

Date: March 4, 2008

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

From: George M. Burgess
County Manager

Subject: Bid Waiver Authorizing the Award of the attached Concession Agreement to Areas
USA, Inc., Waiving Competitive Bid Requirements R#212-08

Amended
Agenda Item No. 8(A)(1)(F)

This item was amended at the March 4, 2008 Board meeting to reflect that the 30% ACDBE participation was changed to 30% local with 16% ACDBE, and with the 16% being counted toward the local participation.

RECOMMENDATION

It is recommended that the Board award the attached Agreement for a bookstore specialty retail location (location) at Miami International Airport (MIA) with Areas USA, Inc., for an initial Minimum Annual Guarantee (MAG) of \$123,500; waive competitive bidding procedures pursuant to Section 2-8.1 of the Miami-Dade County Code and Section 5.03D of the Home Rule Charter by a two-thirds vote; and authorize the Mayor or his designee to execute the contract substantially in the form attached hereto and to exercise any termination provisions therein.

SCOPE

Miami International Airport (MIA) is located within Commission District 6; however, the impact of this agenda item is countywide as Miami International Airport is a regional asset.

DELEGATED AUTHORITY

In accordance with Miami-Dade County Code Section 2-8.3 related to identifying delegation of Board authority contained within the subject agreement, the Aviation Director or designee has the authority to exercise the option to extend and terminate the agreement.

FISCAL IMPACT/FUNDING SOURCE

This project is revenue generating. The County shall be paid the greater of a monthly fee of 12 percent of total gross monthly revenues or the minimum monthly guarantee upon the opening of five aircraft gates in Zone C. Areas USA will pay an initial minimum annual guarantee of \$123,500 if only two gates – D24 and D25, are operational in the vicinity. Upon five gates becoming operational, Areas USA will pay a Minimum Annual Guarantee (MAG) of \$158,801.61.

In addition, there are also applicable fees, security payments and bonds that must be paid on a percentage basis as follows: (1) Concession Marketing fee of one half (1/2) of one percent (1%) of gross revenues to be assessed annually and paid monthly, (2) Construction Permit Fee in an amount equal to one percent (1%) of the estimated construction cost of the improvements (such fee shall be used to reimburse the Miami-Dade Aviation Department (MDAD) for its costs of maintaining on-site Building Department staff to review Concessionaire's and Sub-tenant's plans/specifications), (3) Initial Payment Security of twenty-five percent (25%) of the MAG and non-Location rent, and (4) Initial MAG Performance Bond or other security instrument equal to seventy-five (75%) percent of the MAG and non-Location rent amount.

TRACK RECORD/MONITOR

Areas has a satisfactory performance record and is current in all obligations to the County. The MDAD Project Manager and Monitor for the project is Manager of Commercial Operations Patricia Ryan.

BACKGROUND

On May 18, 2007, RFP 01-07 was issued for a Bookstore & Café concept in MIA's South Terminal. The seven stated goals (RFP No. MDAD-01-07, Page 12) were to:

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

On Thursday, January 17, 2008, the Aviation & Tourism Committee (ATC) of the Miami-Dade Board of County Commissioners (BCC) considered a recommendation to award to Host International, the contract for RFP # 01.07. Host International is a U.S corporation registered in Delaware. A local company, Master Concessionaire LLC is the joint venture partner of Host. The ATC voted instead to award the contract to second ranked Areas. Areas is based in Spain. Bookstore *Books & Books* is Areas' local partner in the venture. The key reason for the ATC vote, as expressed by several of the Commissioners, was a desire by the ATC to provide an opportunity for a local bookstore to have a presence at MIA. The Committee felt that a local-brand bookstore could best accomplish goal #5 above; a goal which they weighted heavily amongst the others. The ATC however, expressed concern that Areas offered only a 6 percent participation (measured as a percentage of gross revenue share) to its local partner *Books & Books*. By comparison, Host offered 30 percent participation to its local partner and ACDBE Master Concessionaire LLC.

On February 5, 2008, the ATC's Areas/*Books & Books* recommendation was scheduled to be considered by the full BCC. The BCC however deferred the hearing of the item, further voting to return it to the ATC for re-consideration. It is in light of these developments that a compromise recommendation was proposed through a supplemental report at the February ATC. On February 14, 2008, the ATC considered and accepted the supplemental report, the purpose of which was to:

- 1) Preserve the procurement process of Miami-Dade County and in particular the concession program at Miami International Airport (MIA)
- 2) Support the expressed desire of the Miami-Dade County Board of County Commissioners (BCC) to have a local-brand bookstore presence at MIA
- 3) Reinforce the County's commitment to require that mentor-firms permit meaningful participation by their ACDBE/local understudies.

More specifically, the supplement recognizes that the Airport Concession Master Plan called for two bookstores, including the aforementioned locations in the South Terminal, and also acknowledges the desire of the BCC to have a local-brand bookstore at MIA and that the Areas proposal is the only one amongst the four proposals that offers that opportunity – *Books & Books*. The supplement therefore recommended that the original award to Host of RFP 01-07 (South Terminal *Books & Café*) be approved by the Board, and that Areas USA be awarded, through this bid waiver, the yet to be advertised second bookstore location. The award to Areas USA however, was contingent upon a 30-percent gross revenue participation by *Books & Books*, instead of the 6 percent offered in Areas' original proposal.

PROJECT: Bookstore Specialty Retail

PROJECT NO. Not Applicable

PROJECT LOCATION: Miami International Airport

COMPANY NAME: Areas USA, Inc.

TERM OF AGREEMENT: The Term of the Agreement is eight (8) years.

OPTION(S) TO RENEW: 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.

CONTRACT MEASURE: ACDBE participation was voluntary

CONTRACT MEASURE ACHIEVED: Committed to 30% Local with 16% ACDBE participation of gross revenues

ACDBE: RMJ Airport Joint Venture:
Books and Books cafe
Downtown Book Center
Spanish Periodical, LLC

COMPANY PRINCIPALS: Xavier Rabell
Eduardo Uribe
Tim Kinder
Silvia Peralta

GENDER, ETHNICITY & OWNERSHIP BREAKDOWN: Hispanic Male

COMPANY LOCATION: 5301 Blue Lagoon Dr. Ste. 690
Miami, FL 33126

HOW LONG IN BUSINESS: One (1) year and three (3) months

PREVIOUS AGREEMENTS WITH THE COUNTY WITHIN THE PAST FIVE (5) YEARS: One (1) Concession contract for Food and Beverages at MIA; Areas pays sales-based rentals (percentage fee) and Minimum Annual Guarantee, whichever is higher.

ADVERTISEMENT DATE: Not Applicable

LIVING WAGE: Not Applicable

USING DEPARTMENT: Miami-Dade Aviation Department


Assistant County Manager



MEMORANDUM

(Revised)

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

DATE: March 4, 2008


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

SUBJECT: Amended
Agenda Item No. 8(A) (1) (F)

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 _____

Amended
Agenda Item No. 8(A)(1)(F)
03-04-08

RESOLUTION NO. R- 212-08

RESOLUTION AWARDING NON-EXCLUSIVE LEASE AND CONCESSION AGREEMENT AT MIAMI INTERNATIONAL AIRPORT TO AREAS USA, INC., FOR THE BOOKSTORE CAFÉ SPECIALTY RETAIL CONCEPT; WAIVING COMPETITIVE BIDDING PURSUANT TO SECTION 5.03D OF THE MIAMI-DADE COUNTY CHARTER AND SECTION 2-8.1 OF THE CODE OF MIAMI-DADE COUNTY; FINDING SUCH WAIVER TO BE IN THE BEST INTERESTS OF MIAMI-DADE COUNTY; AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE THE AGREEMENT AND ANY RENEWAL, CANCELLATION, OR TERMINATION PROVISIONS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum and documents, 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, pursuant to Section 5.03D of the Home Rule Charter and Section 2-8.1 of the Code waives competitive bidding by vote of two-thirds of the members of the County Commission present and finds such waiver to be best interests of Miami-Dade County, and awards to Areas USA, Inc.; the contract for the financing, construction, and operation of a Bookstore Café Specialty Retail concept at Miami International Airport for a term of eight (8) years commencing upon the Lease Effective Date which may be extended for one, two (2) year term upon agreement of the parties; the Minimum Annual Guarantee shall be \$158,801.61 upon competition of four aircraft gates, and prior thereto it shall be \$123,000. This Board authorizes the Mayor or his designee to execute the agreement in substantially the form attached hereto, and to exercise the renewal, cancellation, or termination provisions contained in the agreement.

The foregoing resolution was offered by Commissioner **Jose "Pepe" Diaz**, who moved its adoption. The motion was seconded by Commissioner **Carlos A. Gimenez** and upon being put to a vote, the vote was as follows:

	Bruno A. Barreiro, Chairman	aye	
	Barbara J. Jordan, Vice-Chairwoman	aye	
Jose "Pepe" Diaz	aye	Audrey M. Edmonson	aye
Carlos A. Gimenez	aye	Sally A. Heyman	aye
Joe A. Martinez	absent	Dennis C. Moss	aye
Dorrin D. Rolle	aye	Natacha Seijas	absent
Katy Sorenson	absent	Rebeca Sosa	aye
Sen. Javier D. Souto	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 4th day of March, 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: **Kay Sullivan**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

RW

Roy Wood

**LEASE AND CONCESSION
AGREEMENT
BY AND BETWEEN
MIAMI-DADE COUNTY, FLORIDA
AND
AREAS USA, INC
FOR
BOOKSTORE SPECIALTY RETAIL
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 Enterprises**" or "**ACDBE**" shall have the meaning ascribed in Article 14 entitled "Airport Concession Disadvantaged Business Enterprises".

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 "**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 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 "**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 "**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.

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 "**Term**" shall mean as ascribed to in Article 1.02.

The term "**Prime Concessionaire**" shall mean the Concessionaire who operates the Location and sub-leases some portion of the Location.

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

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 (6th) Term year of the Agreement and be completed no later than the last day of the sixth (6th) Term year of this Agreement.

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

The term "**Retail**" when used in this Agreement shall mean the bookstore specialty retail Location 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.

**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 _____, 2008, by and between MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida and Areas USA, Inc. ("Concessionaire"), a Florida corporation.

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, Department, and the County to visitors, as further described herein; and

WHEREAS, the Request for Proposal (RFP) 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 NOT USED

1.02 TERM: The Department hereby leases to the Concessionaire the Concession Location, Exhibit A, for a term commencing upon the Lease Effective Date of this Agreement; which shall expire at 11:59 o'clock P.M. on the date eight (8) years from the Lease Effective Date unless sooner terminated. The term of the Agreement awarded to the Concessionaire shall be eight (8) years commencing on the Lease Effective Date unless sooner terminated. In no event shall this Agreement afford Concessionaire or any other

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.

1.08 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 a retail category as described in Exhibit L at the percentage fee as provided by the Department, 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. 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. 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.

requirements of applicable law, the Concessionaire assumes sole responsibility for any such work.

- 1.12 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.
- 1.13 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 penalties 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 bookstore retail concession 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 penalties pursuant to Sub-Article 3.24, Liquidated Damages. Upon the assessment of thirty (30) Days of penalties as to the

2. Develop, subject to review and approval by the Department, a standard Sub-tenant Lease Agreement, 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.
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:
 5. Negotiating financial terms with potential Sub-tenants in accordance with the
 6. Department's approved key business terms and baseline pro-forma.
 7. Preparing term sheets of potential Sub-tenant deals, outlining all business terms for the Department's approval.
 8. List of use and products for each concept.
9. Prepare the appropriate Sub-Lease agreement and exhibits. Sub-Lease agreements shall:
 - (1) Not extend beyond the expiration date or termination date of the Lease and Concession Agreement.
 - (2) Contain comparable terms and conditions as may be applicable to those contained in the Lease and Concession Agreement.

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 an 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 of bookstore 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.

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

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 (10th) 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 (10th) 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 provided by the Department, will be adjusted accordingly.

3.05 RETAIL CATEGORY PERCENTAGE FEE: The Concessionaire shall pay the Department the Percentage Fee as stated below. The Concessionaire percentage will be paid for the Location operated by the Concessionaire and Sub-tenant percentage for the Location sub-leased.

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- 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 (20th) 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 non-Location (Support and Storage) rent. 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 and rent provided for in Sub-Article 3.01, which is equal to \$119,101.20.

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, penalties 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 penalties

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

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.

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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 showing all Gross Revenues and all exclusions from Gross Revenues, 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

and twenty-five percent (25%) of any annual rental for the lease of support and storage spaces set forth in Sub-Article 3.06 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 the 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.”

ARTICLE 4 – IMPROVEMENTS TO THE LOCATION

4.01 IMPROVEMENTS TO LOCATION: The Concessionaire shall be required to invest a minimum of two hundred dollars per square foot (\$200.00 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 1.09(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

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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 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 one complete set 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, 4.03, Refurbishment of Location, and 4.04, Concessionaire Development Requirements. 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

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. Store 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.

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 \$200/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 penalty 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.

- 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.
 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

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 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

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 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 penalties being assessed pursuant to Sub-Article 3.24, Penalties.

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

addition to any penalties imposed by the Department pursuant to Sub-Article 3.24, Penalties.

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.

- 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.

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 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.

11.08 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.

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

- 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 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:

<u>Bond (Total Contract) Amount</u>	<u>Best's Rating</u>
\$ 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.

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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;

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- (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 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

- (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.

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.

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

The Department's decision on commercially useful function matters is final.

14.03 ACDBE PARTICIPATION ACHIEVED THROUGH JOINT VENTURE ("JV") PARTNERING: Concessionaires may 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, Subpart F. 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:

- A. 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.
- B. The work should be submitted as part of this Agreement 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 the 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 (10) hours per week.

Each Joint Venture partner must submit the Monthly Utilization Reports (MURs), in addition to the Monthly Report of ACDBE Joint Venture Activity (Appendix C, page 12), providing details of how the performance objectives were achieved and providing documentation of the achievement on the ACDBE form on page 12 of Appendix C. This information should include, but not be limited to:

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

1. Deliverables and work products.
 2. Time sheets of partner employees used to fulfill objectives. Time sheets must accurately reflect hours worked and compensation earned.
 3. Proof that employees of partners actually work for them (payroll, payroll tax returns, and the like).
- C. Each ACDBE 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.

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 Sub-Article 14.07. Airport Concession Disadvantaged Business Enterprises Plan, 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:

1. Store Operations
 - a. Passenger profile analysis
 - b. Cash handling/sales audit
 - c. Enhancing sales
 - d. Selling to the customer
 - e. Staffing to meet customer levels
 - f. Opening and closing procedures
2. Personnel
 - a. Employment practices
 - b. Compliance with wage and hour laws
 - c. Compliance with County and Airport requirements
 - d. Designing compensation and benefits plans
 - e. Management and staff training to enhance product knowledge and customer service
 - f. Warehousing, packaging and sales reporting of merchandise
3. Design and Display
 - a. Retail layout
 - b. Merchandising techniques
 - c. Visual display techniques
4. Loss Prevention
 - a. External and internal theft
 - b. Shop security
5. Books, Records and Reports
 - a. The books of account and supporting records of the Concessionaire and the Sub-tenant(s) shall be maintained at the principal office and shall be open for inspection by the Department or the ACDBE Sub-tenant(s) or joint venture(s), upon reasonable prior written notice, during business hours.
 - b. The Concessionaire books of account, for both financial and tax reporting purposes shall be maintained on the accrual method of accounting. The Concessionaire shall provide to the Sub-tenant(s) or joint venture(s), within an agreed upon time after the end of each month during the term of the Agreement,

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 Statutes, by Rule 1.070 of the Florida Rules of Civil Procedure, and by Rule 4(c) of the Federal Rules of Civil Procedure. 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, 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 Statutes.

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

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.

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.

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:

Areas USA, Inc.
5301 Blue Lagoon Dr. Ste. 690
Miami, FL 33126

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 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

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. These 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

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.
- 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

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 retail locations in an airport, transportation center, retail shopping center or marketplace generating a minimum of \$250,000 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.

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.
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

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.
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.

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

Areas USA, Inc.
(Legal Name of Corporation)

By: [Signature]
Concessionaire - Signature

Name: Kevin Patel
MGR USA, CEO
(Type Name & Title)

ATTEST:

Secretary [Signature]
(Signature and Seal)

Tim Kinder Director of Merchandise
(Type Name & Title)

INDIVIDUAL, PARTNERSHIP OR JOINT VENTURE

Legal Name
By: _____
Signature

(Type Name & Title)

Legal Name
By: _____
Signature

(Type Name & Title)

Attest: _____

Name of Managing Joint Venturer:

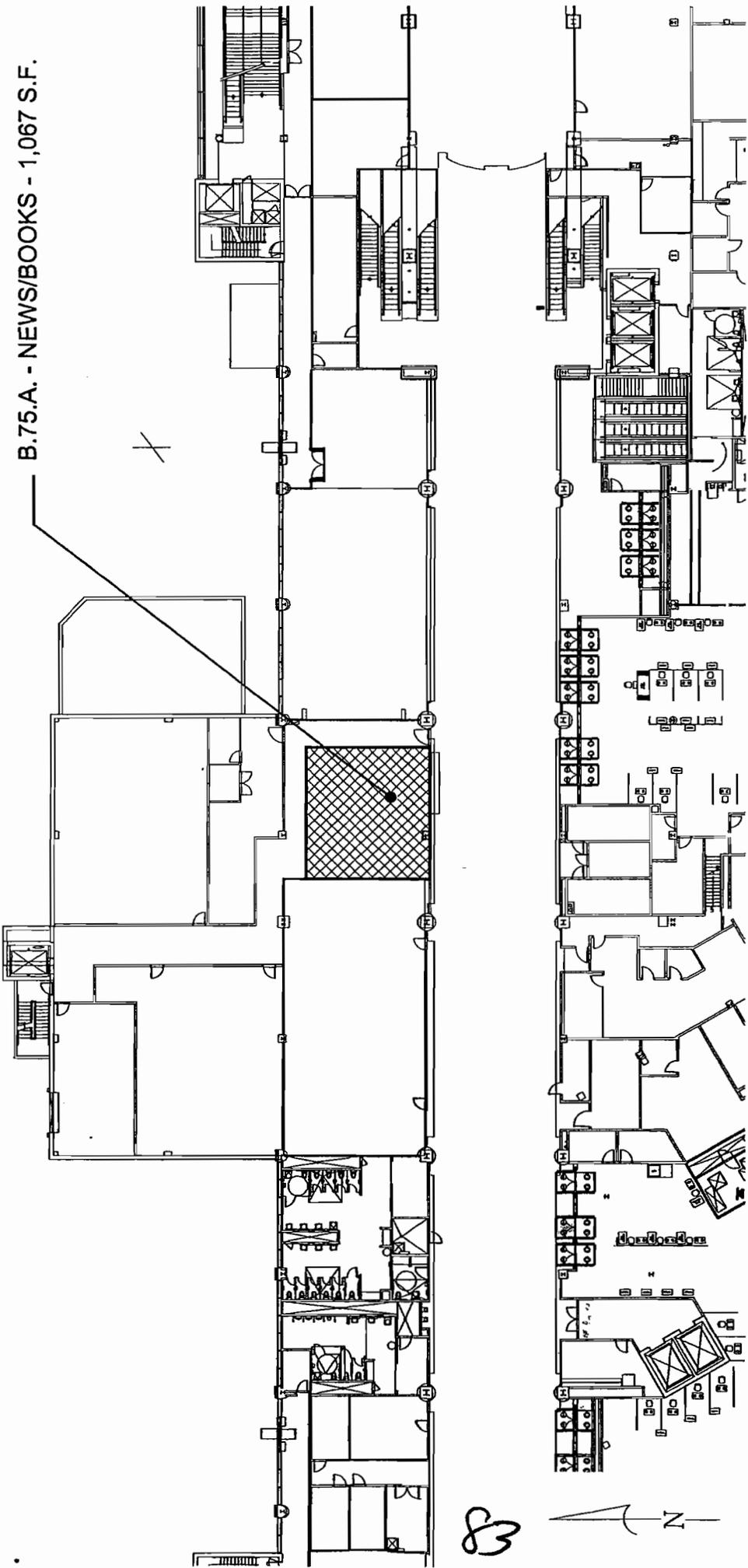
Witness: _____

By: _____
Signature of Authorized Representative of
the Joint Venture

Corporate Seal

(ATTACH ADDITIONAL SHEETS FOR EACH JOINT VENTURER, AS NEEDED)

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EXHIBIT "A" RETAIL RFP

**MIAMI DADE AVIATION DEPARTMENT
 MIAMI INTERNATIONAL AIRPORT
 PROPOSED RETAIL CONCESSION
 NORTH TERMINAL, ZONE B
 Second Level
 August, 2007**

LEGEND
 NEWS/BOOKS

