed by TSA, Homeland Security, FAA, Federal Inspection Services Agencies or MDAD upon Concessionaire sub-consultants, suppliers, and their individual employees for a violation of applicable security provisions. The Concessionaire shall be responsible to the Owner for all such violations and shall indemnify and hold the Owner harmless for all costs, fines and liquidated damages arising there from, such costs to include reasonable attorneys' fees.

18.16 INTENT OF AGREEMENT: This Agreement is for the benefit of the parties only and does not: (a) grant rights to third party beneficiaries or to any other person; or (b) authorize non-parties to the Agreement to maintain an action for personal injuries, professional liability, or property damage pursuant to the terms or provisions of the Agreement.

18.17 MODIFICATIONS: This Agreement may be modified and revised in writing and duly executed by the parties hereto. Such modification may be made unilateral by the Department only as permitted pursuant to **Sub-Article 18.04, Administrative Modifications, Sub-Article 21.02, Right to Amend**, and **Sub-Article 21.04, Right to Modify**. Any oral representation or modification concerning this Agreement shall be of no force or effect. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with this Agreement.

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18.18 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. When accumulated in a building in sufficient quantities, it 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."**

18.19 TRADEMARKS AND LICENSES: The Department may, from time to time, require the Concessionaire as part of its advertising and marketing program to utilize certain patents, copyrights, trademarks, trade names, logos, computer software and other intellectual property owned by the Department in the performance of this Agreement which patents, copyrights, trademarks, trade names, logos, computer software and intellectual property may have been created pursuant to the terms of this Agreement. Such permission, when granted, shall be evidenced by a nonexclusive license executed by the Concessionaire and the Department, on behalf of the Department granting the Concessionaire the right, license and privilege to use a specific patent, copyright, trademark, trade name, logo, computer software or other intellectual property without requiring payment of fees therefore. Failure of the parties to execute a formal license agreement shall not vest title or interest in such patent, copyright, trademark, trade name, logo computer software or intellectual property in the using party.

18.20 HEADINGS: The headings of the various Articles and Sub-Articles of this Agreement, and its Table of Contents are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.

18.21 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.

18.22 GOVERNMENTAL DEPARTMENT: 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.

18.23 INDEPENDENT CONTRACTOR: The Concessionaire shall perform all services described herein as an independent contractor and not as an officer, agent, servant, or employee of the Department. All personnel provided by the Concessionaire in the performance of this Agreement shall be considered to be, at all times, the sole employees of the Concessionaire under its sole discretion, and not employees or agents of the Department: Except as provided in § 2-11.1(s) of the Code, the Concessionaire represents and warrants: (i) it has not employed or retained any company or person other than a bona fide employee working solely for the Concessionaire to solicit or secure this Agreement; and (ii) it has not paid, or agreed to pay any company or other person any fee, commission, gift, or other consideration contingent upon the execution of this Agreement. A breach of this warranty makes this Agreement voidable by the Department without any liability to the Contractor for any reason.

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18.24 OTHER LIENS: Concessionaire shall not permit any mortgages, deeds of trust or similar liens to be imposed on the Location, the leasehold, or the furniture, fixtures and equipment or any portion thereof. Concessionaire or its Sub-tenants shall not permit or suffer any liens, including mechanics', materialmen's and tax liens to be imposed upon the Location, or any part thereof, without promptly discharging the same. Notwithstanding the foregoing, Concessionaire or its Sub-tenants may in good faith contest any such lien if Concessionaire provides a bond in an amount and form acceptable to Department in order to clear the record of any such liens. Concessionaire further agrees that it shall not sell, convey, mortgage, grant, bargain, encumber, pledge, assign or otherwise transfer its leasehold interest in the Location or any personal property or trade fixtures in the Location, including any furniture, fixtures and equipment or any part thereof or permit any of the foregoing to occur. Concessionaire shall assume the defense of and indemnify and hold harmless County against any and all liens and charges of any and every nature and kind which may at any time be established against said Location and improvements, or any part thereof, as a consequence of any act or omission of Concessionaire or its Sub-tenants or as a consequence of the existence of Concessionaire's interest under this Lease.

ARTICLE 19 - SUB-LEASES

19.01 ASSIGNMENT OF SUB-LEASES BY DEPARTMENT: In the event this Agreement is terminated prior to the completion of the Term or Extension, the Department shall have the following rights and obligations regarding the Sub-tenant Agreements then in effect:

(A) in case of termination without cause by the County or if the Concessionaire terminates with cause, the County shall execute an agreement assigning to the County the Concessionaire's right and duties under all Sub-Lease agreements then in effect (Assignment Agreement); and

(B) in cases of termination with cause by the County or if the Concessionaire terminates without cause, refer to **Sub-Article 12.07, Termination for Abandonment**, the County reserves the right to not execute an Assignment Agreement to assume those Sub-tenant agreements that fail to satisfy any of the following criteria:

(a) Sub-tenant is not currently in non-monetary default, beyond all applicable notice and cure periods;

(b) Sub-tenant has no outstanding uncured material defaults and no material defaults, cured or otherwise, within one (1) year before the proposed date of assignment;

(c) Sub-tenant has not had no more that three (3) accumulated defaults of any kind during the previous twelve (12) months under its Sub-Lease agreement;

(d) Sub-tenant is current regarding all payments of any kind for which it is responsible under its Sub-Lease agreement; and

(e) Sub-tenant has no outstanding claims of default against the Concessionaire in its capacity as landlord under the Sub-Lease agreement or has waived any such claims.

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In addition to the foregoing, the County has no obligation to assume any Sub-tenant agreement (i) which does not conform to the requirements of this Agreement unless each non-conforming provision was explained to the Department and specifically approved prior to execution of the Sub-Lease or even if not approved, the non-conforming provisions are not adverse to the Department's interests, as determined in the judgment of the Department, or (ii) the Concessionaire does not execute an Assignment Agreement which provides that the Concessionaire remains liable for and indemnifies and holds harmless the County for any claims arising out of the performance of the Sub-Lease agreement up to the effective date of the Assignment Agreement.

19.02 DEPARTMENT'S RIGHTS TO APPROVE SUB-LEASES: Concessionaire shall not sub-lease this Agreement or any of the rights and privileges hereunder, or contract for the performance of any of the services to be provided by the Concessionaire hereunder without the Department's prior written approval, which approval may be granted or withheld by Department in the exercise of its sole discretion.

19.03 CONCESSIONAIRE'S SUB-LEASE AGREEMENT REQUIREMENTS: The Concessionaire's Sub-Lease agreement(s) must not extend beyond the Term or, any Extension and must contain comparable terms and conditions, as may be applicable, to those contained herein.

Costs not directly related to the Location of a Sub-tenant shall not be imposed upon that sub-tenant except for such costs required by the Department such as the marketing fee and/or common logistics fee.

19.04 SUB-TENANT MINIMUM QUALIFICATIONS REQUIREMENT: The Concessionaire must ensure that each Sub-tenant has a minimum of three (3) years continuous experience within the last five (5) years in managing or operating and maintaining one or more retain locations in an airport, transportation center, retail shopping center or marketplace generating a minimum of $300,000 in gross sales per year per location.

ARTICLE 20 - WAIVER OF CLAIMS

The Concessionaire hereby waives any and all claims it now has or may hereafter have against the County and the Department, and against any member, including, without limitation, all members of the Board of County Commissioners, officers, agents or employees of each, for any loss of anticipated profits caused by any suit or proceeding attacking directly or indirectly the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement or any part thereof, or by judgment or award in any suit or proceeding declaring this Agreement null and void or voidable, or delaying the same or any part thereof from being carried out. The Concessionaire hereby further waives any and all claims for compensation for any and all loss or damage sustained by reason of any delay in making the Location available to the Concessionaire or by reason of any defects or deficiencies in the Location or in the terminal building including any defect or deficiency in the Location or in the terminal building which substantially impedes the Concessionaire's or its Sub-tenants' ability to operate a concession at the Location or because of any interruption in any of the services thereto, including, but not limited to, power, telephone, heating, air conditioning or water supply systems, drainage or

sewage systems, and Concessionaire hereby expressly releases the County and Department from any and all demands, claims, actions, and causes of action arising from any of such causes.

ARTICLE 21 - REQUIRED, GENERAL AND MISCELLANEOUS PROVISIONS

21.01 AGREEMENTS WITH STATE OF FLORIDA AND MIAMI-DADE COUNTY: This Agreement shall be subject to all restrictions of record affecting the Airport and the use thereof, all federal, State, County laws, and regulations affecting the same, and shall be subject and subordinate to the previsions of any and all existing agreements between the County and the State of Florida, or its boards, agencies or commissions, and to any future agreement between or among the foregoing relative to the operation or maintenance of the Airport, the execution of which may be required as a condition precedent to the expenditure of federal, State, County funds for the development of the Airport, or any part thereof. All provisions hereof shall be subordinate to the right of the United States to occupy or use the Airport, or any part thereof, during time of war or national emergency.

21.02 RIGHT TO AMEND: In the event that the Federal Aviation Administration or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of its approval or to the obtaining of funds for improvements at the Airport, Concessionaire hereby consents to any and all such modifications and changes as may be reasonably required.

21.03 CONCESSIONAIRE COVENANTS AND ASSURANCES:

A. Covenants Against Discrimination:

1. Concessionaire on behalf of itself, its Sub-tenants, successors in interest and its assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Location or the Airport; (2) that in the installation of any equipment at the Airport and the furnishing or services in connection therewith, no person on the grounds or race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; and (3) that Concessionaire shall operate at the Airport in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally assisted programs of the Department of Transportation-effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended. Likewise, Concessionaire shall comply with laws of the State of Florida, prohibiting discrimination because of race, color, religion, sex, national origin, age, handicap or marital status. Should Concessionaire authorize another person or entity, with Department's prior written consent, to provide services or benefits in or in connection with its rights or obligations under this Agreement, Concessionaire shall obtain from such

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person or entity a written agreement pursuant to which such person or entity shall, with respect to the services or benefits which it is authorized to provide, undertake for itself the obligations contained in this paragraph. Concessionaire shall furnish the original or a true copy of such agreement to Department.

2. Concessionaire will provide and cause its Sub-tenants to provide all information and reports required by said Code of Federal Regulations, or by directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its locations as may be determined by the Department or the Federal Aviation Administration to be pertinent to ascertain whether there has been compliance with said Regulations and directives. Where any information required of Concessionaire is in the exclusive possession of another who fails or refuses to furnish this information, Concessionaire shall so certify to Department or the Federal Aviation Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

3. In the event of a breach of any of the above nondiscrimination covenants, Department shall have the right to impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate. Such rights shall include the right to terminate this Agreement and to reenter and repossess the Location and the improvements thereto, and hold the same as if this Agreement had never been made. The rights granted to Department by the foregoing sentence shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

4. Concessionaire assures County that no person shall be excluded on the grounds or race, creed, color, national origin or sex from participating in or receiving the services or benefits of any program or activity covered by Title 14, Code of Federal Regulations, Part 152, Subpart E, Federal Aviation Administration, Nondiscrimination in Airport Aid Program, and that it will be bound by and comply with all other applicable provisions of such Subpart E, as it may be amended from time to time. Concessionaire also assures County that it will require its covered suborganizations to provide assurances to the same effect and provide copies thereof to the Department.

5. Concessionaire further assures County that it and its Sub-tenants will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall on the grounds of race, creed, color, national origin, sex, age or handicap be excluded from participating in any activity conducted at or in connection with its operations at the Location. Concessionaire also assures County that it will require its contractors and Sub-tenants to provide assurances to the same effect and ensure that such assurances are included in contracts and Sub-Lease agreements at all tiers which are entered into in connection with Concessionaire's services hereunder.

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6. a) This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23, Subpart F. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement covered by 49 CFR Part 23, Subpart F.

   b) Concessionaire agrees to include the above statements in any subsequent concession agreements that it enters and cause those businesses to similarly include the statements in further agreements.

7. County may from time to time be required by the United States Government or one or more of its agencies, to adopt additional or amended provisions including nondiscrimination provisions concerning the use and operation of the Airport, and Concessionaire agrees that it will adopt such requirements as part of this Agreement.

21.04 RIGHT TO MODIFY: The parties hereto covenant and agree that, during the Term and/or Extension, if applicable, this Agreement may be unilaterally modified by the Department, upon advice of its legal counsel, in order to conform to judicial or Federal Trade Commission or FAA rulings or opinions. This Sub-Article shall not preclude Concessionaire from contesting said rulings or opinions, but the Concessionaire shall abide by the unilateral change while such a challenge is pending. Except as otherwise specifically provided in this Agreement, this Agreement may not be modified except by a written instrument signed by both parties.

21.05 TAX EXEMPT STATUS OF DEPARTMENT REVENUE BONDS: The Concessionaire agrees to comply promptly with any applicable provisions of any federal tax statute, and all regulations or other binding authority promulgated or decided hereunder, as required to permit the Department's capital expansion projects to be planned and constructed by the Department with revenue bonds the interest on which is generally exempt from federal income taxation, other than any applicable individual or corporate alternative minimum taxes (and other than during any period while such revenue bonds are held by a "substantial user" of the projects financed by such revenue bonds or a "related person" to a "substantial user"), including, without limitation, the execution by the Concessionaire and delivery to the Department of an election not to claim depreciation or any investment credit with respect to any portion of such capital expansion projects or any other portion of the Airport System.

21.06 REMEDIES: All remedies provided in this Agreement shall be deemed cumulative and additional, and not in lieu of or exclusive of each other or of any other remedy available at law or in equity arising hereunder.

21.07 NOT USED

21.08 REGULATIONS OF DEPARTMENT: The rights and privileges granted to the Concessionaire hereunder and the occupancy and use by the Concessionaire and the

Concessionaire's Sub-tenants of the Location shall at all times be subject to reasonable rules and regulations of Department as the same are now or may hereafter be prescribed through the lawful exercise of its power, including, but not limited to, all applicable provisions of Department's Policy and Procedures Manual as the same may be amended from time to time.

21.09 INTEREST: Any sums payable to the Department by the Concessionaire under any provisions of this Agreement, which may be amended from time to time, which are not paid when due shall bear interest at the rate of one and one half percent (1 1/2%) per month (or, if less, the maximum rate of interest allowed by law) from the due date thereof until paid.

21.10 MISCELLANEOUS PROVISIONS: The Concessionaire, its Sub-tenants and its agents, contractors, sub-contractors and/or employees shall promptly observe and comply with applicable provisions of all federal, State, and local statutes, ordinances, regulations and rules which govern or apply to the Concessionaire or to its services or operations hereunder.

1. The Concessionaire shall, at its own cost and expense, procure and keep in force during the Term and any Extension thereto if applicable, all necessary licenses, registrations, certificates, bonds, permits, and other authorizations as are required by law in order for the Concessionaire to provide its services hereunder and shall pay all taxes, (including sales and use taxes), assessments including, without limitation, storm water utility fees and impact fees which may be assessed, levied, exacted or imposed by all governmental authorities having jurisdiction on Concessionaire's property, on its services, on its Gross Revenues, on its income, on this Agreement and the fees payable to the County hereunder, on the rights and privileges granted to the Concessionaire herein, on the Location and on any and all equipment installed on the Location and the Concessionaire shall make and file all applications, reports, and returns required in connection therewith.

2. The Concessionaire agrees to repair promptly, at its sole cost and expense and in a manner acceptable to the Department, any damage caused by the Concessionaire or any of its Sub-tenants, officers, agents, employees, contractors, subcontractors, licensees or invitees to the Airport or any equipment or property located thereon.

3. The Concessionaire is not authorized to act as the County's agent hereunder and shall have no authority, express or implied, to act for or bind the County hereunder and nothing contained in this Agreement shall be deemed or construed by the County or the Concessionaire or by any third party to create the relationship of partnership or of joint venture. No provision of this Agreement shall be deemed to make the County the joint employer of any employee of the Concessionaire.

4 The County shall have the right during the Concessionaire's normal business hours (and at any time during an emergency) to inspect the Location and the property of the Concessionaire located thereon, in order to enforce this Agreement, to enforce applicable laws and regulations, and to protect persons and property.

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5. The Article and paragraph headings herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision of this Agreement.

6. Time is expressed to be the essence of this Agreement.

7. This Agreement will inure to the benefit of and shall be binding upon the parties hereto and their authorized successors and assigns.

8. If any covenant, condition or provision of this Agreement is held to be invalid by any court of competent jurisdiction, such holding shall not affect the validity of any other covenant, condition or provision contain herein.

9. Except as otherwise provide herein, if certain action may be taken only with the consent or approval of the County, or if a determination or judgment is to be made by the County, such consent or approval may be granted or withheld, or such determination or judgment shall be made, in the sole discretion of the County or the County.

10. The County's Ethics Commission has also adopted rules delineating the responsibilities of lobbyists and County personnel in implementing the requirements of the lobbying section of the Conflict of Interest and Code of Ethics Ordinance. The Proposer shall comply with these requirements.

21.11 FORCE MAJEURE: Strictly in relation to the obligations of each party to the other under this Agreement, and not for any other purpose or for any benefit of a third party, each party shall be excused from the timely performance of their respective obligations or undertakings provided in this Agreement, if the performance of such obligations or undertakings is prevented or delayed, retarded or hindered by strikes, lockouts, boycotts, actions of labor unions, labor disputes, labor disruptions, work stoppages or slowdowns, unless involving employees of the Concessionaire, embargo's, general shortages of labor, equipment, the Location, materials or supplies in the open market, acts of God, acts of the public enemy, acts of governmental authority, including, without limitation, the FAA, the DOT, the TSA, the EPA, the DOJ, or civil and defense authorities, extreme weather conditions, war (declared or undeclared), invasion, insurrection, terrorism, riots, rebellion or sabotage.

21.12 ENTIRE AGREEMENT: This Agreement, together with the Exhibits attached hereto, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and any prior agreements, representations or statements made with respect to such subject matter, whether oral or written, and any contemporaneous oral agreements, representations or statements with respect to such subject matter, are merged herein; provided, however, that Concessionaire hereby affirms the completeness and accuracy of the information provided by Concessionaire to County in their Proposal, and in all attachments thereto and enclosures therewith, submitted by Concessionaire to County in connection with the award of this Agreement. None of the provisions, terms or conditions contained in the Agreement may be modified or otherwise altered except as may be

specifically authorized by **Sub-Article 18.04, Administrative Modifications**, or the Sub-Articles stated therein, or by written instrument executed by the parties hereto.

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

CONCESSIONAIRE

_____
(Legal Name of Corporation)

ATTEST:

Secretary_____
(Signature and Seal)

By: _____
Concessionaire - Signature

_____
(Type Name & Title)

Name: _____

_____
(Type Name & Title)

INDIVIDUAL, PARTNERSHIP OR JOINT VENTURE

_____
Legal Name

_____
Legal Name

By: _____
Signature

By: _____
Signature

_____
(Type Name & Title)

_____
(Type Name & Title)

Attest: _____

Name of Managing Joint Venturer:

_____

Witness: _____

By: _____
Signature of Authorized Representative of the Joint Venture

Corporate Seal

(ATTACH ADDITIONAL SHEETS FOR EACH JOINT VENTURER, AS NEEDED)

321

BOARD OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

By: _____
County Manager

Approved for Form
and Legal Sufficiency

_____
Assistant County Attorney

Attest: Harvey Ruvin, Clerk

By: _____
Deputy Clerk

Resolution No.: _____

Date: _____

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EXHIBIT A

LOCATIONS

Package Summary

UNIT #	TERMINAL	LOCATION	CONCEPT CATEGORY	PROPOSED CONCEPT	SIZE (SF)	AVAILABILITY
PACKAGE 1						
C.40.A	North	Zone C	Gift Specialty Shops	Gifts	715	End 2008
C.42.A	North	Zone C	Jewelry Watches, & Acc.	High-end Jewelry	867	End 2008
C.46.A	North	Zone C	Fashion Apparel & Acc.	Men's Apparel	1,578	End 2008
C.50.A	North	Zone C	News/Books	Newsstand	973	End 2008
D.21.A	North	Zone D	Fashion Apparel & Acc.	Fashion Accessories	700	Mid 2009
B.81.A	North	Zone B	News/Books	News/Gifts	1,243	End 2008
TOTAL PACKAGE 1					**6,076**	
PACKAGE 2						
C.24.A	North	Zone C	Entertainment & Electronics	Technology	1,196	Mid 2009
C.32.A	North	Zone C	News/Books	News/Gifts	1,820	End 2008
C.40.B	North	Zone C	News/Books	Newsstand	801	End 2008
C.41.A	North	Zone C	Gift Specialty Shops	Gifts	1,089	Mid 2009
C.44.A	North	Zone C	Fashion Apparel & Acc.	Women's Apparel	1,317	End 2008
C.55.A	North	Zone C	Gift Specialty Shops	Gifts	113	End 2008
TOTAL PACKAGE 2					**6,336**	
PACKAGE 3						
C.22.A	North	Zone C	Fashion Accessory	Sunglasses	718	Mid 2009
TOTAL PACKAGE 3					**718**	
PACKAGE 4						
C.23.A	North	Zone C	Jewelry	Watches	568	Mid 2009
TOTAL PACKAGE 4					**568**	
PACKAGE 5						
H3-FB02	South	South - 3rd Floor Intl. Arrivals	Walkaway	Coffee Shop	700	End 2008
TOTAL PACKAGE 5					**700**	
TOTAL SQUARE FEET					**14,398**	

PACKAGE 1

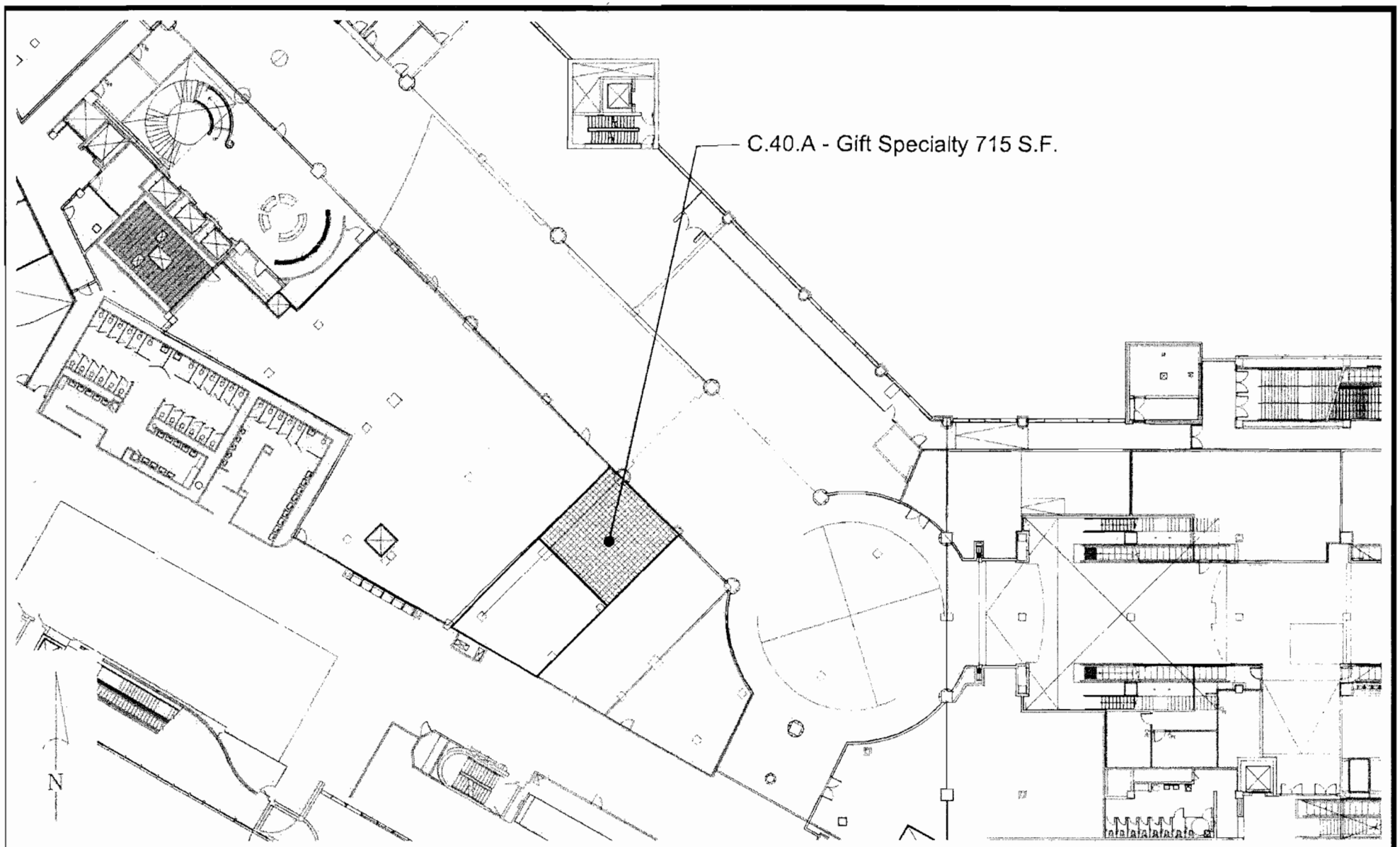
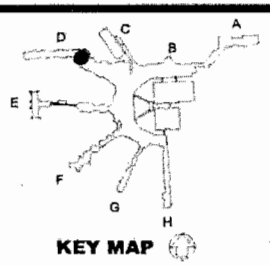


EXHIBIT "A" RETAIL RFP

LEGEND

GIFT SPECIALTY

MIAMI DADE AVIATION DEPARTMENT
MIAMI INTERNATIONAL AIRPORT
PROPOSED RETAIL CONCESSION
NORTH TERMINAL, ZONE C
Second Level
August, 2007



KEY MAP

TECHNICAL SUPPORT DIVISION

PROJECT FILE 60279

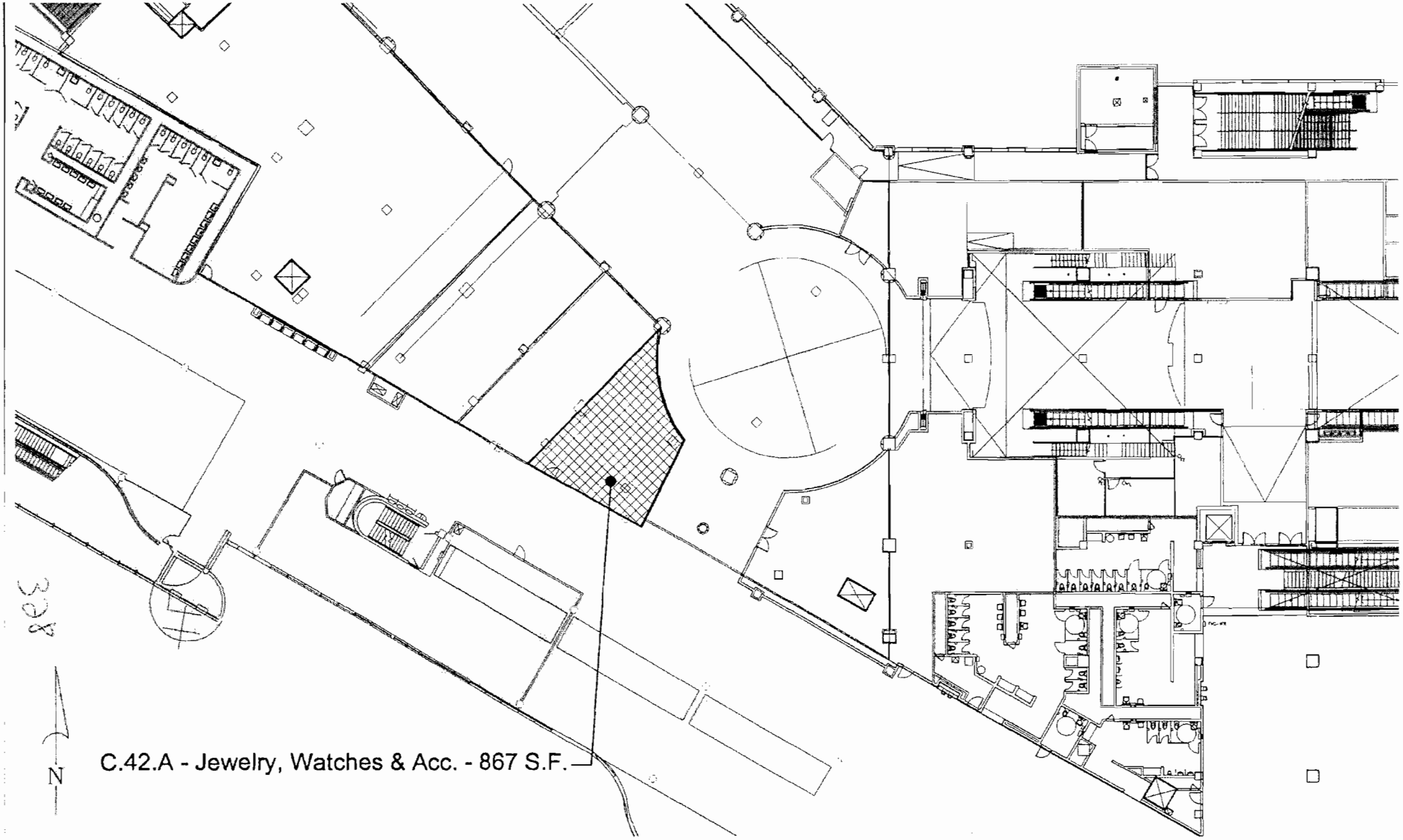
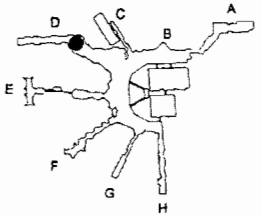


EXHIBIT "A" RETAIL RFP

LEGEND

Fashion Jewelry

MIAMI DADE AVIATION DEPARTMENT
MIAMI INTERNATIONAL AIRPORT
PROPOSED RETAIL CONCESSION
NORTH TERMINAL, ZONE C
Second Level
August, 2007



KEY MAP

TECHNICAL SUPPORT DIVISION

PROJECT FILE 60279

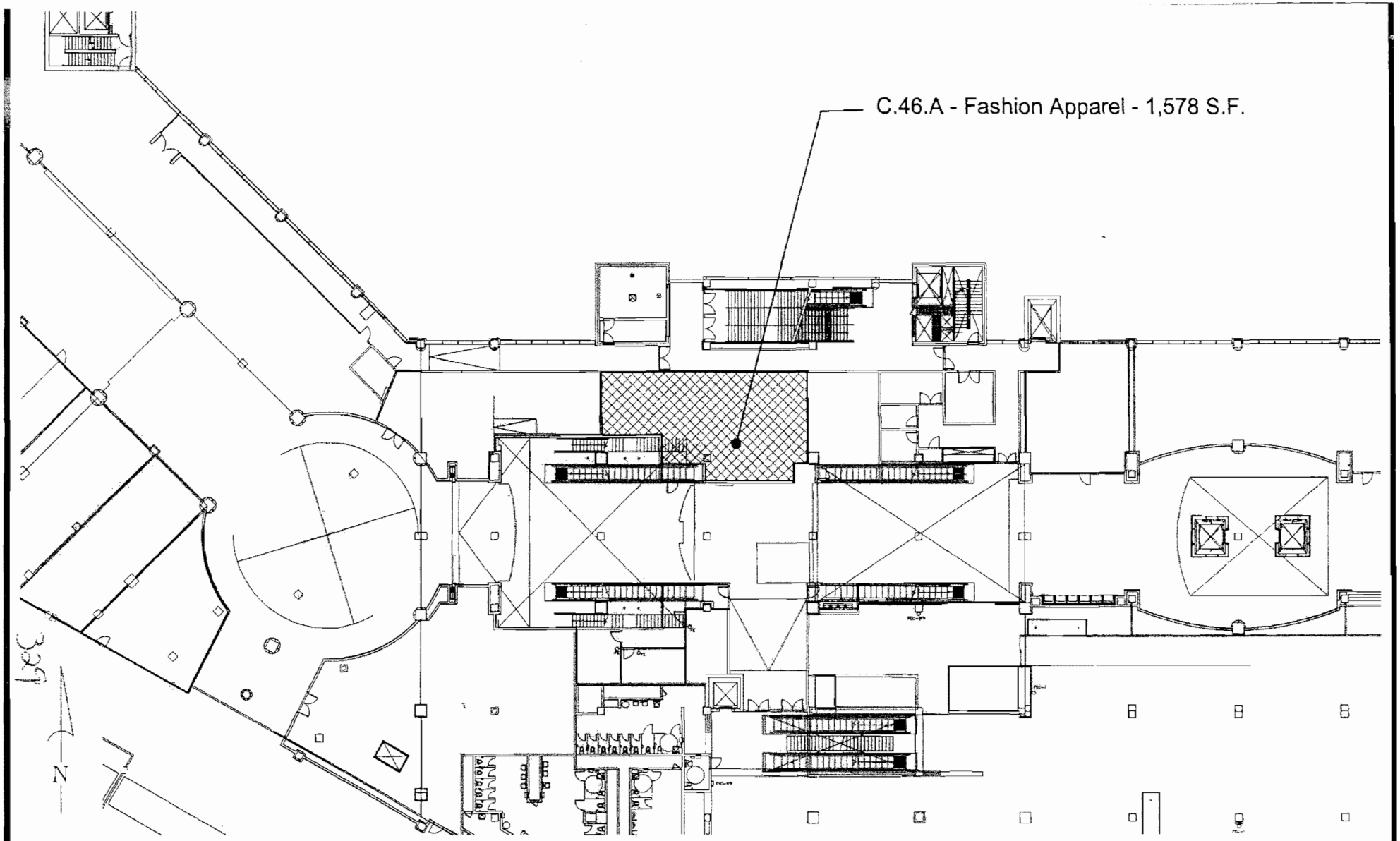
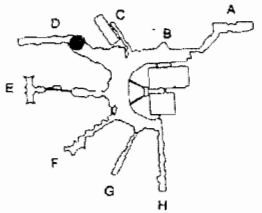


EXHIBIT "A" RETAIL RFP

LEGEND

Fashion Apparel

MIAMI DADE AVIATION DEPARTMENT
MIAMI INTERNATIONAL AIRPORT
PROPOSED RETAIL CONCESSION
NORTH TERMINAL, ZONE C
Second Level
August, 2007



KEY MAP

TECHNICAL SUPPORT DIVISION

PROJECT FILE 60279

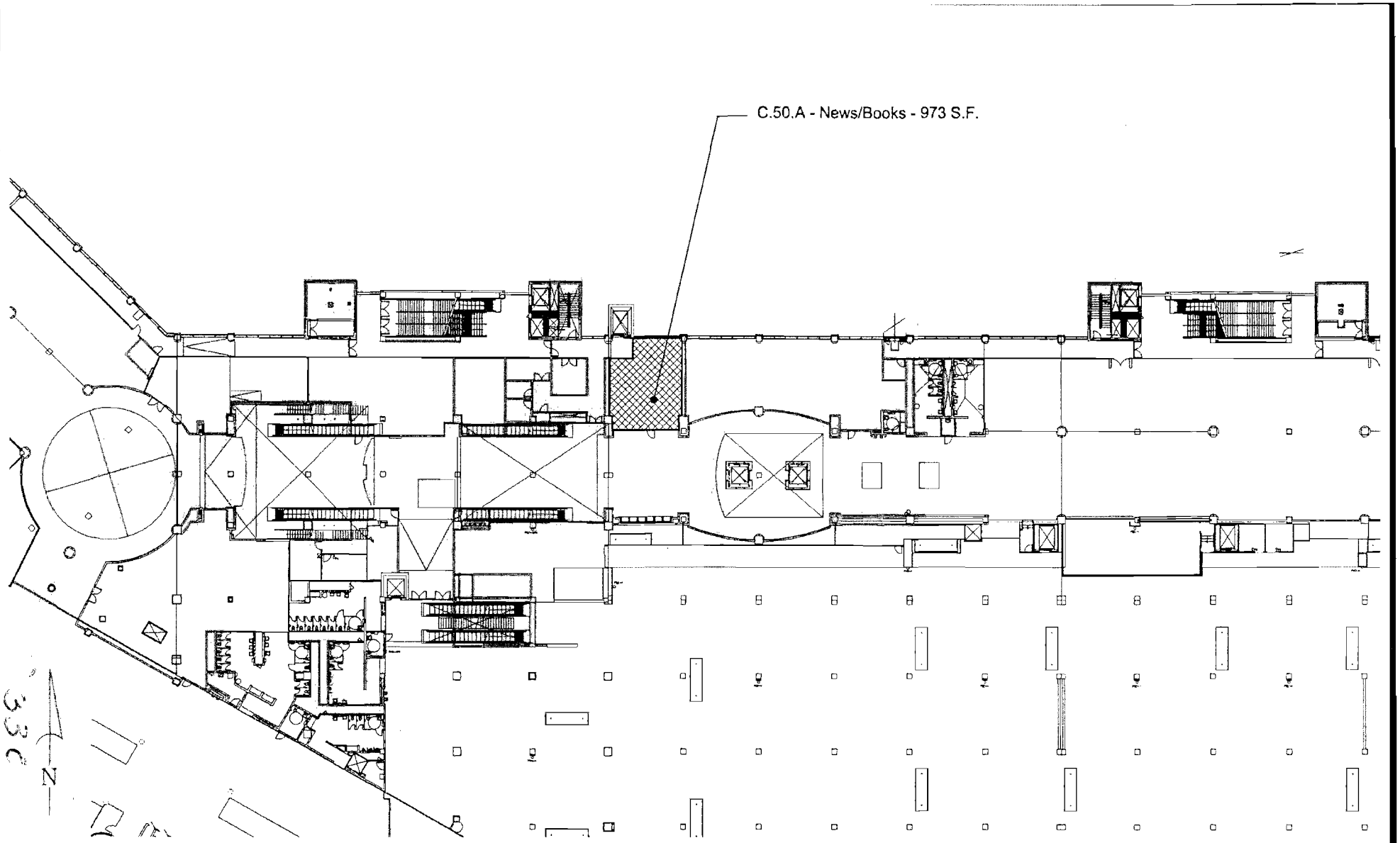
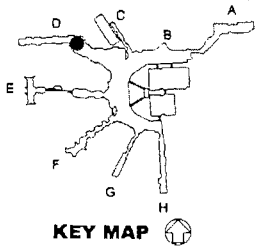


EXHIBIT "A" RETAIL RFP

LEGEND

News/Books

MIAMI DADE AVIATION DEPARTMENT
MIAMI INTERNATIONAL AIRPORT
PROPOSED RETAIL CONCESSION
NORTH TERMINAL, ZONE C
Second Level
August, 2007



KEY MAP

TECHNICAL SUPPORT DIVISION

PROJECT FILE 60279

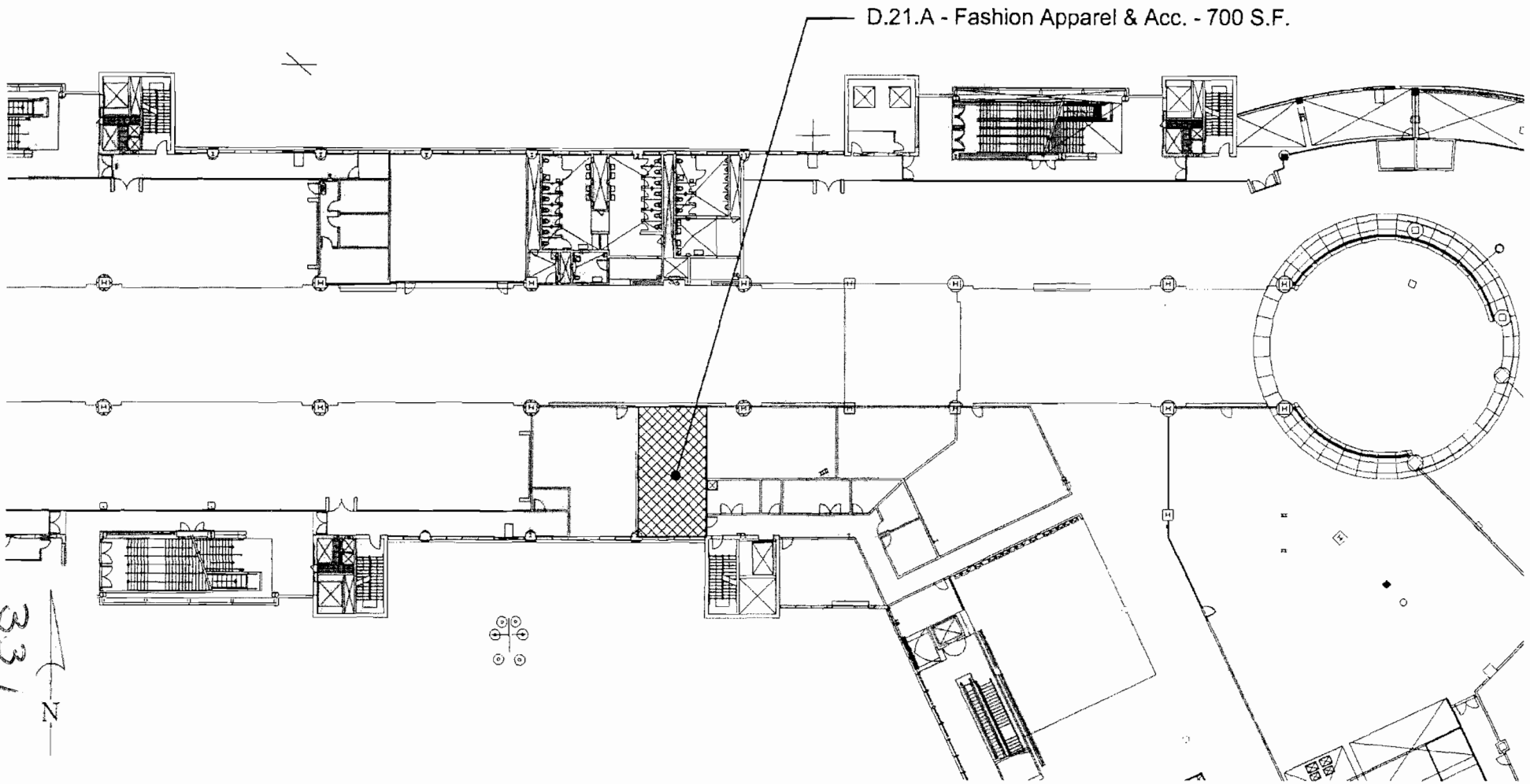
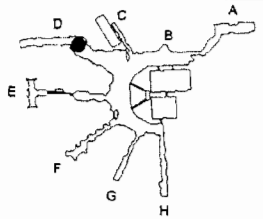


EXHIBIT "A" RETAIL RFP

LEGEND

Fashion Apparel

MIAMI DADE AVIATION DEPARTMENT
MIAMI INTERNATIONAL AIRPORT
PROPOSED RETAIL CONCESSION
NORTH TERMINAL, ZONE D
Second Level
August, 2007



KEY MAP

MDA
TECHNICAL SUPPORT DIVISION

PROJECT FILE 80279

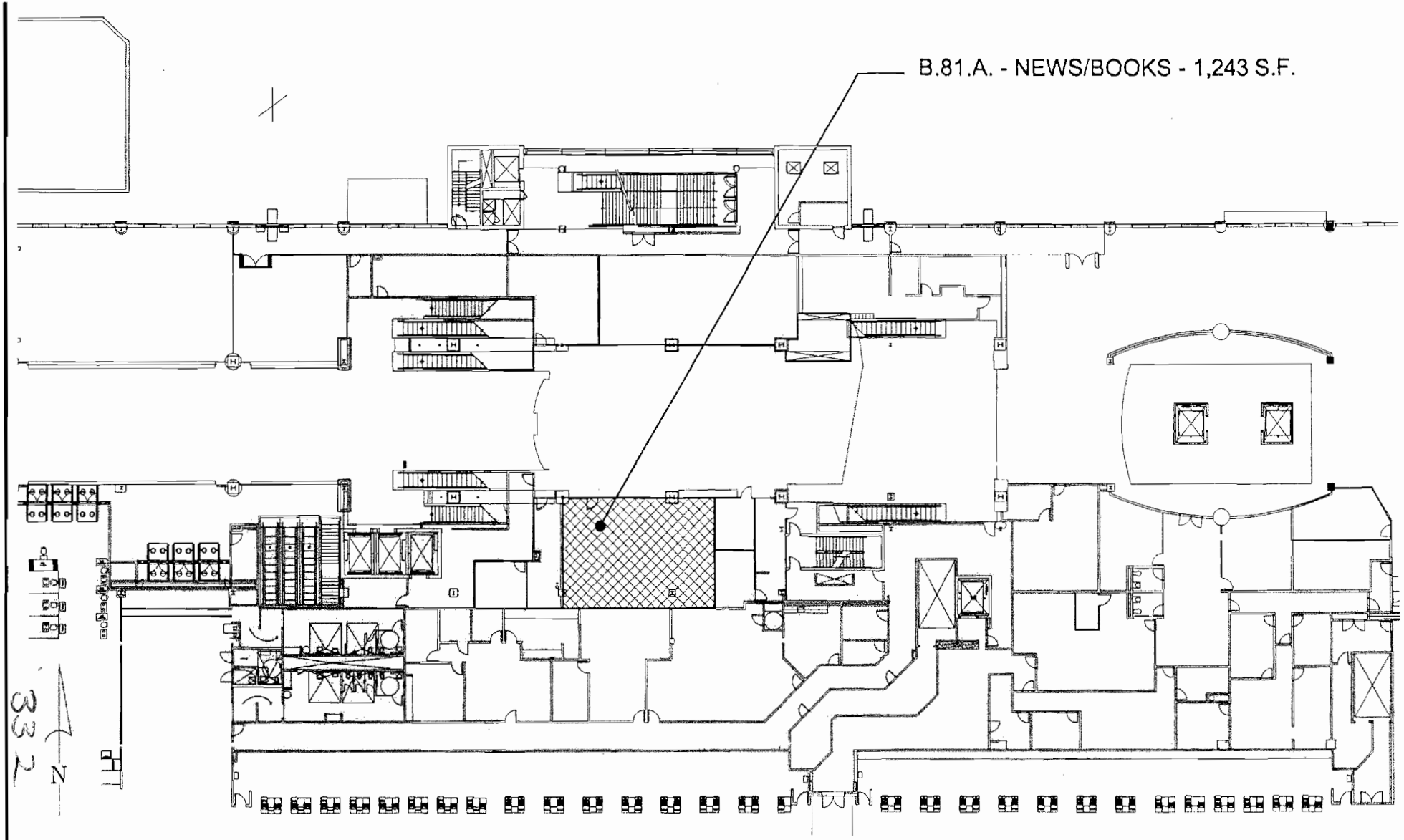
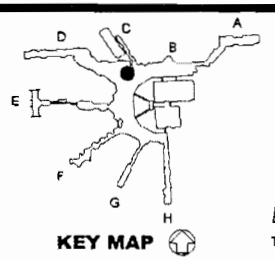


EXHIBIT "A" RETAIL RFP

LEGEND

NEWS/BOOKS

MIAMI DADE AVIATION DEPARTMENT
MIAMI INTERNATIONAL AIRPORT
PROPOSED RETAIL CONCESSION
NORTH TERMINAL, ZONE B
Second Level
August, 2007



KEY MAP

TECHNICAL SUPPORT DIVISION

PROJECT FILE 60279

PACKAGE 2

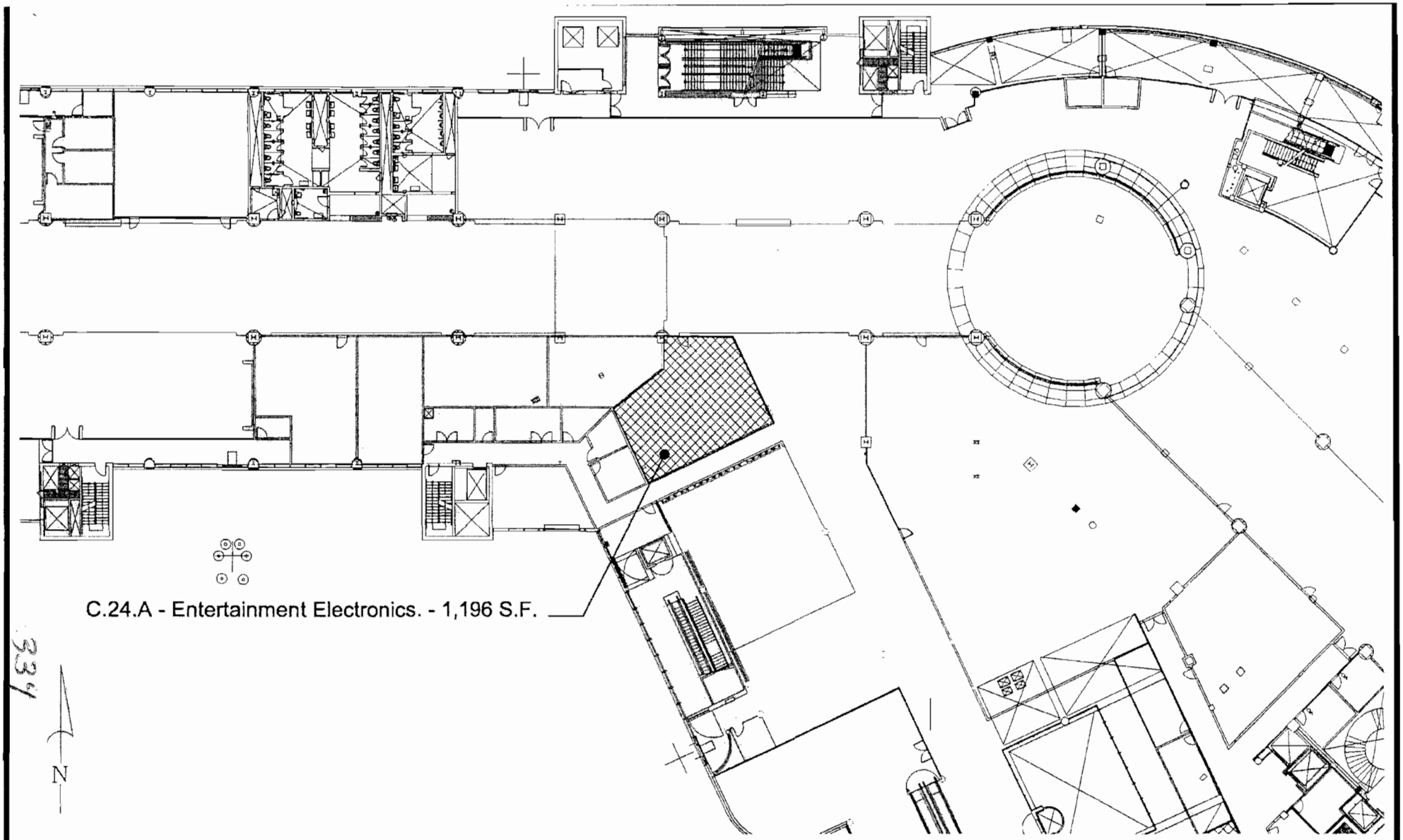
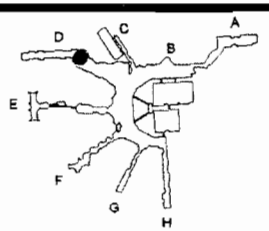


EXHIBIT "A" RETAIL RFP

LEGEND

Entertainment Electronics

MIAMI DADE AVIATION DEPARTMENT
MIAMI INTERNATIONAL AIRPORT
PROPOSED RETAIL CONCESSION
NORTH TERMINAL, ZONE C
Second Level
August, 2007



KEY MAP

MDA
TECHNICAL SUPPORT DIVISION

PROJECT FILE 60279

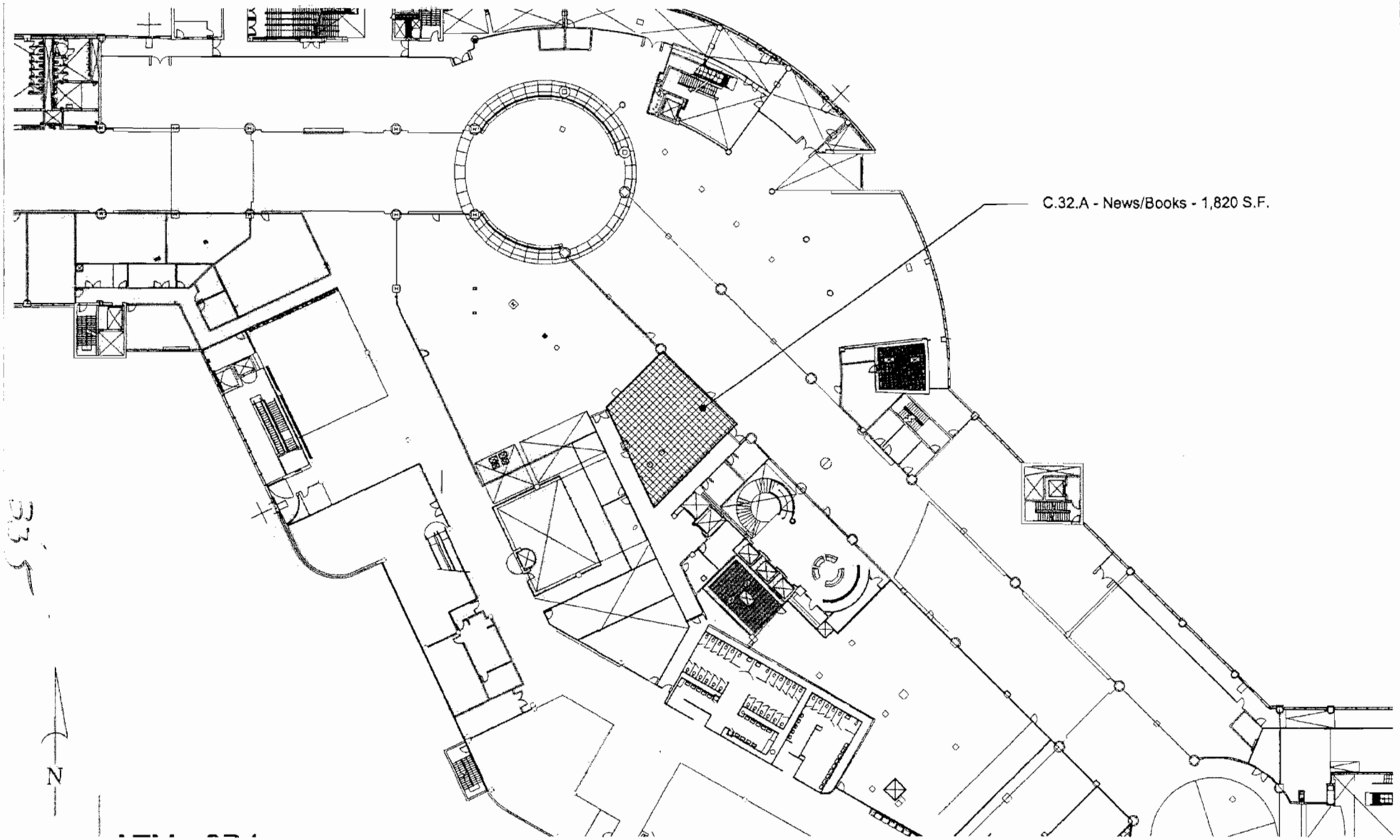
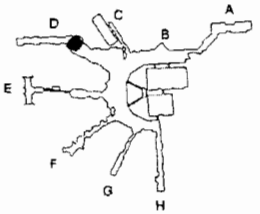


EXHIBIT "A" RETAIL RFP

LEGEND

NEWS/BOOKS

MIAMI DADE AVIATION DEPARTMENT
MIAMI INTERNATIONAL AIRPORT
PROPOSED RETAIL CONCESSION
NORTH TERMINAL, ZONE C
Second Level
August, 2007



KEY MAP

MDA
TECHNICAL SUPPORT DIVISION

PROJECT FILE 60279

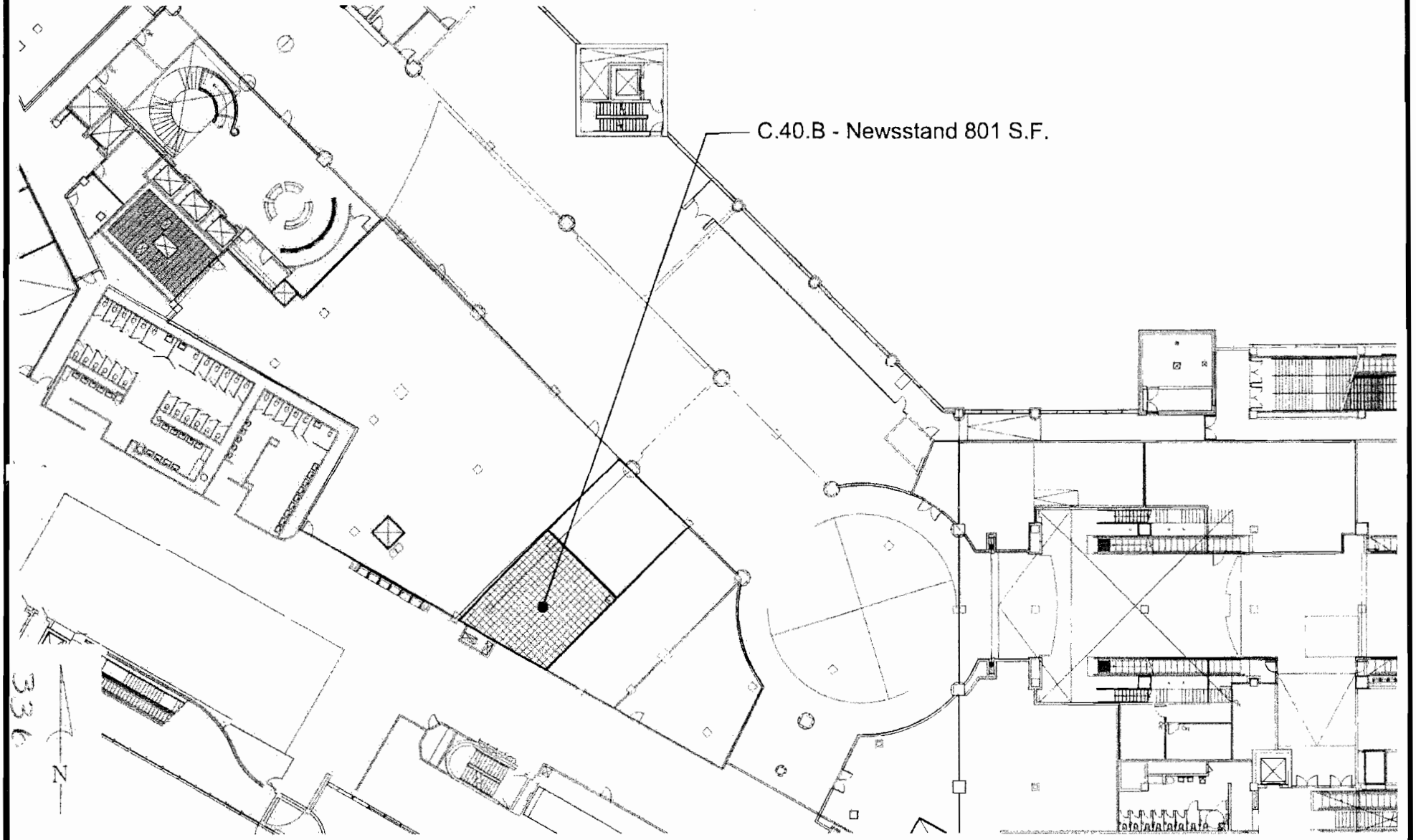
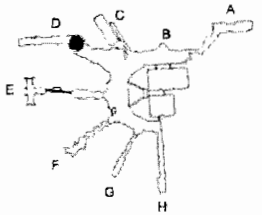


EXHIBIT "A" RETAIL RFP

LEGEND

NEWSSTAND

MIAMI DADE AVIATION DEPARTMENT
MIAMI INTERNATIONAL AIRPORT
PROPOSED RETAIL CONCESSION
NORTH TERMINAL, ZONE C
Second Level
August, 2007



KEY MAP

MIA
TECHNICAL SUPPORT DIVISION

PROJECT FILE 60279

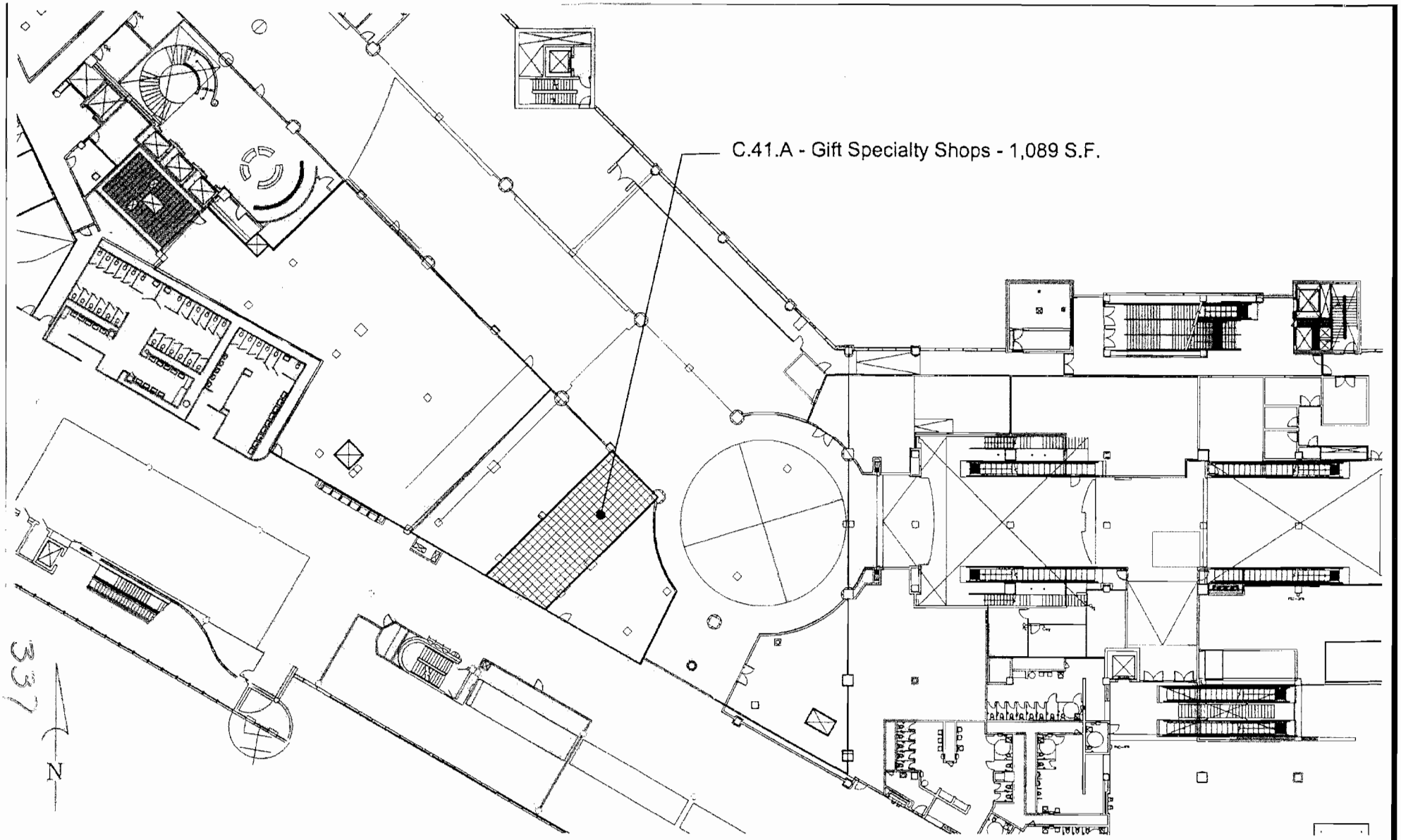
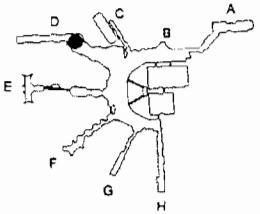


EXHIBIT "A" RETAIL RFP

LEGEND

Gift Specialty Shops

MIAMI DADE AVIATION DEPARTMENT
MIAMI INTERNATIONAL AIRPORT
PROPOSED RETAIL CONCESSION
NORTH TERMINAL, ZONE C
Second Level
August, 2007



KEY MAP

TECHNICAL SUPPORT DIVISION

PROJECT FILE 60279

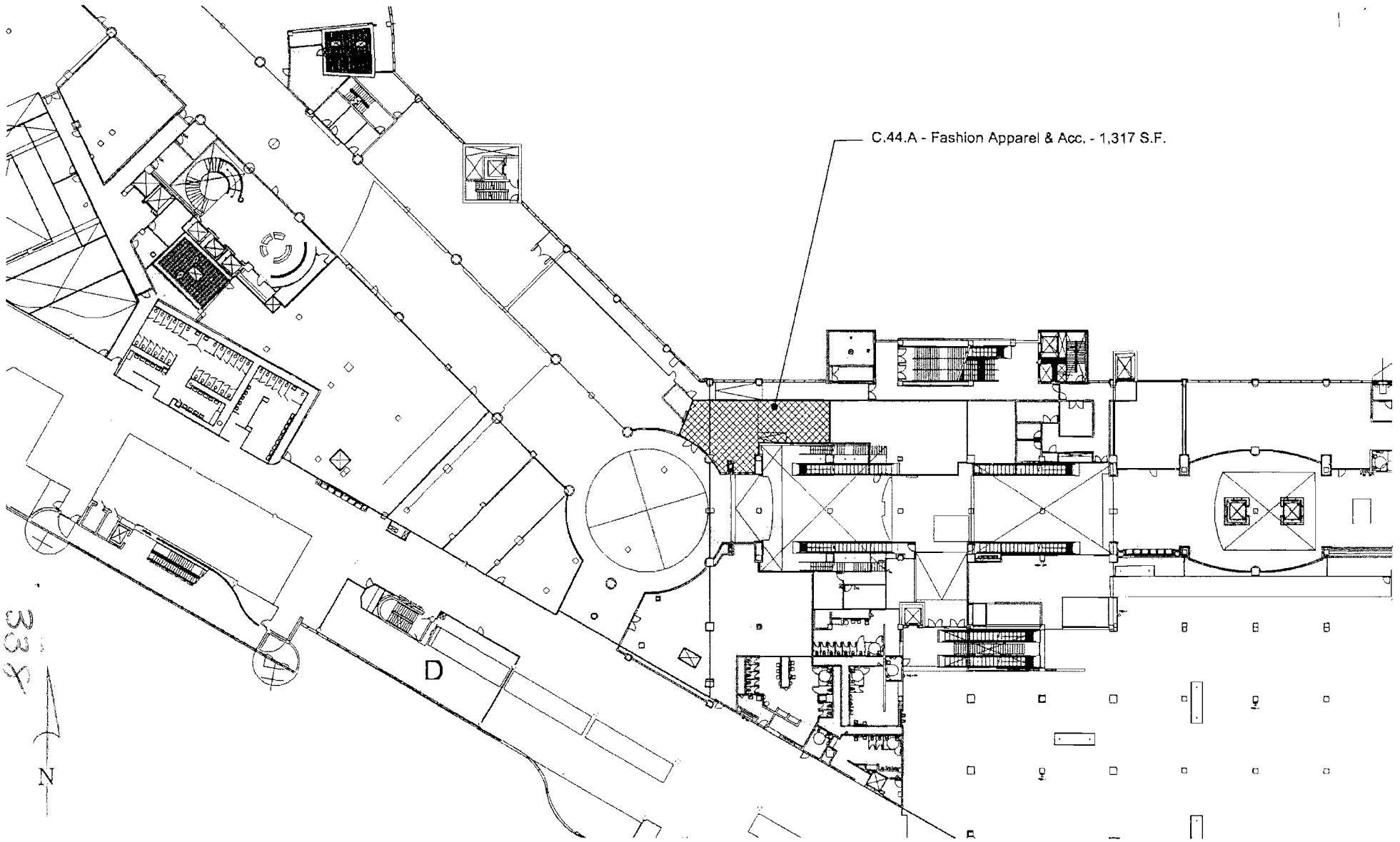
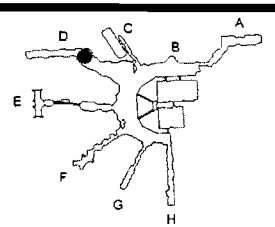


EXHIBIT "A" RETAIL RFP

LEGEND

WOMEN'S APPAREL

MIAMI DADE AVIATION DEPARTMENT
MIAMI INTERNATIONAL AIRPORT
PROPOSED RETAIL CONCESSION
NORTH TERMINAL, ZONE C
Second Level
August, 2007



KEY MAP

TECHNICAL SUPPORT DIVISION

PROJECT FILE 60279

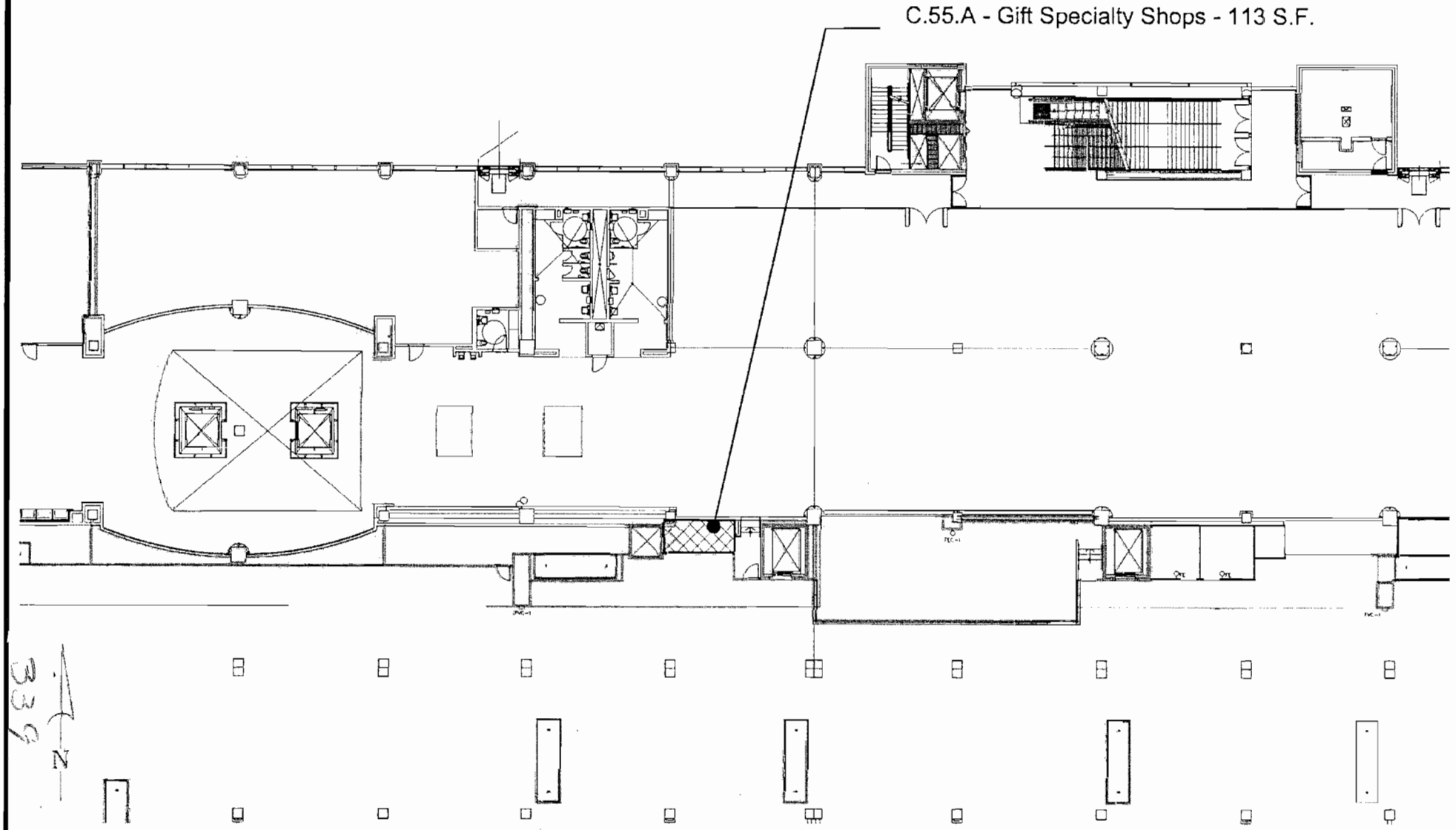
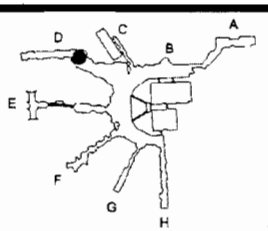


EXHIBIT "A" RETAIL RFP

LEGEND

Gift Specialty Shops

MIAMI DADE AVIATION DEPARTMENT
MIAMI INTERNATIONAL AIRPORT
PROPOSED RETAIL CONCESSION
NORTH TERMINAL, ZONE C
Second Level
August, 2007



KEY MAP

TECHNICAL SUPPORT DIVISION

PROJECT FILE 60279

PACKAGE 3

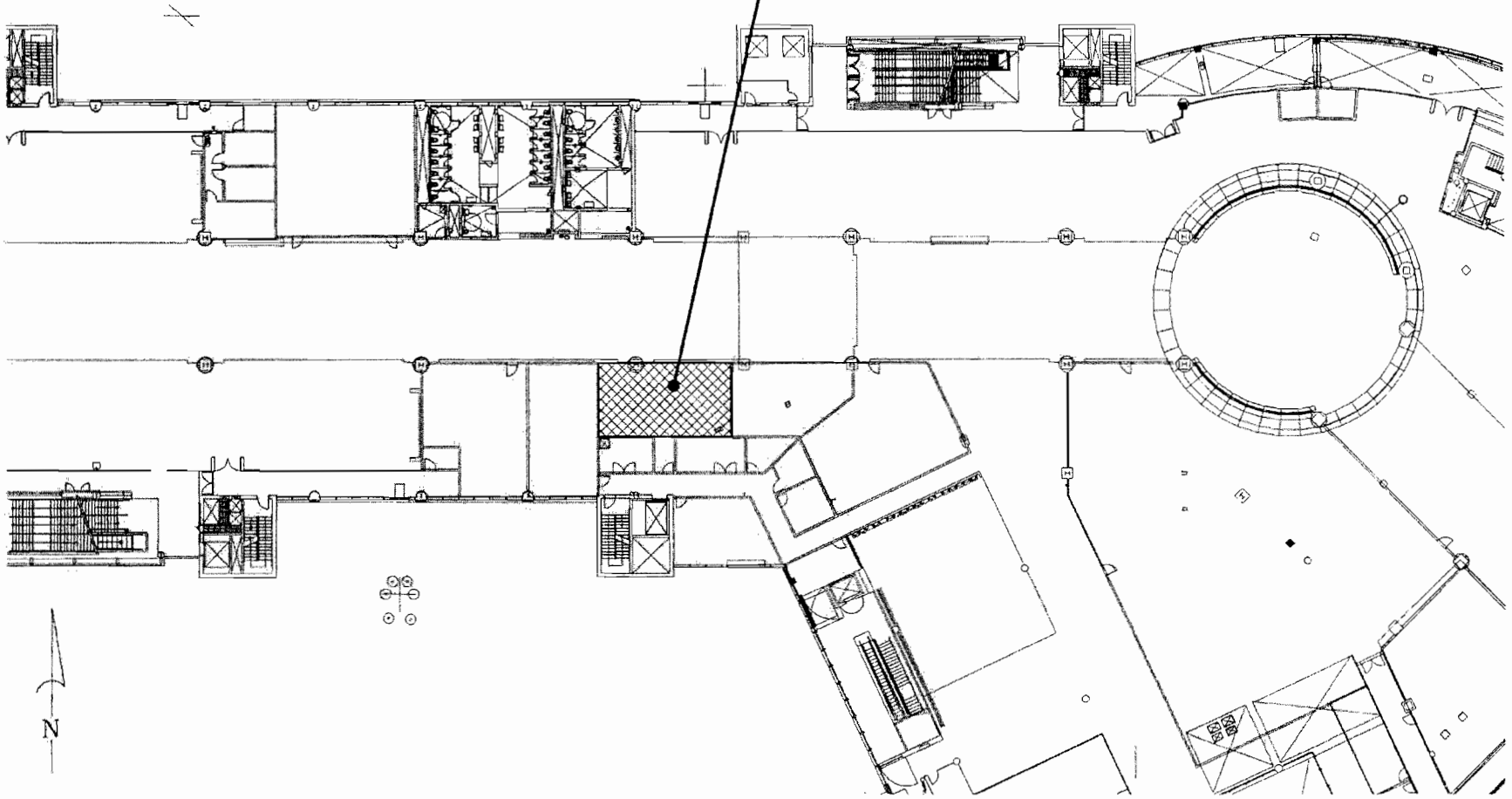
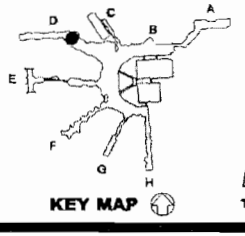


EXHIBIT "A" RETAIL RFP

LEGEND

Fashion Accessory Sunglasses

MIAMI DADE AVIATION DEPARTMENT
MIAMI INTERNATIONAL AIRPORT
PROPOSED RETAIL CONCESSION
NORTH TERMINAL, ZONE C
Second Level
August, 2007



KEY MAP

MIA
TECHNICAL SUPPORT DIVISION

PROJECT FILE 60279

1179

PACKAGE 4

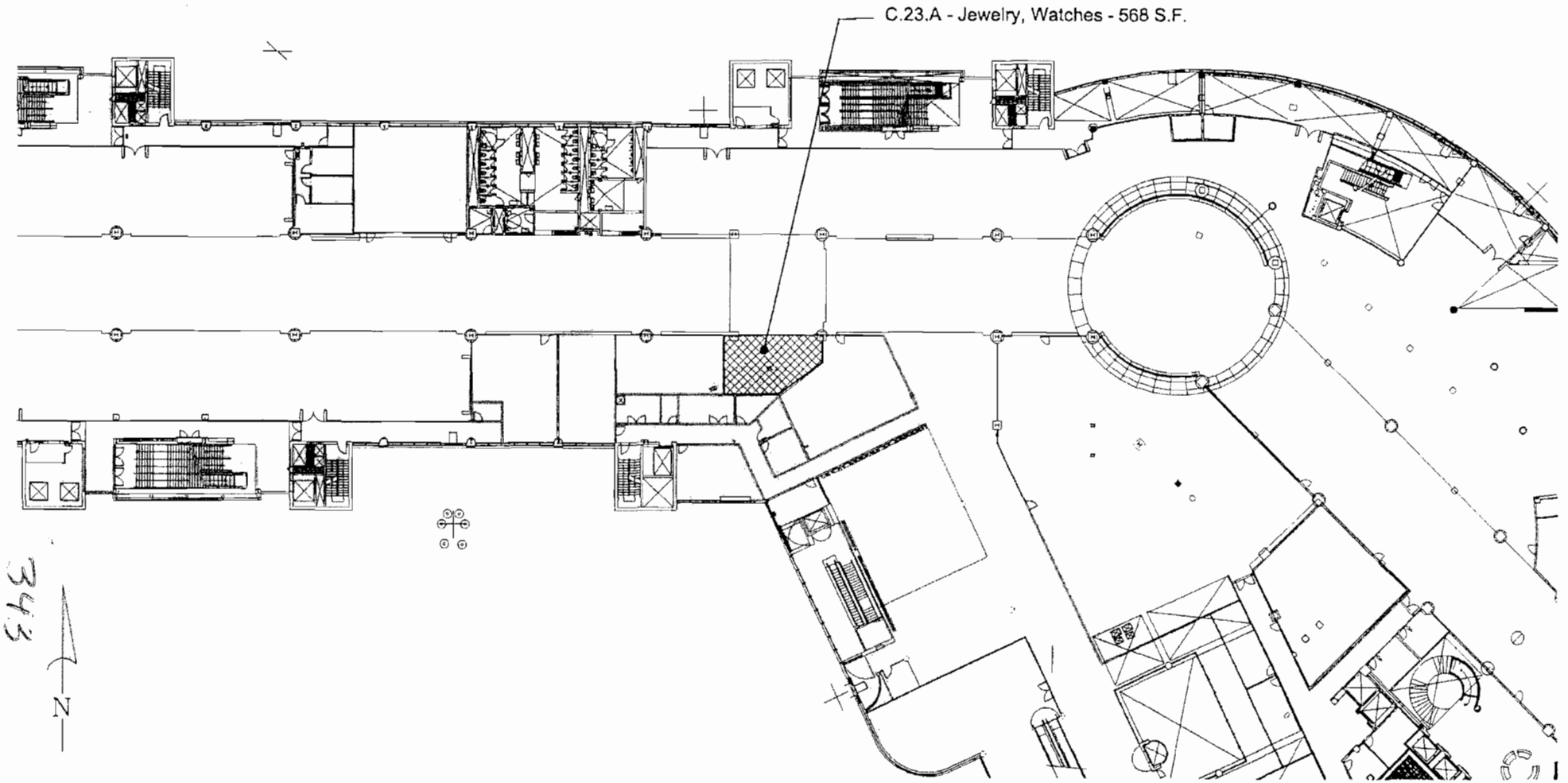
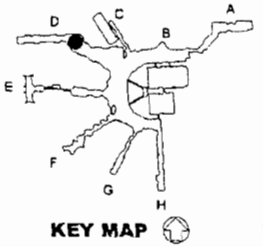


EXHIBIT "A" RETAIL RFP

LEGEND

Jewelry, Watches

MIAMI DADE AVIATION DEPARTMENT
MIAMI INTERNATIONAL AIRPORT
PROPOSED RETAIL CONCESSION
NORTH TERMINAL, ZONE C
Second Level
August, 2007



KEY MAP

MDA
TECHNICAL SUPPORT DIVISION

PROJECT FILE 60279

PACKAGE 5

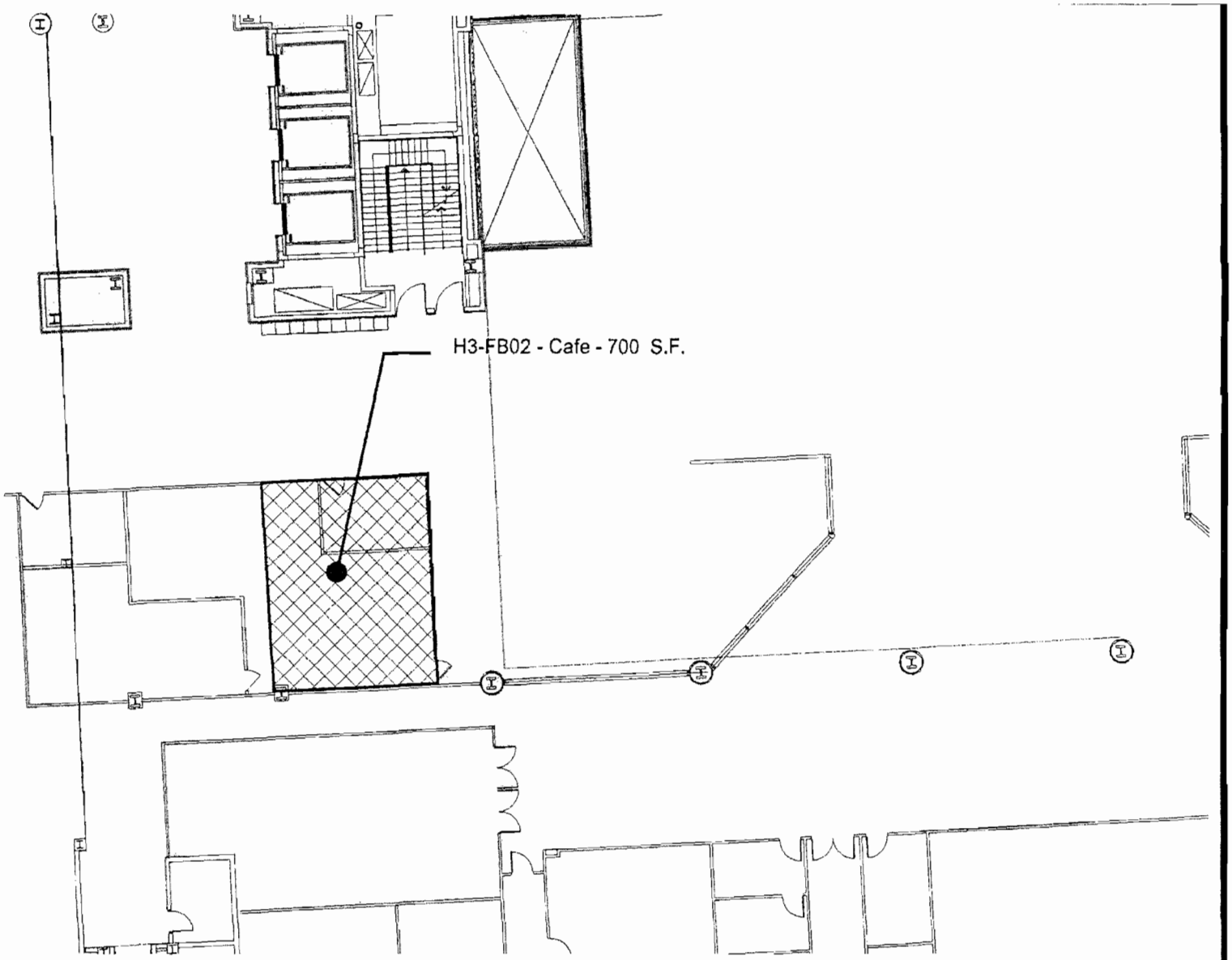
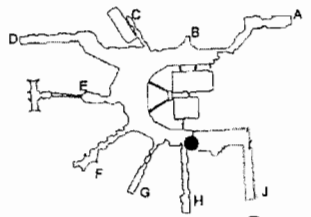


EXHIBIT "A" RETAIL RFP

LEGEND

Cafe

MIAMI DADE AVIATION DEPARTMENT
MIAMI INTERNATIONAL AIRPORT
PROPOSED FOOD & BEVERAGE
SOUTH TERMINAL
Third Level
August, 2007



KEY MAP

TECHNICAL SUPPORT DIVISION

PROJECT FILE 60279

EXHIBIT B

SURETY PERFORMANCE AND PAYMENT BOND

EXHIBIT B

SURETY PERFORMANCE AND PAYMENT BOND

By this Bond, We, [CONCESSIONAIRE], as Principal, whose principal business address is [INSERT ADDRESS], as Developer under the contract dated , 200 , between Principal and Miami-Dade County for the development of the [IMPROVEMENTS] (hereinafter referred to as "Lease and Concession Agreement") the terms of which Lease and Concession Agreement are incorporated by reference in its entirety into this Bond, and We, _____,as Co-Principal, whose principal business address is _____, as Contractor under the contract dated , 200 , between Co-Principal and [CONCESSIONAIRE], for the construction of the [IMPROVEMENTS](hereinafter referred to as "Construction Contract") the terms of which Construction Contract are incorporated by reference in its entirety into this Bond and _____, a corporation, whose principal business address is _____ as Surety, are bound to Miami-Dade County (hereinafter referred to as "County") in the sum of _____ (U.S. dollars) $_____, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal or Co-Principal:

1 . Performs all the work under the Construction Contract, including but not limited to guarantees, warranties and the curing of latent defects, said Construction Contract being made a part of this bond by reference, and in the times and in the manner prescribed in the Construction Contract, including any and all damages for delay; and

2. Promptly makes payments to all claimants, as defined in Section 255.05(l), Florida Statutes, supplying Principal or Co-Principal with labor, materials, or supplies, used directly or indirectly by Principal or Co-Principal in the prosecution of the work provided for in the Construction Contract; and

3. Pays County all losses, damages, including damages for delay, expenses, costs and attorney's fees, including appellate proceedings, that County sustains because of a default by Principal or Co-Principal under the Construction Contract, including but not limited to a failure to honor all guarantees and warranties or to cure latent defects in its work or materials within 5 years after completion of the work under the Construction Contract; and

4. Performs the guarantee of all work and materials furnished under the Construction Contract for the time specified in the Construction Contract, including all warranties and curing all latent defects within 5 years after completion of the work under the Construction Contract; then this bond is void; otherwise it remains in full force.

If no specific periods of warranty are stated in the Construction Contract for any particular item or work, material or equipment, the warranty shall be deemed to be a period of one (1) year from the date of final acceptance by the County. This Bond does not limit the County's ability to pursue suits directly with the Principal or Co-Principal seeking damages for latent defects in

SURETY PERFORMANCE AND PAYMENT BOND (Cont'd)

materials or workmanship, such actions being subject to the limitations found in Section 95.11, Florida Statutes.

Any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Construction Contract or the changes does not affect Surety's obligation under this Bond.

IN WITNESS WHEREOF, the above bounden parties have caused this Bond to be executed by their appropriate officials as of the _____ day of _____, 20 __.

CONCESSIONAIRE

_____

[CONCESSIONAIRE]

BY:

_____

_____

(President) (Managing Partner or Joint Venturer)

CONTRACTOR

_____

_____ (Contractor Name)

BY:

_____

_____

(President) (Managing Partner or Joint Venturer)

(SEAL)

SURETY PERFORMANCE AND PAYMENT BOND (Cont'd)

COUNTERSIGNED BY RESIDENT
FLORIDA AGENT OF SURETY:

_____

_____
(Copy of Agent's current
Identification Card as issued by
State of Florida Insurance Commissioner must be attached)

_____

SURETY:

_____

By: _____

Attorney-in-Fact

(CORPORATE SEAL)

(Power of Attorney must be attached)

EXHIBIT C

NOT USED

EXHIBIT D

PERFORMANCE BOND FOR MAG REQUIREMENTS

Bond No._____

PERFORMANCE BOND FOR MAG REQUIREMENTS

KNOW ALL MEN BY THESE PRESENTS, that we, _____ _____ as Principal, and _____ licensed to do business in the State of Florida as Surety, are held and firmly bound unto Miami-Dade County (Obligee), in the penal sum of _____ _____, $_____(words and figures) of the Minimum Annual Guarantee as required in Section 3.01 of the Lease and Concession Agreement entitled "Minimum Annual Guarantee", for the payment of which sum well and truly to be made, the Principal and Surety bind themselves, their heirs, executors, administrators, and successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas by Concession Agreement dated _____, Obligee has granted unto said Principal the right to operate an _____ at Miami International Airport and more fully described in said Lease and Concession Agreement for a term as set forth in said Agreement, a copy of which is attached, which Agreement is made a part hereof and incorporated herein by reference.

NOW, THEREFORE, if Principal, its executors, administrators, successors and assigns shall promptly and faithfully perform the Lease and Concession Agreement, according to the terms, stipulations of conditions thereof, then this obligation shall become, null and void; otherwise to remain in full force and effect.

Provided, however, this bond shall be in full force and effect for the term commencing _____ and ending _____but may be renewed annually thereafter by the principal with written consent of the Surety by issuing a Continuation Certificate no later than thirty (30) days prior to the renewal date.

Provided further, however, that regardless of the number of years this bond may be in force, the aggregate liability of the Surety shall not be cumulative and is limited to the stated penal sum.

Provided further, however, that in the event the bond is not renewed, the liability of the Surety shall be limited to the actual damages sustained by the Obligee due to lack of performance of the Principal during the effective term of the bond. The Surety shall not be held liable for any contract period beyond which it consents to in writing, as defined in the Lease and Concession Agreement in Section 3.01 "Minimum Annual Guarantee", and Section 3.11 "MAG Performance Bond".

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their several seals, this ____ day of _____ the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

In The Presence Of:

_____ _____(Seal)

Witness By:_____

Witness: Surety:

_____ _____(Seal)

By: _____

The following Exhibits can be obtained by visiting our Website at: www.miami-airport.com/html/business opportunities.

Exhibit E - Concessions Design Guidelines

Exhibit F - Tenant irport Construction-Non-Reimbursable Procedures (TAC-N)

Tenant Airport Construction Reimbursable Procedures (TAC-R)

Exhibit G - Independent Auditor's Report

Exhibit H - *See Note Below

Exhibit I - Monthly Report of Gross Revenues

Exhibit J- TSA Prohibited Items List

Exhibit K - Commercial Operations Tenant Handbook

Exhibit L - Standards of Operation

* Note: Exhibit H - Executed Affidavits and Condition of Award Certificates.