

Date: November 20, 2008

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

From: George M. Burgess
County Manager

R.A. Cuevas, Jr.
County Attorney

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

Agenda Item No. 12(A)(2)

Resolution No. R-1273-08

RECOMMENDATION

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

SCOPE

Miami International Airport is located within District Six.

FISCAL IMPACT

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

PROJECT MONITOR

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

BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

PROJECT: Concourse “A” Apron and Utility Corridor Phase 3

PROJECT NO.: 95098A21

PROJECT DESCRIPTION: Installation of underground utilities, including jet fuel pipes, electrical, telecommunications duct banks, water main, and sanitary sewer lines, on both the airside and landside portions of the airport.

PROJECT LOCATION: Miami International Airport

APPROVAL PATH: Board of County Commissioners

USING DEPARTMENT: Aviation Department

MANAGING DEPARTMENT: Aviation Department

PRIME CONTRACTOR: Felix Equities, Inc.

COMPANY PRINCIPALS: Felix M. Petrillo, President
William J. Vescio, Vice President
Felix J. Petrillo, Vice President

COMPANY QUALIFIER: Nicholas Fiducia

COMPANY EMAIL ADDRESS: Not available

COMPANY ADDRESS 385 Alhambra Circle
Coral Gables, Fl 33134

YEARS IN BUSINESS: 20

PREVIOUS CONTRACTS WITH THE COUNTY: Four contracts totaling \$31,442,000

CSBE CONTRACT MEASURES: 22%, later reduced to 14.38%

CSBE ACHIEVED 12.6%, with \$1,641,426 being paid to date

CSBE SUBCONTRACTORS AND SUPPLIERS: MIA Electrical, Inc.
Roberts Traffic Corporation
MLC Construction


Assistant County Manager



MEMORANDUM

(Revised)

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

DATE: November 20, 2008

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

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

Please note any items checked.

- "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved _____ Mayor
Veto _____
Override _____

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

RESOLUTION NO. R-1273-08

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

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

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

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

The foregoing resolution was offered by Commissioner **Barbara J. Jordan**, who moved its adoption. The motion was seconded by Commissioner **Katy Sorenson** 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	absent	Audrey M. Edmonson	aye
Carlos A. Gimenez	absent	Sally A. Heyman	aye
Joe A. Martinez	absent	Dennis C. Moss	absent
Dorrin D. Rolle	aye	Natacha Seijas	absent
Katy Sorenson	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	absent		

The Chairperson thereupon declared the resolution duly passed and adopted this 20th day of November, 2008. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK



By: **Kay Sullivan**
Deputy Clerk

Approved by County Attorney as to form and legal sufficiency.

[Handwritten signature]

[Handwritten mark]

Thomas P. Abbott

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3 **SETTLEMENT AGREEMENT**

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

7 Felix Equities, Inc. ("FEI") and United States Fidelity and
8 Guaranty Company, now known as The Travelers
9 Companies, Inc. (sometimes referred to hereafter as the
10 "Surety"), with FEI and the Surety sometimes
11 collectively referred to hereafter as "Plaintiffs,"

12 - and -

13
14
15 Miami-Dade County, Florida, referred to hereafter as
16 the "County" or "Defendant."

17
18 Whereas, there is currently pending in the 11th Judicial Circuit Court in
19 and for Miami-Dade County, Florida (the "Court"), Case No. 01-31297 CA 27,
20 an action entitled *Felix Equities, Inc. versus Miami-Dade County, Florida*, referred
21 to hereafter as the "Lawsuit";

22
23 Whereas, there is currently pending in the 11th Judicial Circuit Court in
24 and for Miami-Dade County, Florida (the "Court"), Case No. 01-31298 CA 01,
25 an action entitled *Felix Equities, Inc. versus Bechtel Corporation, et al.*, referred to
26 hereafter as the "Consultants Lawsuit" in which the defendants include Bechtel
27 Infrastructure Corporation f/k/a Bechtel Corporation, DMJM Aviation, Inc. f/k/a
28 Day & Zimmerman, Inc., Spillis Candela & Partners, Inc., Budgal Group, Inc.,
29 Poinciana Development Group, Inc. f/k/a Forrest Construction Management,
30 Inc., Maurice Gray Associates, Inc., Sharpton, Brunson & Company, TBI Airport
31 Management, Inc. f/k/a Thompson Consultants International, Inc., all as joint
32 venturers doing business as Dade Aviation Consultants ("DAC"), Rafael Becquer,
33 Andres Gutierrez, P.E., URS Corporation Southern, Inc. f/k/a URS Griener, Inc.
34 ("URS"), Miguel Cruz, P.E., and The Architectural Partnership, Inc. ("TAP"), all of
35 the foregoing collectively referred to hereafter as "Consultants";

36
37 Whereas, the Parties, each of whom is represented by counsel, recognize
38 their respective rights and obligations, and are desirous of settling – fully and
39 finally – the Lawsuit as well as any and all claims and counterclaims which
40 were or could have been brought in the Lawsuit;

42 Whereas, prior to signing this Agreement, each Party had an opportunity
43 to and in fact has had counsel review this Agreement and explain that Party's
44 rights and obligations under and the legal effect of this Agreement; and
45

46 Whereas, the Parties have signed this Agreement of their own free will
47 and volition, with the full recognition and understanding of their rights and
48 obligations under and the legal effect of this Agreement;
49

50 Now Therefore, for and in consideration of the following covenants and
51 agreements, or other valuable consideration, the receipt and sufficiency of
52 which are hereby acknowledged and conclusively established, the Parties
53 covenant and agree as follows:
54

55 1. Recitals: The foregoing recitals are true and correct.
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57 2. Nothing In This Agreement To Act As Admission: Neither this
58 Agreement nor anything in it shall act as or constitute an admission by any Party
59 that any Party, or any of their respective past or present officers, directors,
60 shareholders, agents, employees, independent contractors, agents, accountants or
61 attorneys, committed any wrongful act, or violated or breached the terms of any
62 agreement or duty owed, whether statutory or otherwise.
63

64 3. Conditions Precedent: A condition precedent to the effectiveness of
65 this Agreement is approval of this Agreement by the Miami-Dade County, Florida
66 Board of County Commissioners (the "Board"), to the extent that may be required.
67 An additional condition precedent to the effectiveness of this Agreement is
68 approval of this Agreement by the Trustee of the Liquidating Trust (the "Trustee")
69 that owns FEI, to the extent that may be required. An additional condition
70 precedent to the effectiveness of this Agreement is approval of this Agreement by
71 the DAC Board of Control and URS.
72

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

86 prejudice (along with a proposed Order of Dismissal With Prejudice) providing that
87 the Lawsuit shall be dismissed with prejudice, with each side to bear its own
88 attorneys' fees and costs, and with the Court reserving jurisdiction for the purpose
89 of enforcing this Agreement. In addition, Defendant will exonerate the payment
90 and performance bonds issued by Surety for the Project (as defined below), cancel
91 same of record, and return the bonds to Surety.
92

93 5. Release from Plaintiffs to Defendant: Plaintiffs hereby remise,
94 release, acquit, satisfy and forever discharge Defendant (including Defendant's past
95 and present employees, members of its Board of County Commissioners, agents,
96 attorneys, accountants, insurers, and servants, and their respective heirs and
97 personal representatives, all of the foregoing hereinafter collectively referred to as
98 the "Defendant Releasees"), of and from any and all, and all manner of, claims,
99 actions, causes of action, suits, debts, sums of money, accounts, reckonings,
100 contracts, controversies, agreements, promises, damages, and demands whatsoever,
101 in law or in equity, which Plaintiffs had or now have, or which any successor or
102 assign of Plaintiffs hereafter can, shall or may have, against any of the Defendant
103 Releasees for, upon, or by reason of any matter, cause or thing whatsoever, from
104 the beginning of the world to the date of this Agreement, whether known or
105 unknown, direct or indirect, vested or contingent, which relates to the subject
106 matter of the Lawsuit or arising out of the construction contract known as the
107 "Concourse A Apron & Utility Corridor Phase 3, Project Number 95-098-A21 (the
108 "Project"). Without limiting the generality of the foregoing, this Release includes
109 the release of any and all claims, rights, and causes of action, of any type or kind
110 whatsoever, which were or could have been raised or asserted by Plaintiffs against
111 the Defendant Releasees in the Lawsuit. Notwithstanding the foregoing, Plaintiffs
112 expressly exclude from the effect of this Release and do not release the Defendant
113 Releasees from the terms and conditions of this Agreement.
114

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

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

152
153 7. Attorneys' Fees: Other than as provided below, the Parties agree that
154 each of them will be responsible for paying their own attorneys' fees, costs and
155 expenses arising out of or connected with the Lawsuit, including but not limited to
156 the preparation and execution of this Agreement.

157
158 8. Paragraph Headings: The headings of the paragraphs of this
159 Agreement are inserted only for the purpose of convenience of reference, and the
160 Parties recognize and agree that these headings may not adequately or accurately
161 describe the contents of the paragraphs which they head. Such headings shall not
162 be deemed to govern, limit, modify, or in any manner affect the scope, meaning,
163 or intent of the provisions of this Agreement or any part or portion thereof, nor
164 shall they otherwise be given any legal effect.

165
166 9. Parties: This Agreement, as well as the obligations created and the
167 benefits conferred hereunder, shall be binding on and inure to the benefit of the
168 Parties as well as their personal representatives, heirs, past and present
169 representative officers, directors, agents, attorneys, accountants, insurers,
170 employees, and any subsidiary, affiliated and parent corporations, collateral
171 corporations, or other business entities controlled directly or indirectly by the
172 Parties. Each Party hereby represents and warrants, with respect to any and all
173 claims and counterclaims which were or could have been asserted in the Lawsuit
174 against the other Party, that: (a) no other person or entity is entitled to assert any
175 such claims or counterclaims against, or to recover any monetary, declarative,

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

181
182 10. **Authority:** Each person signing this Agreement on behalf of a Party
183 represents and warrants that he or she has full power and authority to enter into
184 this Agreement and to fully, completely, and finally settle the Lawsuit, including
185 but not limited to any and all claims and counterclaims which were or could have
186 been asserted in the Lawsuit.

187
188 11. **Governing Law and Venue:** This Agreement shall be enforceable and
189 construed according to the laws of the State of Florida without regard to its conflict
190 of laws provisions. The Parties agree that any action to enforce this Agreement
191 shall be brought in the 11th Judicial Circuit in and for Miami-Dade County, Florida.
192 Moreover, each Party agrees and consents to the exercise of personal jurisdiction in
193 these courts for the purpose of any enforcement action.

194
195 12. **Enforcement Action:** The Parties agree that in the event any Party
196 brings an action to enforce any of the provisions of this Agreement, the Party
197 prevailing in any such action shall be entitled to recover, and the losing Party shall
198 be obligated to pay, the reasonable attorneys' fees and costs incurred in such
199 proceeding, including attorneys' fees and costs incurred in any appellate
200 proceedings. **THE PARTIES AGREE TO WAIVE ANY RIGHT TO TRIAL BY JURY**
201 **IN ANY ENFORCEMENT PROCEEDING, ACTION, OR LITIGATION ARISING**
202 **OUT OF, DIRECTLY OR INDIRECTLY, THIS AGREEMENT.**

203
204 13. **Participation of Mediator in Preparing Settlement Papers:** The
205 Parties acknowledge that Brian F. Spector, who served as the mediator in the
206 Lawsuit (the "Mediator"), prepared or assisted the Parties' respective counsel in
207 preparing this Agreement (including any exhibits). The Parties (and each of them)
208 acknowledge that the Mediator is not their lawyer and each Party looked solely to
209 its own counsel for advice concerning the advisability of entering into this
210 Agreement. To the extent limited by Florida law, the County and the other Parties
211 agree to indemnify the Mediator and hold the Mediator harmless against claims of
212 any type or kind which might be asserted by anyone against the Mediator arising,
213 directly or indirectly, out of the Mediator's participation in the preparation of this
214 Agreement and the exhibits hereto.

215
216 14. **Entire Agreement:** The Parties acknowledge that this Agreement
217 contains the full and complete agreement between and among them, and that
218 there are no oral or implied agreements or understandings not specifically set forth
219 herein. Each Party acknowledges that no other Party, or agent or attorney of any
220 other Party, or any person, firm, corporation or any other entity has made any

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

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238 **REMAINDER OF THIS PAGE INTENTIONALLY**
239 **LEFT BLANK FOLLOWED BY THREE (3) SIGNATURE PAGES**
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265 **FELIX EQUITIES, INC.**

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268 By: _____

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270 As: Trustee of the Liquidating Trust

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273 STATE OF FLORIDA)

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275 COUNTY OF MIAMI-DADE)

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

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

Notary Public, State of Florida at Large

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