Memorandum

MIAMI-DADE COUNTY

Date: November 20, 2008

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

Agenda Item No. 12(A)(2)

From: George M. Burgess
County Manager

R.A. Cuevas, Jr.
County Attorney

Subject: Approval of Mediation Settlement Agreement among Miami-Dade County, Felix Equities, Inc. ("FEI"), and United States Fidelity and Guaranty Company ("USF&G"), in the amount of $6,420,875.

RECOMMENDATION

It is recommended that the Board approve the attached Settlement Agreement among Miami-Dade County, Felix Equities, Inc.("FEI"), and United States Fidelity and Guaranty Company ("USF&G"), under which the County will pay FEI and USF&G the sum of $6,420,875 to settle all claims of FEI and USF&G arising out of FEI's and USF&G's work under a construction contract at Miami International Airport known as the "Concourse A Apron & Utility Corridor Phase 3, Project Number 95-098-A21 (the "Construction Contract") and arising out of FEI's and USF&G's claims asserted in the lawsuit styled *Felix Equities, Inc., v. Miami-Dade County, Florida,* Case No. 01-31297 CA 27, in the Circuit Court of the 11th Judicial Circuit in Miami-Dade County.

SCOPE

Miami International Airport is located within District Six.

FISCAL IMPACT

The original construction contract was in the amount of $19,900,000. There is a balance owing under the contract in the amount of $6,888,297.18. The settlement of $6,420,875 is less than the balance under the contract and no funds other than the funds currently available under the contract will be used.

PROJECT MONITOR

The project has been closed but the lawsuit and the settlement agreement are under the supervision of Juan Gonzalez, Chief, Airport Construction, of Miami-Dade County's Aviation Department.

BACKGROUND

The construction contract was advertised for public bidding in 1998. FEI was awarded the contract in the amount of $19,900,000 based on FEI's assurance that it would complete the work in only 440 days rather than the anticipated 540 days.

The work under the construction contract involved the landside and airside areas of the airport. In both areas, FEI was required to install twin jet fuel pipes, along with utility pipes for water, sanitary sewage, electrical, and telecommunications.

A notice to proceed was issued to FEI on February 8, 1999. Shortly after FEI commenced construction, it became apparent that FEI was having problems in providing sufficient manpower for the job, acquiring the necessary fuel and utility line equipment in a timely manner, and arranging for subcontractors to perform the work. At the same time, the County discovered a number of unforeseen subsurface conditions and soil contamination problems that required the County to issue not less than 42 work orders for additional work on the pre-termination portion of the project.

The project was under the direct management of Dade Aviation Consultants ("DAC"). The engineering work was provided by Greiner, Inc. ("Greiner"), and the construction inspection work was performed by The Architectural Partnership ("TAP").

The County had earlier agreed that the additional work and other unforeseen conditions entitled FEI to 300 additional days to complete the work. In September of 2000, however, it became apparent to the professional service managers on the job that, in spite of the 300 additional days granted, FEI would be unable to complete the job in a timely manner and that the job was in such a state of disarray that a notice of potential termination should be issued. The County issued the notice to FEI and demanded assurance from FEI that they would be able to complete the work on a timely basis. No satisfactory assurance was provided by FEI and DAC recommended to the County that the contract be terminated.

The construction contract was terminated on November 2, 2000 and the Surety, USF&G, was placed on notice to complete the work. USF&G retained FEI to continue as the general contractor to complete the work. USF&G thereafter failed to provide the County with satisfactory pay requests for the work that USF&G caused to be performed on the project, and consequently, with the exception of an interim payment of $2.5 million dollars in December 2004 that was made as part of the litigation process, the County has paid USF&G nothing for the work required to complete the project. After USF&G started performing the work on the post-termination portion of the work in January, 2001, it was not until three years later in November 2003 that USF&G advised the County that the work it viewed as being required under the Construction Contract was completed.

Meanwhile, in late 2001, FEI had filed two actions in local state court. One was the lawsuit against the County that is the subject of the Settlement Agreement involved in this memorandum and resolution. The other was a companion lawsuit brought against DAC, Greiner, TAP, and certain named individuals of those companies. In the lawsuit brought against the County, FEI claimed that it was entitled to damages arising from the wrongful termination of the construction contract and delay damages.

DAC, Greiner, and TAP owed the County an obligation under their respective professional service agreements to indemnify the County and provide a defense against the allegations made by FEI in the lawsuit. Accordingly, after discovery had commenced, the County tendered the defense of the lawsuit to those three parties. DAC, Greiner, TAP, and their insurance carrier CNA retained the local law firm of Shutts & Bowen and a law firm from Orlando (Page, Eichenblatt, Bernbaum & Bennett), to represent the defendants and the County. The County Attorney's Office continued to be actively involved in the discovery and defense of the lawsuit.

The lawsuit against the County became divided into two portions: one was for "pre-termination" damages, i.e., damages arising out of all actions occurring prior to November 2, 2000, and the other was for "post-termination" damages, i.e., damages arising out of all actions occurring after November 2, 2000. The lawsuit is significantly complex, and involves not less than 188,000 separate documents to be considered in conjunction with the County's defense of the claims. Active discovery on just the pre-termination portion of the lawsuit has occurred over the past four years, and the parties were about to commence active discovery in the post-discovery portion. Two separate jury trials would have been required. The first jury trial involving the pre-termination liability and damages alone was estimated to require six weeks of jury trial action, and the second involving the post-termination damages was estimated to require a similar period of time, following an extensive discovery period associated with that post-termination period.

FEI has claimed that FEI and USF&G together are entitled to damages in excess of $30 million. The County refused to pay anything other than a suitable amount representing the work that USF&G in fact performed on the job. The contract balance of $6.68 million has been kept in an interest-bearing account since 2003. The County was also mindful that, even though the County believed it would prevail at trial, there were many issues in the case upon which a jury could conceivably find in favor of FEI and/or USF&G, in which case those parties would be entitled to significant amounts of interest and attorneys' fees.

The parties attempted to mediate the matter in June 2006, but that effort was unsuccessful. The parties engaged in a new mediation on September 18, 2008, and this time the mediation resulted in a settlement of both lawsuits. Under the Settlement Agreement with the County, the settlement is made conditional upon approval by the Board of County Commissioners, and requires the County to pay FEI and USF&G the sum of $6,420,875 within fourteen days of Board approval. Under the Settlement Agreement among FEI and DAC, Greiner, and TAP, *et al.,* those parties and their insurance carrier agree to pay FEI and USF&G the sum of $2,929,125 conditioned upon approval of the first Settlement Agreement by both the Board of County Commissioners and the parties then in control of consultants' legal affairs.

Under the Settlement Agreement with the County, FEI and USF&G release the County forever from any claims FEI and USF&G did raise or could have raised in their lawsuit against the County. In turn, the County releases FEI, USF&G, and the consultants (including DAC, Greiner, and TAP) from all claims relating to the subject matter of the lawsuit, the project, or the separate professional services agreements between the County and the consultants.

The County is pleased that the lawsuit could be settled and that the lawsuit could be settled for an amount that is less than the existing balance remaining under the Construction Contract. It is therefore recommended that the Board approved the attached Settlement Agreement between the County and FEI and USF&G.

PROJECT: Concourse "A" Apron and Utility Corridor Phase 3

PROJECT NO.: 95098A21

PROJECT DESCRIPTION:	Installation of underground utilities, including jet fuel pipes, electrical, telecommunications duct banks, water main, and sanitary sewer lines, on both the airside and landside portions of the airport.
PROJECT LOCATION:	Miami International Airport
APPROVAL PATH:	Board of County Commissioners
USING DEPARTMENT:	Aviation Department
MANAGING DEPARTMENT:	Aviation Department
PRIME CONTRACTOR:	Felix Equities, Inc.
COMPANY PRINCIPALS:	Felix M. Petrillo, President William J. Vescio, Vice President Felix J. Petrillo, Vice President
COMPANY QUALIFIER:	Nicholas Fiducia
COMPANY EMAIL ADDRESS:	Not available
COMPANY ADDRESS	385 Alhambra Circle Coral Gables, Fl 33134
YEARS IN BUSINESS:	20
PREVIOUS CONTRACTS WITH THE COUNTY:	Four contracts totaling $31,442,000
CSBE CONTRACT MEASURES:	22%, later reduced to 14.38%
CSBE ACHIEVED	12.6%, with $1,641,426 being paid to date
CSBE SUBCONTRACTORS AND SUPPLIERS:	MIA Electrical, Inc. Roberts Traffic Corporation MLC Construction

Assistant County Manager

MEMORANDUM

(Revised)

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

DATE: November 20, 2008

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

SUBJECT: Agenda Item No. 12(A)(2)

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**

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Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 12(A)(2)
11-20-08

RESOLUTION NO. _____

RESOLUTION RELATING TO MIAMI INTERNATIONAL AIRPORT; APPROVING MEDIATION SETTLEMENT AGREEMENT UNDER WHICH THE COUNTY WILL PAY $6,420,875 TO RESOLVE ALL CLAIMS AGAINST THE COUNTY ARISING OUT OF THE LAWSUIT AMONG FELIX EQUITIES, INC., UNITED STATES FIDELITY AND GUARANTY COMPANY, AND MIAMI-DADE COUNTY, CIRCUIT COURT CASE NO. 01-31297 CA 27, SUCH LAWSUIT RELATING TO INSTALLATION OF JET FUEL PIPING AND UTILITY PIPING UNDER THE CONTRACT KNOWN AS CONCOURSE A APRON & UTILITY CORRIDOR PHASE 3, PROJECT NUMBER 95-098-A21; AUTHORIZING THE MAYOR OR DESIGNEE TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY TO IMPLEMENT THE AGREEMENT, SUBJECT TO APPROVAL OF THE COUNTY ATTORNEY AS TO FORM AND LEGAL SUFFICIENCY

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum and document, copies of which are incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the attached Settlement Agreement ("the Agreement") among Miami-Dade County, Felix Equities, Inc.("Felix Equities"), and the United States Fidelity and Guaranty Company ("USF&G"), under which the County's Aviation Department shall pay Felix Equities and USF&G the amount of $6,420,875, in payment by the County for the release by all parties of all claims that have been or could have been raised against and among each other in the lawsuit styled as *Felix Equities, Inc., v. Miami-Dade County*, Circuit Court Case No. 01-31297 CA 27, such lawsuit relating to the installation of jet fuel piping and utility piping under the construction

contract known as the "Concourse A Apron & Utility Corridor Phase 3, Project Number 95-098-A21" at Miami International Airport, in substantially the form attached hereto and incorporated herein; authorizes the County Mayor or designee to execute the Agreement in substantially the form attached hereto, and to execute all other documents necessary to implement the Agreement, subject to approval of the County Attorney as to form and legal sufficiency.

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 20th day of November, 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.

Thomas P. Abbott

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made and entered into this 18th day of September, 2008, by and between the following, sometimes referred to hereafter collectively as the "Parties" and individually as a "Party":

> Felix Equities, Inc. ("FEI") and United States Fidelity and Guaranty Company, now known as The Travelers Companies, Inc. (sometimes referred to hereafter as the "Surety"), with FEI and the Surety sometimes collectively referred to hereafter as "Plaintiffs,"
>
> - and -
>
> Miami-Dade County, Florida, referred to hereafter as the "County" or "Defendant."

Whereas, there is currently pending in the 11th Judicial Circuit Court in and for Miami-Dade County, Florida (the "Court"), Case No. 01-31297 CA 27, an action entitled *Felix Equities, Inc. versus Miami-Dade County, Florida*, referred to hereafter as the "Lawsuit";

Whereas, there is currently pending in the 11th Judicial Circuit Court in and for Miami-Dade County, Florida (the "Court"), Case No. 01-31298 CA 01, an action entitled *Felix Equities, Inc. versus Bechtel Corporation, et al.*, referred to hereafter as the "Consultants Lawsuit" in which the defendants include Bechtel Infrastructure Corporation f/k/a Bechtel Corporation, DMJM Aviation, Inc. f/k/a Day & Zimmerman, Inc., Spillis Candela & Partners, Inc., Budgal Group, Inc., Poinciana Development Group, Inc. f/k/a Forrest Construction Management, Inc., Maurice Gray Associates, Inc., Sharpton, Brunson & Company, TBI Airport Management, Inc. f/k/a Thompson Consultants International, Inc., all as joint venturers doing business as Dade Aviation Consultants ("DAC"), Rafael Becquer, Andres Gutierrez, P.E., URS Corporation Southern, Inc. f/k/a URS Griener, Inc. ("URS"), Miguel Cruz, P.E., and The Architectural Partnership, Inc. ("TAP"), all of the foregoing collectively referred to hereafter as "Consultants";

Whereas, the Parties, each of whom is represented by counsel, recognize their respective rights and obligations, and are desirous of settling – fully and finally – the Lawsuit as well as any and all claims and counterclaims which were or could have been brought in the Lawsuit;

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Whereas, prior to signing this Agreement, each Party had an opportunity to and in fact has had counsel review this Agreement and explain that Party's rights and obligations under and the legal effect of this Agreement; and

Whereas, the Parties have signed this Agreement of their own free will and volition, with the full recognition and understanding of their rights and obligations under and the legal effect of this Agreement;

Now Therefore, for and in consideration of the following covenants and agreements, or other valuable consideration, the receipt and sufficiency of which are hereby acknowledged and conclusively established, the Parties covenant and agree as follows:

1. **Recitals**: The foregoing recitals are true and correct.

2. **Nothing In This Agreement To Act As Admission**: Neither this Agreement nor anything in it shall act as or constitute an admission by any Party that any Party, or any of their respective past or present officers, directors, shareholders, agents, employees, independent contractors, agents, accountants or attorneys, committed any wrongful act, or violated or breached the terms of any agreement or duty owed, whether statutory or otherwise.

3. **Conditions Precedent**: A condition precedent to the effectiveness of this Agreement is approval of this Agreement by the Miami-Dade County, Florida Board of County Commissioners (the "Board"), to the extent that may be required. An additional condition precedent to the effectiveness of this Agreement is approval of this Agreement by the Trustee of the Liquidating Trust (the "Trustee") that owns FEI, to the extent that may be required. An additional condition precedent to the effectiveness of this Agreement is approval of this Agreement by the DAC Board of Control and URS.

4. **Settlement of Lawsuit**: Upon approval of this Agreement by the Board and the Trustee, in settlement of the Lawsuit, including but not limited to any and all claims and counterclaims which were or could have been asserted in the Lawsuit, the County promises to pay Plaintiffs the sum of Six Million Four Hundred Twenty Thousand Eight Hundred Seventy-Five Dollars ($6,420,875), referred to hereafter as the "Settlement Sum." The Settlement Sum shall be paid within fourteen (14) days from the date of the approval by the Board (as may be necessary) and the Trustee (whichever is later) of this Agreement either via wire transfer or check made payable to Ferencik, Libanoff, Brandt, Bustamente & Williams, P.A. Trust Account. Additionally, the Parties, through their respective counsel in the Lawsuit, within five (5) days of payment of the Settlement Sum, and receipt of good funds, shall prepare and file with the Court, in accordance with Rule 1.420 of the Florida Rules of Civil Procedure, a stipulation of dismissal with

prejudice (along with a proposed Order of Dismissal With Prejudice) providing that the Lawsuit shall be dismissed with prejudice, with each side to bear its own attorneys' fees and costs, and with the Court reserving jurisdiction for the purpose of enforcing this Agreement. In addition, Defendant will exonerate the payment and performance bonds issued by Surety for the Project (as defined below), cancel same of record, and return the bonds to Surety.

5. **Release from Plaintiffs to Defendant**: Plaintiffs hereby remise, release, acquit, satisfy and forever discharge Defendant (including Defendant's past and present employees, members of its Board of County Commissioners, agents, attorneys, accountants, insurers, and servants, and their respective heirs and personal representatives, all of the foregoing hereinafter collectively referred to as the "Defendant Releasees"), of and from any and all, and all manner of, claims, actions, causes of action, suits, debts, sums of money, accounts, reckonings, contracts, controversies, agreements, promises, damages, and demands whatsoever, in law or in equity, which Plaintiffs had or now have, or which any successor or assign of Plaintiffs hereafter can, shall or may have, against any of the Defendant Releasees for, upon, or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the date of this Agreement, whether known or unknown, direct or indirect, vested or contingent, which relates to the subject matter of the Lawsuit or arising out of the construction contract known as the "Concourse A Apron & Utility Corridor Phase 3, Project Number 95-098-A21 (the "Project"). Without limiting the generality of the foregoing, this Release includes the release of any and all claims, rights, and causes of action, of any type or kind whatsoever, which were or could have been raised or asserted by Plaintiffs against the Defendant Releasees in the Lawsuit. Notwithstanding the foregoing, Plaintiffs expressly exclude from the effect of this Release and do not release the Defendant Releasees from the terms and conditions of this Agreement.

6. **Release from Defendant to Plaintiffs and Consultants**: In consideration of the promises made herein by the Parties each to the other, and by Consultants to the Plaintiffs in a companion Settlement Agreement that resolves all claims arising between the Consultants and the Plaintiffs in the Consultants Lawsuit, Defendant hereby remises, releases, acquits, satisfies and forever discharges Plaintiffs and Consultants (including each Plaintiff's and Consultants' past and present parent, subsidiary, affiliate or predecessor entities, and any and all of his, her, its and/or their respective past and present officers, directors, agents, attorneys, accountants, insurers, servants, employees, and shareholders, and their respective heirs and personal representatives, all of the foregoing hereinafter collectively referred to as the "Plaintiff/Consultant Releasees"), of and from any and all, and all manner of, claims, actions, causes of action, suits, debts, sums of money, accounts, reckonings, contracts, controversies, agreements, promises, damages, and demands whatsoever, in law or in equity, which Defendant had or now has, or which any successor or assign of Defendant hereafter can, shall or may have, against any of the Plaintiff/Consultant Releasees for, upon, or by reason of

any matter, cause or thing whatsoever, from the beginning of the world to the date of this Agreement, whether known or unknown, direct or indirect, vested or contingent, which relates to the subject matter of the Lawsuit or the Project, or any of the professional services agreements between the Defendant and the Consultants arising out of and relating to the Project, and any indemnity provisions or indemnity obligations provided therein or arising thereunder or under common law, the contract between FEI and the County, or any payment made pursuant to this Agreement, and all bonds issued by the Surety to the County, as well as any future claims arising out of the work performed by Plaintiffs and all subcontractors (including but not limited to claims for defective or nonconforming work, regardless of whether such alleged defective or nonconforming work is patent or latent in nature, except to the extent of any unexpired separate and express written warranties provided by Plaintiffs or its subcontractors, provided that enforcement of any warranty claim can be asserted only against the provider of the warranty). Without limiting the generality of the foregoing, this Release includes the release of any and all claims, rights, and causes of action, of any type or kind whatsoever, which were or could have been raised or asserted by Defendant against the Plaintiff/Consultant Releasees in the Lawsuit. Notwithstanding the foregoing, Defendant expressly excludes from the effect of this Release and does not release the Plaintiff/Consultant Releasees from the terms and conditions of this Agreement.

7. Attorneys' Fees: Other than as provided below, the Parties agree that each of them will be responsible for paying their own attorneys' fees, costs and expenses arising out of or connected with the Lawsuit, including but not limited to the preparation and execution of this Agreement.

8. Paragraph Headings: The headings of the paragraphs of this Agreement are inserted only for the purpose of convenience of reference, and the Parties recognize and agree that these headings may not adequately or accurately describe the contents of the paragraphs which they head. Such headings shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of this Agreement or any part or portion thereof, nor shall they otherwise be given any legal effect.

9. Parties: This Agreement, as well as the obligations created and the benefits conferred hereunder, shall be binding on and inure to the benefit of the Parties as well as their personal representatives, heirs, past and present representative officers, directors, agents, attorneys, accountants, insurers, employees, and any subsidiary, affiliated and parent corporations, collateral corporations, or other business entities controlled directly or indirectly by the Parties. Each Party hereby represents and warrants, with respect to any and all claims and counterclaims which were or could have been asserted in the Lawsuit against the other Party, that: (a) no other person or entity is entitled to assert any such claims or counterclaims against, or to recover any monetary, declarative,

injunctive, equitable, or any other form of relief from, the opposing Party; and (b) except with regard to the claims owned by the Trustee, no Party has assigned, transferred, hypothecated, or in any other way disposed of all or any portion of any of claims or counterclaims which were or could have been asserted in the Lawsuit against the opposing Party.

10. Authority: Each person signing this Agreement on behalf of a Party represents and warrants that he or she has full power and authority to enter into this Agreement and to fully, completely, and finally settle the Lawsuit, including but not limited to any and all claims and counterclaims which were or could have been asserted in the Lawsuit.

11. Governing Law and Venue: This Agreement shall be enforceable and construed according to the laws of the State of Florida without regard to its conflict of laws provisions. The Parties agree that any action to enforce this Agreement shall be brought in the 11th Judicial Circuit in and for Miami-Dade County, Florida. Moreover, each Party agrees and consents to the exercise of personal jurisdiction in these courts for the purpose of any enforcement action.

12. Enforcement Action: The Parties agree that in the event any Party brings an action to enforce any of the provisions of this Agreement, the Party prevailing in any such action shall be entitled to recover, and the losing Party shall be obligated to pay, the reasonable attorneys' fees and costs incurred in such proceeding, including attorneys' fees and costs incurred in any appellate proceedings. **THE PARTIES AGREE TO WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ENFORCEMENT PROCEEDING, ACTION, OR LITIGATION ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS AGREEMENT.**

13. Participation of Mediator in Preparing Settlement Papers: The Parties acknowledge that Brian F. Spector, who served as the mediator in the Lawsuit (the "Mediator"), prepared or assisted the Parties' respective counsel in preparing this Agreement (including any exhibits). The Parties (and each of them) acknowledge that the Mediator is not their lawyer and each Party looked solely to its own counsel for advice concerning the advisability of entering into this Agreement. To the extent limited by Florida law, the County and the other Parties agree to indemnify the Mediator and hold the Mediator harmless against claims of any type or kind which might by asserted by anyone against the Mediator arising, directly or indirectly, out of the Mediator's participation in the preparation of this Agreement and the exhibits hereto.

14. Entire Agreement: The Parties acknowledge that this Agreement contains the full and complete agreement between and among them, and that there are no oral or implied agreements or understandings not specifically set forth herein. Each Party acknowledges that no other Party, or agent or attorney of any other Party, or any person, firm, corporation or any other entity has made any

promise, representation, or warranty, whatsoever, express, implied, or statutory, not contained herein, concerning the subject matter hereof, to induce the execution of this Agreement. Each signatory also hereby acknowledges that he or she has not executed this Agreement in reliance on any promise, representation, or warranty not contained herein. The Parties further agree that no modifications of this Agreement may be made except by means of a written agreement signed by each of the Parties. Finally, the Parties agree that the waiver of any breach of this Agreement by any Party shall not be a waiver of any other subsequent or prior breach. From time to time at the request of any of the Parties to this Agreement, without further consideration and within a reasonable period of time after request hereunder is made, the Parties hereby agree to execute and deliver any and all further documents and instruments and to do all acts that any of the Parties to this Agreement may reasonably request which may be necessary or appropriate to fully implement the provisions of this Agreement.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK FOLLOWED BY THREE (3) SIGNATURE PAGES

FELIX EQUITIES, INC.

By:_____

As: Trustee of the Liquidating Trust

Attorney for Felix Equities, Inc.
in accordance with Fla.R.Civ.P. 1.730(b)

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of September, 2008, by _____, as Trustee of the Liquidating Trust, who produced as identification a driver's license from the State of _____, number _____.

_____
Notary Public, State of Florida at Large

THE TRAVELERS COMPANIES, INC.

By: Gregory Daily

Its: MANAGING DIRECTOR
Indicate Office/Title

Attorney for The Travelers Companies, Inc. in accordance with Fla.R.Civ.P. 1.730(b)

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 18th day of September, 2008, by Gregory Lee Daily of The Travelers Companies, Inc., on behalf of the corporation, who produced as identification a driver's license from the State of Maryland, number D-400-288-497-093.

Brian F. Spector
Notary Public, State of Florida at Large

BRIAN F. SPECTOR
Notary Public - State of Florida
My Commission Expires Oct 15, 2008
Commission # DD330088
Bonded By National Notary Assn.

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MIAMI-DADE COUNTY, FLORIDA

By: _____
Thomas P. Abbott
Assistant County Attorney

_____
Attorney for Miami-Dade County, Florida
in accordance with Fla.R.Civ.P. 1.730(b)

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 18th day of September, 2008, by Thomas P. Abbott, of Miami-Dade County, Florida, on behalf of the County, who produced as identification a driver's license from the State of Florida, number A130-835-41-104-0.

_____
Brian F. Spector
Notary Public, State of Florida at Large

BRIAN F. SPECTOR
Notary Public - State of Florida
My Commission Expires Oct 15, 2008
Commission # DD330088
Bonded By National Notary Assn.