

ADVERTISING AND DISPLAY
CONCESSION AGREEMENT

between

BROWARD COUNTY

and

IN-TER-SPACE SERVICES, INC.
D/B/A CLEAR CHANNEL AIRPORTS

at

FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT

RLI #20160425-0-AV-01

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Advertising and Display Concession Agreement between Broward County and In-Ter-Space Services, Inc. d/b/a Clear Channel Airports

RLI #20160425-0-AV-01

This CONCESSION AGREEMENT ("Agreement") is made by and between BROWARD COUNTY ("County") and In-Ter-Space Services, Inc. d/b/a Clear Channel Airports, authorized to do business in the State of Florida ("Concessionaire").

RECITALS:

A. County is the owner and operator of the Fort Lauderdale-Hollywood International Airport ("Airport").

B. Concessionaire is engaged in operating an advertising and display concession business.

C. Under this Agreement, County shall grant to Concessionaire the nonexclusive right to operate an airport advertising and display concession in the "Assigned Areas" (as hereinafter defined).

D. This Agreement establishes terms and conditions relating to the occupancy, use, and operation of the Assigned Areas by Concessionaire designated herein.

NOW, THEREFORE, in consideration of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, County and Concessionaire hereby agree as follows:

ARTICLE I
DEFINITIONS

The following words in this Agreement shall be as defined below:

- 1.1 Advertising Location(s) shall mean the area or areas of the Airport Terminals, parking garages and Rental Car Center within the Assigned Areas (as hereinafter defined) designated by this Agreement and the Exhibits hereto as the place or places where the placement of advertising by Concessionaire and the advertising business of Concessionaire shall be conducted.
- 1.2 Affiliate shall mean an entity controlled by or under common control with another entity, and "control" shall mean ownership of not less than fifty percent (50%) of all the voting stock or equitable interest in such corporation or entity.
- 1.3 Agreement shall mean this Concession Agreement and its Exhibits A-H inclusive, including any supplements, modifications or amendments thereof.

- 1.4 Airport shall mean the Fort Lauderdale-Hollywood International Airport, located in Broward County, Florida.
- 1.5 Airport Concession Disadvantaged Business Enterprise or ACDBE shall be defined as set forth in 49 CFR Parts 23 and 26 of the Regulations of the Office of the Secretary of the United States Department of Transportation.
- 1.6 Airport Terminals and Terminals shall mean the Terminal Buildings at the Airport, including Terminals 1, 2, 3 and 4.
- 1.7 Annual Gross Revenues shall mean the aggregate amount of all Gross Revenues of Concessionaire during each Contract Year.
- 1.8 Applicable Laws and Regulations shall mean all present and future federal, state, County, quasi-governmental, and local laws, ordinances, codes, rules, and regulations, including but not limited to, ordinances, orders, advisory circulars, tariffs, environmental laws and regulations, security laws and regulations, the Airport's Security Program, all TSA and FAA requirements, and the Airport's rules and regulations, as amended from time to time.
- 1.9 Assigned Area(s) shall mean the area or areas of the Airport Terminals designated by this Agreement, as set forth in **Exhibit A** attached hereto and made a part hereof, as the place or places where the business of Concessionaire may be conducted pursuant to the terms of this Agreement as to those areas set forth in **Exhibit A**. All Assigned Areas are subject to the County's right to access and maintain all utilities, infrastructure, and Improvements now or hereafter constructed thereon, including, but not limited to, equipment permanently affixed therein, consisting without limitation of electrical, plumbing, sprinkler, fire protection and fire alarm, heating, steam, sewage, drainage, refrigerating, communications, gas and other systems and their pipes, wires, mains, lines, tubes, conduits, equipment and fixtures.
- 1.10 Aviation Department shall mean the Broward County Aviation Department and its duly authorized representatives.
- 1.11 Board shall mean the Board of County Commissioners of Broward County, Florida, a political subdivision of the State of Florida.
- 1.12 Capital Expenditure shall mean the costs paid for work done, services rendered, and materials furnished for construction of the "Improvements" (as hereinafter defined) at the Advertising Locations that are made in accordance with "Approved Plans" (as hereinafter defined), that are installed by Concessionaire or Concessionaire's Parties subject to the following:

- 1.12.1 Concessionaire's actual cost of design, construction and acquisition of such Improvements, plus the cost of required bonds and construction insurance, shall qualify as Capital Expenditure costs. Payments made by Concessionaire to independent contractors for engineering and architectural design work shall be included as Capital Expenditure costs, provided, that such costs shall not exceed ten percent (10%) of the total of all other sums included in the determination of the total Capital Expenditure amount. Only payments made by Concessionaire to third party costs shall be included as Capital Expenditure costs.
 - 1.12.2 Costs for consultants (other than engineering and design consultants, as provided above), legal fees and accountants' fees shall not be included in Capital Expenditure costs. No finance, interest expenses or administration, supervisory, or overhead or internal costs of the Concessionaire or Concessionaire's Parties shall be included in the determination of total Capital Expenditure. No other costs of Concessionaire or Concessionaire's Parties shall be included in Capital Expenditure costs unless specifically approved in writing by the Aviation Department, upon the separate written request of the Concessionaire, made prior to incurring such costs. Costs associated with acquisition or installation of Personalty shall not be included in Capital Expenditure costs.
 - 1.12.3 The cost of installations per the Aviation Department's approved "Tenant Design Guidelines" manual (as hereinafter defined), shall be included as Capital Expenditure costs. Special finishes, wall tile or other special wall finishes and coverings and construction photographs shall not be included in Capital Expenditure costs unless specifically approved in writing by the Aviation Department, upon the separate written request of Concessionaire made prior to incurring such costs.
 - 1.12.4 Any costs associated with repairs, alterations, modifications, renovations or maintenance of any Improvements at the Advertising Locations (including Improvements existing as of the date of this Agreement, and Improvements constructed subsequent to the Effective Date at the Advertising Locations) shall not be included in Capital Expenditure costs, unless specifically approved in writing by the Aviation Department upon the separate written request of Concessionaire made prior to incurring such costs.
- 1.13 Capital Investment shall mean Concessionaire's minimum required dollar investment of Capital Expenditures for Improvements to the Assigned Areas in the Airport, including the consolidated rental car center and the garages, as set forth in Article VI.
- 1.14 Intentionally not used.

- 1.15 Concession means the nonexclusive right to operate the advertising and display concession described in this Agreement.
- 1.16 Concession Plan shall mean the plans for renovation and reconcepting of the Advertising Locations in the Airport. The Concession Plan and any change to the Concession Plan must be approved in writing by the Aviation Department prior to implementation. The Concession Plan will include, without limitation, details regarding location, types of operation, and concepts proposed for all Advertising Locations.
- 1.17 Concessionaire's Parties shall mean the officers, agents, employees, partners, contractors, subcontractors, subconcessionaires, sublessees, guests and invitees of Concessionaire and its Affiliates.
- 1.18 Contract Year shall mean the period beginning on the October 1, 2018 and ending September 30, 2019 and each twelve month period thereafter, until the termination of this Agreement.
- 1.19 Director or Director of Aviation shall mean the Director of Aviation or the designee.
- 1.20 Disincentive Fees shall mean the fees established pursuant to Article VIII of this Agreement.
- 1.21 Effective Date shall mean April 1, 2018.
- 1.22 Federal Aviation Administration or FAA shall mean that agency of the United States Government created and established under the Federal Aviation Act of 1958, as codified in Title 49, United States Code, or its successor.
- 1.23 Gross Revenues and Gross Revenues of Concessionaire shall mean the aggregate of all charges or other fees charged by Concessionaire on all sales made by Concessionaire of advertising services, whether such charges or fees were received or not received, and all other items and revenues of every kind and character derived from, including in-kind services, arising out of, or payable on account of the business conducted by Concessionaire at the Airport or from the operations of Concessionaire under this Agreement, whether for cash or credit, without any deduction for credit card discounts or credit card services, whether the same shall be paid or unpaid. "Gross Revenues" shall include all monies paid or payable to Concessionaire and/or any of its sublessees, assignees, contractors or management companies that are doing business at the Airport premises. The term shall not include federal, state, or municipal taxes. "Gross Revenues" shall not include: (1) sales tax collection allowance paid by the state of Florida to Concessionaire as compensation for the keeping of prescribed records and the proper accounting and remittance of state sales tax; (2) any charges on a reimbursement basis, as mutually agreed upon by the Aviation Department and

Concessionaire; (3) any refunds made by Concessionaire to customers, if approved by the Aviation Department and made for reasons other than unacceptable or unsatisfactory services; (4) actual telephone line or data charges to Concessionaire for the telephone reservation boards; (5) any taxes imposed by law which are separately stated to and paid by the customer and directly payable by Concessionaire to a taxing authority; and (6) any commission fees actually paid by Concessionaire for advertising, to a recognized third-party advertising agency that is not an affiliate or a subsidiary company of Concessionaire, provided that any such commissions shall not exceed fifteen percent (15%). The entire amount of sales shall be included in Gross Revenues and no deduction shall be allowed for uncollected or uncollectable credit accounts or dishonored checks.

- 1.24 Improvements shall mean any and all construction, alterations, installations, modifications, renovations, replacements, refurbishments, fixtures, permanently affixed equipment, facilities (both above ground and below ground), and any other structures now or hereafter constructed on or removed from the Assigned Areas by Concessionaire, and all additions, alterations, modifications, renovations, and replacements thereto. Any structure, furnishing, display, equipment, trade fixture, fixture, or any other improvement that is nailed, bolted, stapled, or otherwise permanently affixed to the Assigned Areas shall be considered permanently installed or affixed and is included within the definition of Improvement. Personalty shall not be included in this definition.
- 1.25 Midterm Refurbishment shall mean the refurbishments required to be undertaken by Concessionaire to the Assigned Areas pursuant to Article VI and in accordance with the terms and conditions of this Agreement.
- 1.26 Minimum Annual Guarantee or MAG shall mean the minimum amount of money due annually to County from Concessionaire payable on a monthly basis, pursuant to Article IV of this Agreement.
- 1.27 Monthly Gross Revenues shall mean the aggregate amount of all Gross Revenues of Concessionaire during any calendar month.
- 1.28 Percentage Fee is the monthly sum of money that is due to the County as a percentage of Gross Revenues from all sales and revenues of Concessionaire, pursuant to Article IV of this Agreement.
- 1.29 Person shall mean any individual, firm, trust, estate, partnership, joint venture, company, corporation, association, or any other legal entity or business enterprise. The reference in this Agreement to any one of the foregoing types of persons shall be deemed a reference to all other types of persons.
- 1.30 Personalty shall mean all equipment, furniture, furnishings, and trade fixtures of Concessionaire or third parties operating under Concessionaire, that are located on Assigned Areas, but not permanently affixed thereto.

- 1.31 Privilege Fees shall mean the amount of money owed by Concessionaire to County, pursuant to Article IV herein, for the right to operate its concession business at the Airport, which fee shall be the greater of the Minimum Annual Guarantee or the Percentage Fee.
- 1.32 Support Space shall mean an Assigned Area, which area is noncontiguous to Advertising Locations, used by Concessionaire for office/administrative space or storage of inventory to support the Advertising Locations' operations, as set forth in **Exhibit A**.
- 1.33 Tenant Design Guidelines shall mean those architectural standards, controls, and instructions promulgated by the Aviation Department, as revised from time to time.
- 1.34 TSA shall mean the federal Transportation Security Administration, or any successor agency.
- 1.35 Transition Period shall mean the period of time that Concessionaire will operate from temporary facilities until the final concession areas are constructed and completed. The Transition Period shall commence on the Effective Date and shall end on September 30, 2018.

Additional words and phrases used in this Agreement but not defined above or elsewhere in this Agreement shall have their usual and customary meaning.

ARTICLE II TERM

- 2.1 The term of this Agreement ("Term") shall commence on the Effective Date and terminate at 11:59 p.m. on September 30, 2023, ("Expiration Date"), unless earlier terminated or extended, as provided for in this Agreement.
- 2.2 Option Period. The Director of Aviation, in his or her sole discretion, upon written request from Concessionaire, which request must be delivered by Concessionaire to the Director of Aviation not later than twelve (12) months before the last day of the fifth (5th) Contract Year, may extend the Term of the Agreement for an additional three (3) Contract Years (the "Option Period"). The Director shall respond to the request for extension, in writing, within ninety (90) days after it is received. If the Director fails to timely respond, the request shall be deemed to have been denied. If the requested extension is approved by the Director, the Term of this Agreement shall end on the last day of the eighth (8th) Contract Year (unless earlier terminated). Any approval of a request for an extension to the Agreement shall be conditioned upon Concessionaire being in full compliance with the terms and conditions of the Agreement.

ARTICLE III
PRIVILEGES AND OBLIGATIONS OF CONCESSIONAIRE

- 3.1 Subject to the terms and conditions of this Agreement, Concessionaire shall have the nonexclusive right, privilege and obligation to operate the Concession from the Assigned Areas as set forth on **Exhibit A**. Concessionaire shall obtain the prior written approval of the Aviation Department regarding the types of displays and concepts Concessionaire proposes to bring within its Assigned Areas. The Aviation Department shall have sole discretion to approve or disapprove Concessionaire's proposed displays and concepts.
- 3.2 Concessionaire shall have the right and privilege to sell the permitted advertising concepts described on **Exhibit B**, attached hereto and made a part hereof, on a nonexclusive basis. The permitted advertising concepts listed on **Exhibit B**, which are to be offered for sale by Concessionaire, may not be changed without the prior written consent of the Aviation Department. Any revisions to **Exhibit B** shall be made pursuant to Section 3.2 of this Agreement, and Concessionaire and County shall execute an amendment to this Agreement, which amendment shall set forth the change in permitted advertising concepts through revision to **Exhibit B**, the rates related thereto, and the date on which the change shall be effective. The Director of Aviation shall be authorized on behalf of the County to execute any amendment to **Exhibit A** and **Exhibit B** pursuant to the provisions of this section.
- 3.2.1 Future Rights. The parties anticipate that during the Term of this Agreement the County may, from time to time and at its sole discretion, make additional advertising locations available to Concessionaire in the Airport for Concessionaire's operations. In the event that Concessionaire requests additional advertising locations, Concessionaire shall send a written request to County that includes the following:
1. Size and location of the additional advertising location(s); and
 2. Concessionaire's proposed Percentage Fee.

Within thirty (30) days after receiving the request from Concessionaire, County will notify Concessionaire if it accepts or rejects the request for additional locations. If County fails to respond in thirty (30) days, the request shall be deemed to have been denied.

- 3.3 The content of all advertising shall be submitted to the Aviation Department for approval prior to any use within the Airport. All advertising materials and locations shall comply with the Aviation Department Advertising Policy as same may be amended. In accordance with the Aviation Department Advertising Policy, Concessionaire shall not advertise any goods or products at the Airport that are determined by the Aviation Department to be offensive. Concessionaire will promptly remove any advertisement determined to be offensive or that does not

comply with the Aviation Department Advertising Policy upon the direction of the Aviation Department. If such materials are not removed within twelve (12) hours of the Aviation Department's written direction, then the Aviation Department shall have the right to remove the materials and charge Concessionaire for all costs and expenses related to the removal thereof, and Concessionaire shall pay County within ten (10) days of receipt of invoice from County.

- 3.4 The Aviation Department shall provide a reasonable number of parking spaces and locations, in the sole discretion of the Aviation Department, on or near the Airport for Concessionaire's employees' use. County, in its sole discretion, may impose a reasonable charge, as set forth in Chapter 39 of the Broward County Administrative Code, for the privilege of utilizing these parking facilities which shall be paid by Concessionaire within ten (10) days of receipt of invoice from County.
- 3.5 Concessionaire shall conduct its business from and limit same to the Advertising Locations and other Assigned Areas specifically set forth in **Exhibit A**. Unless otherwise approved in writing by the Aviation Department, Concessionaire may not use any space within or about the Terminals that is not within the designated areas set forth in **Exhibit A**, for storage or operations. At County's sole option, if additional storage space is available, Concessionaire may lease available additional storage space at an annual rate to be paid monthly in advance and in an amount at least equal to the then-current rate on a per-square-foot basis for similar or equivalent space, as set forth in the Broward County Administrative Code. In such event, this Agreement must be amended to reflect the additional storage space and the rental rate therefore.
 - 3.5.1 In the event the Aviation Department deems it desirable that Concessionaire operate at different Advertising Locations or other Assigned Areas than set forth in **Exhibit A**, Concessionaire shall upon ten (10) days written notice be required to relocate and operate out of such reassigned locations without expense to County and without any abatement of the sums payable by Concessionaire to County pursuant to this Agreement, except as may be provided for in this Agreement. In the event any Advertising Location or other Assigned Area is reassigned pursuant to this subsection, **Exhibit A** shall be revised. Both Concessionaire and County shall execute an amendment setting forth the revised **Exhibit A**. If Concessionaire contends the relocation will cause material negative business impacts, Concessionaire may within thirty (30) days of the relocation request, in writing, to meet with the Aviation Department to discuss any such impact. In the event the Director of Aviation determines that an equitable adjustment to Advertising Locations, Assigned Area or Privilege Fees is warranted, an amendment to this Agreement reflecting the proposed change shall be submitted to the Board for consideration.
 - 3.5.2 County reserves the right, in its sole discretion, to delete or reduce any portion of the Assigned Areas due to Airport development, construction,

operational necessity, security, or safety considerations. In the event of such deletion or reduction, Concessionaire shall be given no less than sixty (60) calendar days written notice. Notwithstanding the foregoing, if circumstances beyond the County's control require Concessionaire to reduce or vacate any portion of the Assigned Areas, including, but not limited to, a direct or indirect requirement by the TSA or any other governmental authority, Concessionaire shall be required to immediately vacate those Assigned Areas, and, if available, relocate into other locations designated by the Aviation Department. In such event, County will attempt to provide reasonably comparable space for relocation within the Airport Terminals but makes no guarantee of such availability. Concessionaire shall accomplish any such relocation, expansion, or reduction expeditiously. If Concessionaire contends the relocation will cause material negative business impacts, Concessionaire may within thirty (30) days of the relocation request, in writing, to meet with the Aviation Department to discuss any such impact. In the event the Director of Aviation determines that an equitable adjustment to Advertising Locations, Assigned Area or Privilege Fees is warranted, an amendment to this Agreement reflecting the proposed change shall be submitted to the Board for consideration.

3.5.2.1 The Aviation Department reserves the right, in its sole discretion, to delete or reduce any Support Space dedicated to Concessionaire's administrative functions, including but not limited to, training, human resources, and accounting services. In the event of such deletion or reduction, Concessionaire shall be given no less than sixty (60) calendar days written notice to vacate the space set forth in such written notice.

3.5.2.2 In the event County requires the deletion or reduction of the Assigned Areas pursuant to subsection 3.5.2, County shall not be liable to Concessionaire for any damages, including but not limited to, damages for any inconvenience or loss of business.

3.5.2.3 In the event any Assigned Areas are deleted or reduced pursuant to subsection 3.5.2, **Exhibit A** shall be revised to reflect such reduction or removal, and Concessionaire and County shall execute an amendment reflecting the change in the Assigned Areas.

3.6 In the event the County deems it desirable that Concessionaire operate at different location(s) than that reflected in **Exhibit A**, as may be revised from time to time, Concessionaire shall relocate to and use such reassigned location(s) without expense to the County, and without any abatement of any of the sums payable by Concessionaire to County hereunder. In the event of any reassignment of Assigned Areas location(s) as provided hereunder, **Exhibit A** shall be revised and

Concessionaire and County shall execute an amendment reflecting the change in the Assigned Areas and the revised **Exhibit A**. Upon receiving County's notice, Concessionaire may request, in writing, to meet with the County and discuss, in good faith, any significant negative business impact Concessionaire believes it will suffer as a result of the relocation. After meeting with Concessionaire, the Director of Aviation, in the Director's sole discretion, will determine whether any adjustment decreasing or increasing the Privilege Fee is warranted. If an adjustment to the Privilege Fee is warranted, then an amendment to this Agreement reflecting such change shall be executed by the County and Concessionaire.

- 3.7 Concessionaire may request the consent of the Aviation Department for Concessionaire to operate temporarily from locations in the Terminals which are not included in the Assigned Areas. If the Aviation Department consents to such request, such temporary areas shall be used for the sole purpose of sponsoring special events or promotions. Concessionaire's request shall be made in writing and specify the desired locations, the special event or promotion, the requested length of time for the temporary use, and the products and services to be offered in the temporary area. The Aviation Department, in its sole discretion, shall approve or disapprove such request for the use of temporary locations, within thirty (30) calendar days from receipt of Concessionaire's request. Concessionaire shall pay to County Percentage Fees in accordance with the terms of this Agreement on all sales from such temporary locations. Concessionaire shall report all sales from the temporary locations separately from the sales from the Assigned Areas and such sales from County approved temporary locations shall be excluded from the Annual Adjustment of the MAG as set forth in subsection 4.2.2.2. At all times during which Concessionaire has the right to use or operate from temporary locations approved by the Aviation Department pursuant to this subsection, said temporary areas and the use thereof shall be subject to all the terms and conditions of this Agreement.
- 3.8 Concessionaire is required at all times during the Term of this Agreement to obtain and maintain in full force and effect any and all required permits, licenses, and approvals to legally operate all aspects of its business at the Airport, at Concessionaire's sole expense,.
- 3.9 Concessionaire and Concessionaire's Parties shall have ingress to and egress from the Assigned Areas over Airport public roadways, subject to all Applicable Laws and Regulations. The Aviation Department may, from time to time, substitute other means of ingress and egress. The Aviation Department may, at any time, temporarily or permanently close, consent to, or request the closing of any entrance or other roadway, and any other area at the Airport presently or hereafter used as a roadway, and County shall not be liable for any claims, damages, losses, expenses or liabilities which may arise as a result of any such closing. Concessionaire hereby releases and discharges County, its successors and assigns, from any and all claims, demands or causes of action which Concessionaire may now or at any time hereafter have against County due to the

closing of any street, roadway, or other area used as such, whether within or outside the Airport.

- 3.10 During installation and/or removal of any Personalty or Improvements, Concessionaire shall maintain the public areas surrounding the Assigned Areas in a safe, neat, and orderly manner, as determined by the Aviation Department in its sole discretion.
- 3.11 Concessionaire shall train, instruct and require its employees to assist Airport users with wayfinding within the Airport. Concessionaire shall provide its employees with information regarding the locations of other concessions, restrooms, elevators, airlines, gates, information desks, and other information about the Airport. Said information shall be provided to Airport users with all due courtesy. In addition, Concessionaire shall provide and regularly update each of its locations with a list of emergency and other important telephone numbers.
- 3.12 Concessionaire shall not permit music, audio merchandising, background sounds, or other noise or sounds to be audible outside of the Assigned Areas. All sounds or noise, including but not limited to music generated or caused by the Concessionaire or Concessionaire's Parties, or originating from any Assigned Areas, shall be kept to levels deemed acceptable to the Aviation Department and must immediately be turned off and remain off at the request of the Aviation Department. Concessionaire shall cause the immediate cessation of any noise, music, or other sounds emanating from its Assigned Areas that are offensive, distracting or disturbing, as determined by the Aviation Department in its sole determination.
- 3.13 Concessionaire shall meet with a representative of the Aviation Department designated by the Business & Properties Management Division of the Aviation Department, on no less than a monthly basis to discuss business and operational issues.
- 3.14 Within sixty (60) calendar days following the second (2nd) annual anniversary of the Effective Date, and within sixty (60) calendar days following every other annual anniversary thereafter for the remaining Term, Concessionaire shall deliver to the Aviation Department a concession program containing customer service and marketing components ("Concession Program"). The Concession Program shall include but not be limited to, the following:
 - 3.14.1 A review of each prior year's concession performance, including, without limitation, achievement of sales goals;
 - 3.14.2 The establishment of new goals and objectives for the forthcoming year, including projections of sales for each Advertising Location and the estimated payments which shall be due to County for the forthcoming year;

- 3.14.3 Identification of advertising concepts recommended for replacement during the subsequent year along with a narrative explaining why they are making the recommendation. The Concession Plan shall include all photos, renderings, drawings, and any other information relating to the proposed replacement concepts;
 - 3.14.4 Any future planned or past unplanned capital and/or refurbishment expenditures, investments or Improvements in the Assigned Areas;
 - 3.14.5 Any changes or Improvements in operations anticipated for the coming year, including but not limited to, marketing efforts, training, or services;
 - 3.14.6 Copies of any consumer surveys and other industry trend studies completed for or obtained by Concessionaire that were used or relied upon in the development of Concessionaire's Concession Program;
 - 3.14.7 A review of customer service issues and a complaint summary including, but not limited, to an analysis of how Concessionaire handled the complaints during the previous year;
 - 3.14.8 An updated listing of Advertising Locations, including name of location, type, and square footage of the space. Noncontiguous storage locations, Support Space, temporary Assigned Areas and any Assigned Areas under separate agreements shall be included in this listing; and
 - 3.14.9 Any other information reasonably requested by the Aviation Department.
- 3.15 Concessionaire shall, at all times, keep the Assigned Areas in a clean, safe and sanitary condition and place all garbage, refuse, and recyclable materials in the appropriate containers in the areas designated by the Aviation Department for such. Concessionaire shall take all reasonable measures to reduce the amount of waste it generates by requiring, if possible, suppliers to remove nonessential over wrap, containers, and other packaging, and to use recyclable materials for essential packaging whenever possible.
- 3.16 Aesthetics of the design of the advertising installed at the Advertising Locations shall be consistent with the architecture and design of the Airport or any renovations thereto. Any work proposed by Concessionaire that does not complement the Airport's architecture and motif, as determined in the sole discretion of the Aviation Department, will be disapproved by the Aviation Department. Concessionaire shall provide all identification signage subject to the prior written approval of the signage by the Aviation Department. All signage and supplies shall be consistent with the signage and graphics displayed in the Airport Terminals and shall comply with the provisions of this Agreement and all

Applicable Laws and Regulations. Consistency with the Airport Terminal signage and graphics shall be determined in the sole discretion of the Aviation Department.

Any revenue derived from the placement of signage or advertising shall be included in the Gross Revenues of the Advertising Location and shall be subject to payment of Privilege Fees as referenced herein.

- 3.17 Safety Management System ("SMS"). Concessionaire shall report any and all incidents which have occurred on or about its Assigned Areas, or which have occurred anywhere on the Airport and are related to any of Concessionaire's operations or property, Concessionaire shall cooperate with any subsequent investigations in compliance with Aviation Department's safety management system ("SMS") projects and any other requirement of the FAA's SMS final order, if applicable. All incidents shall be reported in writing to the attention of the airport manager located at the main Aviation Department offices within twenty-four (24) hours of its occurrence. Additionally and simultaneously, a copy of the report shall be emailed to FLLSafety@broward.org or any other email address as directed in writing by the Aviation Department.
- 3.18 Marketing Program: If at any time during the Term of this Agreement the Aviation Department decides to develop a marketing program for all of the concessions located at the Airport, Concessionaire agrees to participate therein, at no additional cost to Concessionaire or County, upon receipt of notice from the Aviation Department that such marketing program shall be implemented. The Marketing Program will cover the development of signage and other promotional materials and programs including, but not limited to, advertising, employee incentives and brochures, informational materials, and technology to communicate the program's offerings. Concessionaire agrees to cooperate with the Aviation Department by providing concept information, logos, or initiating promotional materials, as and when requested.

ARTICLE IV PRIVILEGE FEES, CHARGES AND ACCOUNTABILITY

- 4.1 For the privilege of operating a nonexclusive advertising and display Concession at the Airport, Concessionaire agrees to pay to the County the Privilege Fees as described below. During the Term of this Agreement, the monthly Privilege Fees shall be due and payable monthly on the fifteenth (15th) calendar day of each calendar month.
- 4.2 With the exception of the Transition Period, Privilege Fees shall be the greater of the Percentage Fee calculated pursuant to this Article IV; or the MAG as established pursuant to this Article IV. During the Transition Period, the Privilege Fees shall be the Percentage Fee calculated pursuant to subsection 4.2.1. No MAG payments shall be due to the County during the Transition Period.

- 4.2.1 Percentage Fees shall be equal to sixty-one percent (61%) of monthly Gross Revenues from the preceding month.
- 4.2.2 The MAG shall be calculated as follows:
- 4.2.2.1 The MAG shall be One Million Ten Thousand Dollars (\$1,010,000.00) annually. The MAG shall be payable monthly in the amount of Eighty Four Thousand One Hundred Sixty Six Dollars and Sixty Seven Cents (\$84,166.67), subject to the adjustment stated below.
- 4.2.2.2 Annual Adjustment of the MAG: On the first anniversary of the MAG Commencement Date and on each subsequent anniversary thereafter, the annual MAG shall be adjusted to equal the greater of the following:
- (i) Eight-five percent (85%) of the annual Privilege Fees due by Concessionaire to County for its operations for the preceding Contract Year; or
 - (ii) Previous Contract Year's MAG.
- 4.2.2.3 The adjusted annual MAG during the Term of the Agreement shall never be less than the initial annual MAG specified in subsection 4.2.2.1.
- 4.3 In no event shall the aggregate amount of Privilege Fees payable under this Article IV in any Contract Year exceed the greater of: (a) the MAG for such year; or (b) the total Percentage Fees for such year. Within thirty (30) days of the end of each Contract Year, the parties will meet and review the Privilege Fees paid and Gross Revenues for the period. Any overpayment by Concessionaire shall be applied as credits to reduce Privilege Fees due in the succeeding year. Any overpayment in the last year of the Term shall be refunded within thirty (30) calendar days following receipt of an invoice for such overpayment. If the total Privilege Fees actually paid by Concessionaire during any Contract Year are less than the Privilege Fees due and owing for such Contract Year, then Concessionaire shall immediately pay the difference to County with interest thereon, at eighteen percent (18%) per annum from the date such additional Privilege Fees were due, without further demand. County shall have the right, upon reasonable notice to Concessionaire, to audit Concessionaire's books and records relating to Concessionaire's operations pursuant to this Agreement to determine the correctness of the Privilege Fees paid by Concessionaire to County for any Contract Year.

- 4.4 On or before the 15th calendar day of each month Concessionaire shall submit to County a report of Gross Revenues for the preceding calendar month, and payment of the Privilege Fees attributable to that preceding month. The report shall be on a form supplied by County (**Exhibit G** or as otherwise supplied by County) and signed by an officer, a partner, or other person authorized to sign on behalf of Concessionaire.
- 4.5 Concessionaire shall keep and maintain copies of all invoices, cash receipts, financial records, supporting records, supporting documents, statistical records, and all other documents related to this Agreement (collectively, "books and records"). The books and records of Concessionaire shall, among other things, show all sales made for cash or credit or otherwise, without regard to whether paid or not; all labor, overhead, and all sales taxes collected, as well as the Gross Revenues of said business and the aggregate amount of all sales and services and orders of all Concessionaire's business done upon or within the Assigned Areas of, or in connection with, the Airport. Concessionaire shall keep its books and records in accordance with generally accepted accounting principles and shall maintain such other books and records as the Aviation Department may request. Concessionaire shall keep separate books and records for its Airport operations.
- 4.5.1 Concessionaire's books and records shall be kept and maintained during the "Retention Period" (as hereinafter defined). The "Retention Period" is defined as the greater of: (a) the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, or (b) the period of time covering the term of this Agreement and any extensions thereof and for a period of three (3) years after the expiration or termination of this Agreement, or (c) if any audit has been initiated and audit findings have not been resolved at the end of the three (3) years, the books and records shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by County to be applicable to Concessionaire's records, Concessionaire shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Concessionaire. Concessionaire shall make all books and records required to be maintained hereunder available to the Aviation Department at the Airport, or at the corporate headquarters of Concessionaire, as may be directed by the Aviation Department.
- 4.5.2 If, as a result of any audit, it is established that Concessionaire has understated the Gross Revenues by ten percent (10%) or more (after any deductions and exclusions provided for in this Agreement) during the period covered by the audit, the entire expense of said audit shall be borne by Concessionaire. The provisions of this Section 4.5 shall survive the expiration or termination of this Agreement.
- 4.6 Concessionaire shall provide to the Finance Division of the Aviation Department a special audit report of all Gross Revenues from its operations at the Airport and

from the operations of related or affiliated companies involved in providing services covered by this Agreement. The special audit report shall be prepared by an independent certified public accountant in accordance with the provisions of the "Codification of Statements on Auditing Standards" published by the American Institute of Certified Public Accountants. The special audit report shall be submitted to the Aviation Department within ninety (90) calendar days after the end of each Contract Year and shall include but not be limited to the following:

- 4.6.1 Schedule of all revenues by month broken down by location name, concourse/terminal location, and type of operation and/or product.
 - 4.6.2 Schedule of the MAG and Percentage Fee payments to the Aviation Department for the Contract Year.
 - 4.6.3 A calculation to determine that the total annual Privilege Fees have been paid in accordance with this Agreement.
 - 4.6.4 The special audit report shall include the preparing accountant's opinion on the schedule of all revenues by calendar month, the schedule of payments to the Aviation Department, and the calculation of Privilege Fees.
- 4.7 All payments required to be made by Concessionaire under this Agreement shall be made payable to "Broward County," and shall be paid to the Finance Division, Broward County Aviation Department, 2200 SW 45th Street, Suite 101, Dania Beach, FL 33312, or to such other office or address as specified by the Aviation Department.
- 4.8 Unless otherwise exempted by the Aviation Department, Concessionaire shall pay for all utilities consumed at or used for its Assigned Areas and temporary areas. In the event the Concessionaire wishes to install any utility other than that provided by the Aviation Department, Concessionaire shall obtain prior written approval from the Aviation Department. The Aviation Department, at its discretion, may impose a utility charge for any additional utilities based on one of the following: (a) a consumption audit for utilities consumed at the Assigned Areas, with the cost of such audit borne by Concessionaire; or (b) a pro-rata share calculation made by the Aviation Department. Concessionaire must pay utility charges invoiced by the Aviation Department within ten (10) calendar days after receipt of invoice, or said charges will be subject to interest at the rate of eighteen percent (18%) per annum from the date due until paid in full.

ARTICLE V
IMPROVEMENTS BY COUNTY

- 5.1 County will provide the following for the Assigned Areas:
- 5.1.1 Exterior walls, all structural roof construction, all structural floor construction, and, if applicable, all exterior window walls designed about the perimeter and ceiling, finishes, and common walls as are presently in place at the Assigned Areas or may be installed by County to any new Assigned Areas.
 - 5.1.2 Trunklines for heating and air conditioning service, electrical service, data and water as are presently brought to the Assigned Areas or as may be modified by the ongoing terminal modernization plan. Concessionaire, at its cost and with the prior consent of the Aviation Department, may connect to any nearest utility location for any new Assigned Area.
- 5.2 County makes no representations or warranties whatsoever as to: (a) the condition of the Assigned Areas; or (b) whether the Assigned Areas, or any part thereof, are in compliance with all Applicable Laws and Regulations; or (c) the permitted or available uses of the Assigned Areas under all Applicable Laws and Regulations. County makes no representations or warranties whatsoever as to the legality, permissibility, suitability, or availability of any use of the Assigned Areas that may be contemplated by Concessionaire. County makes no representations or warranties concerning habitability or fitness for any particular purpose. Concessionaire specifically obligates itself to conduct its own due diligence investigation as to the Assigned Areas and the suitability thereof for Concessionaire's purposes. The Assigned Areas and all components thereof are hereby leased in "AS IS CONDITION" and "WITH ALL FAULTS." The Concessionaire represents, acknowledges, and agrees that it has had sufficient opportunity to inspect the Assigned Areas and all components thereof, and hereby accepts the Assigned Areas and all components thereof in "AS IS CONDITION" and "WITH ALL FAULTS." Concessionaire hereby assumes all risk of noncompliance of the Assigned Areas or any part thereof with all Applicable Laws and Regulations. Upon receipt of any notice of noncompliance with any Applicable Laws and Regulations, Concessionaire hereby agrees to make all repairs, alterations, and additions to the Assigned Areas and to take all corrective measures as may be necessary to bring the Assigned Areas into compliance with all Applicable Laws and Regulations. Concessionaire shall not be entitled to any abatement or adjustment of any MAG, Percentage Fee, or Privilege Fees hereunder on account of the condition of the Assigned Areas, or any failure of any of the component parts to be in working order, or because of any necessity of Concessionaire to repair or take corrective actions with respect to any part thereof, or because of the inability of obtaining, or any delay in obtaining, any required development approvals from any governmental body having jurisdiction, including but not limited to County agencies. Furthermore, Concessionaire hereby releases

County from any and all claims, demands, damages and liabilities whatsoever on account of the condition of the Assigned Areas, or any failure of any of the component parts to be in working order, or because of any necessity of Concessionaire to repair or take corrective actions with respect to any part thereof, or the necessity for obtaining any development approvals from any governmental body, including without limitation County agencies. In the event of any conflict between these provisions and any other provision of this Agreement, the provisions of this Section 5.2 shall control.

ARTICLE VI
CONSTRUCTION BY CONCESSIONAIRE

- 6.1 Concessionaire shall install all furnishings and Improvements that are necessary for the customary operation of Advertising Locations at Concessionaire's sole cost.
- 6.2 No Improvements may be constructed on the Advertising Locations and any other Assigned Areas and any temporary locations, unless Concessionaire first obtains the prior written approval of the Aviation Department.
- 6.3 Prior to the commencement of construction or refurbishment of any facilities on the Advertising Locations and any other Assigned Areas, Concessionaire shall submit to the Aviation Department for its written approval, a site plan, schematic rendering, and complete construction drawings and specifications of the contemplated construction or refurbishment. The plans and specifications shall be certified by an architect or engineer licensed to practice in the State of Florida, and shall include: (a) working drawings; (b) technical specifications; (c) bid documents, if applicable; (d) schedule for accomplishing improvements; (e) schedule of finishes and graphics; (f) list of furnishings, fixtures, and equipment; (g) certified estimate of the design, development, and construction costs; and (h) such other information as may be required by the Aviation Department. All construction, Improvements, signs, equipment, and landscaping must be made in accordance with the requirements set forth in this Agreement and must conform to the standard requirements of the Aviation Department that are applicable to concessionaires of the Airport. All of the plans and specifications shall be in such detail as may reasonably permit the Aviation Department to make a determination as to whether the facilities will be consistent with the provisions of this Agreement and the standards of the Aviation Department. The plans and specifications for the facilities that have received the Aviation Department's prior written approval, and any amendments and changes thereto that have received the Aviation Department's prior written approval, are hereinafter referred to collectively as the "Approved Plans." No work may be performed on the Assigned Areas and any temporary locations except pursuant to Approved Plans. At the direction of the Aviation Department, Concessionaire, at its sole cost, shall remove any work which is started or completed without Approved Plans, and the Assigned Areas shall be restored to their previous condition.

- 6.4 All plans and specifications, including without limitation "as-built" plans, shall not identify any conduit ducts for cable, telecommunications, electric service, and the like by any specific company name, and such plans shall identify the purpose of such conduits by generic reference only, including without limitation "phone conduit," "telecommunications conduit," or "power conduit." No material changes shall be made to any Approved Plans without the prior written approval of the Aviation Department, which approval shall not be unreasonably withheld or delayed. Any change that requires the issuance of a building permit or modifies an existing building permit shall be considered a material change.
- 6.5 Any and all construction shall be performed in such a manner as to ensure that:
 - 6.5.1 The facilities are structurally sound, safe for human occupancy, fire resistant and free from any hazards; and
 - 6.5.2 There is sufficient clearance for taxiways, runways and aprons, and the construction activities shall not intrude into any aeronautical surfaces or exceed any height limitations and shall not interfere with the operations of arriving and departing aircraft at the Airport; and
 - 6.5.3 The facilities are of high quality, and attractive in appearance; and
 - 6.5.4 The facilities comply with the provisions of the deed under which County acquired its title to the Airport from the United States of America and the provisions of any grant agreements or other agreements between County and the United States Government or the State of Florida that are applicable to the Assigned Areas; and
 - 6.5.5 All construction and development undertaken is, to the extent possible and commercially practicable, completed in an environmentally conscientious manner; and
 - 6.5.6 There is compliance with the terms and provisions of this Agreement.
- 6.6 All development within the Airport shall be consistent with the Airport's Tenant Design Guidelines, as it may be updated, revised, or amended from time to time. The Aviation Department may, in its sole discretion, permit a variation from the required standards in the Tenant Design Guidelines.
- 6.7 The Aviation Department may refuse to grant approval of any design, materials, Improvements or construction if, in its opinion, Concessionaire has not satisfied the requirements as set forth above, or any other provisions of this Agreement, or for any other reason whatsoever, in the sole discretion of the Director of Aviation or designee.

- 6.8 All Improvements, equipment, and interior design and decor constructed or installed by Concessionaire or Concessionaire's Parties, including the plans and specifications relating to same, shall conform to all Applicable Laws and Regulations. The approval by the County of any plans, specifications, or designs shall not constitute a representation or warranty as to such conformity, and the responsibility for compliance shall at all times remain with Concessionaire.
- 6.9 Upon approval of plans, specifications, and schedules by the Aviation Department, Concessionaire shall obtain all necessary governmental approvals. Concessionaire shall immediately begin construction, installation, or refurbishment, as applicable, of the approved facilities pursuant to the Approved Plans and shall diligently pursue the same to completion by the date agreed to between Concessionaire and the Aviation Department. Any work impacting portions of the Airport other than the Assigned Areas shall be performed within schedules approved by the Aviation Department.
- 6.10 If requested by the Aviation Department, Concessionaire and its architect/engineer and contractor shall meet with the Aviation Department in periodically scheduled meetings to assess the current status of completion.
- 6.11 All fixtures, structures, facilities, and other Improvements existing on the Assigned Areas as of the Effective Date, along with any future additions and alterations made to the Assigned Areas by Concessionaire (except trade fixtures not permanently affixed to the Assigned Areas, and equipment not permanently affixed to the Assigned Areas, and any other Personalty of Concessionaire and or its subconcessionaires), shall become County's property upon construction or installation. All such Improvements shall be surrendered with and remain at the Assigned Areas upon termination of this Agreement and be free and clear of any liens, claims or encumbrances whatsoever. Any additions, including, but not limited to, fixtures or other Improvements, that are nailed, bolted, stapled, or otherwise affixed to the Assigned Areas and are not readily removable are considered Improvements and shall become County property and remain at the Assigned Areas upon termination of this Agreement. If any Personalty, including without limitation, furnishings, trade fixtures, or equipment, is removed by Concessionaire or its subconcessionaires, Concessionaire shall immediately after such removal correct any damage to the Assigned Areas caused by such removal. All utility conduits shall be installed by Concessionaire or its subconcessionaires, at their expense, including without limitation, cable, electric, and telecommunications, and shall be deemed Improvements, and ownership thereof shall be vested in County upon installation. All such conduits shall be free of all liens, claims and encumbrances, including without limitation, any claims of any utilities provider.
- 6.12 Capital Improvements:

- 6.12.1 Capital Investment. In order to maintain an income stream consistent with a high quality operation, Concessionaire agrees to implement the Concession Plan and expend, with respect to the Improvements set forth in the Concession Plan, not less than Six Hundred Ten Thousand Dollars (\$610,000.00) for all Advertising Locations at the Airport.
 - 6.12.2 Concessionaire shall expend the required Capital Investment for Improvements in accordance with the Concession Plan within one (1) calendar year of the Effective Date, which period may only be extended for good cause, as determined in writing by the Director, in his or her sole discretion.
 - 6.12.3 In addition to the required Capital Investment, Concessionaire agrees to invest not less than Seventy Thousand Dollars (\$70,000.00) in refurbishments and additional Improvements during the third Contract Year.
- 6.13 For any cost or expense incurred by Concessionaire to qualify for the Capital Investment requirements, the cost or expense must be submitted and reviewed for approval by the Aviation Department prior to Concessionaire incurring such expense, and:
- 6.13.1 The cost or expense must qualify as a Capital Expenditure
 - 6.13.2 Concessionaire must have constructed the Improvements pursuant to Approved Plans and in compliance with the standards set forth in this Agreement and all Applicable Laws and Regulations;
 - 6.13.3 Concessionaire shall have provided to the Aviation Department all certifications from the contractors and architects/engineers, as required by this Article VI;
 - 6.13.4 Concessionaire shall have provided the schedule of Capital Expenditure costs as required by this Agreement; and
 - 6.13.5 Concessionaire shall have provided the "as-built" plans required by this Article VI.
- 6.14 If requested by the Aviation Department, Concessionaire shall provide the Aviation Department with a report ("Capital Expenditure Report") of the total Capital Expenditure made by Concessionaire towards the Capital Investment requirement. The Aviation Department, at its expense, may audit the costs of any construction or improvements shown on as-built plans provided by Concessionaire, or may engage a CPA firm to conduct such audit. In the event the Capital Expenditure Report requires further auditing, such audit shall be conducted at Concessionaire's offices located in Broward County during normal business hours and

Concessionaire shall be provided with three (3) calendar days advance notice that an audit will be conducted.

- 6.15 Midterm Refurbishment: In the event the Option Period is exercised and approved by the Aviation Department, Concessionaire shall be required to invest no less than a minimum amount of Ninety Thousand Dollars (\$90,000.00) to complete the required "Midterm Refurbishment" (as hereinafter defined). Concessionaire shall be required to evaluate the Advertising Locations and determine what Midterm Refurbishments shall be completed pursuant to this Section 6.15 and the terms and conditions of this Agreement. Midterm Refurbishments shall include, but not be limited to, the following: rebranding/reconcepting; replacement of flooring/wall coverings; addition of serving means (which may include without limitation to-go order counters and automated ordering equipment); replacement of Personality, or other substantial changes to the location/image. Failure to submit plans for the Midterm Refurbishment for each Advertising Location to the Aviation Department for its approval within 90 days after County approval of the Option Period, or failure to complete such Midterm Refurbishments pursuant to the Approved Plans, shall be a material default of this Agreement. Midterm Refurbishment expenses shall not be counted toward the Capital Investment requirement and shall not be subject to any reimbursement by the County in the event of any relocation of an Advertising Location or for any other reason. Concessionaire shall expend all monies required to complete the Midterm Refurbishments as required in this Section 6.15 within six (6) months after the notice of County approval of the Option Period.
- 6.16 Within ninety (90) calendar days following the completion of Improvements to the satisfaction of the Aviation Department and the expenditure of the Capital Investment, Concessionaire must provide to the Aviation Department a certified audit of the monies actually expended in the design and installation of the Improvements on a per-location basis in accordance with the Approved Plans. The certified audit shall be prepared by an independent certified public accounting ("CPA") firm, approved in advance by the Aviation Department and it shall contain the following: (a) a certification of the total of all monies actually expended for the Improvements; (b) a certification of the amount of such expenditures that may be counted toward the Capital Investment requirement; and (c) a certification that said total expenditure and the amount which may be counted toward the required Capital Investment were derived according to generally accepted accounting practices and in accordance with the provisions of this Agreement. Concessionaire shall provide, upon request, such invoices and other back up documentation as may be required by the Aviation Department or the CPA to verify the amount of Capital Expenditure and the amount which may be counted toward the Capital Investment. The Aviation Department shall notify Concessionaire in writing that it has approved or disapproved the certified costs for each Assigned Area within sixty (60) calendar days from the receipt of Concessionaire's certified audit report.

- 6.17 Within sixty (60) calendar days after the completion of Improvements, Concessionaire must provide to the Aviation Department: (a) a certified statement from the construction contractors specifying the total Capital Expenditures and stating that the Improvements are free and clear of all liens, claims or encumbrances by any material suppliers, subcontractors, or laborers; and (b) a certified statement from the architect or engineer stating the total architect's or engineer's fees and that the Improvements have been constructed in accordance with the Approved Plans and in compliance with all Applicable Laws and Regulations. Concessionaire shall provide, upon request, such back-up documentation and release of liens as may be required by County. County, at its option, may conduct an audit of such expenditures, or may engage a duly licensed, certified public accounting firm to conduct such audit.
- 6.18 Concessionaire hereby represents, warrants, and covenants to County that the Assigned Areas and all Improvements now and hereafter constructed or placed thereon shall be at all times free and clear of all liens, claims and encumbrances. If any lien or notice of lien shall be filed against the Assigned Areas or any Improvements, Concessionaire shall, within thirty (30) calendar days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, or order of a court of competent jurisdiction. The provisions hereof shall not apply to any purchase money security interest in any movable trade fixtures installed in the Assigned Areas.
- 6.19 Within sixty (60) calendar days after the completion of Improvements Concessionaire shall at its expense, provide the Aviation Department with a complete set of "as-built" plans and specifications, including Mylar reproducible "record drawings," and one set of machine readable disks containing electronic data in an AUTOCAD format that meets the Aviation Department's graphic standards of the "as-constructed" or "record" plans for such Improvements.
- 6.20 In addition to the Aviation Department's approval, Concessionaire shall obtain all required approvals from all other agencies having jurisdiction over any Improvements, including but not limited to departments, divisions or offices of County and local governments, the State of Florida, and the federal government.
- 6.21 If applicable or necessary, Improvements must be coordinated with the FAA, including the filing of required forms and the provision of any documentation the FAA may request.
- 6.22 All Improvements made to the Assigned Areas by Concessionaire shall be in conformity and consistent with all applicable provisions of the Americans with Disabilities Act of 1990, as same may be amended from time to time.
- 6.23 Concessionaire shall not make any additions, alterations, modifications, or replacements to any Improvements at the Assigned Areas unless Concessionaire shall first have submitted to the Aviation Department, for its written approval,

complete plans and specifications for same in accordance with this Article VI. All additions, alterations, modifications, and replacements shall comply with all provisions of this Agreement. In the event any addition, alteration, modification, or replacement is made without Aviation Department approval, then, upon notice in writing so to do, Concessionaire shall remove the same or, at the option of the Aviation Department, cause the same to be changed to the satisfaction of the Aviation Department. In the case of any failure on the part of Concessionaire to comply with such notice, the Aviation Department may affect the removal or change and Concessionaire shall pay the cost thereof to the County plus permissible fees pursuant to the Broward County Administrative Code.

- 6.24 Prevailing Wage Requirement. If construction work in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) is required of, or undertaken by Concessionaire as a result of this Agreement, Broward County Ordinance No. 83-72, as may be amended from time to time, shall be deemed to apply to such construction work. In such event, Concessionaire shall fully comply with the requirements of such ordinance and shall satisfy, comply with, and complete the requirements set forth in **Exhibits C and D.**

ARTICLE VII
CONSTRUCTION CONTRACTS, BONDS, INDEMNIFICATION,
AND INSURANCE REQUIREMENTS FOR CONTRACTORS

- 7.1 Concessionaire agrees that before commencing any work or construction, Concessionaire shall require the contractors building or installing any Improvements to maintain, at all times, a valid payment bond and a valid performance bond, in accordance with Section 255.05 of the Florida Statutes, which bonds shall be in an amount not less than the amount covering the full amount of the work being performed. Each bond must be rated and A- or higher and must guarantee to County the completion of the work being performed by the contractors as well as full payment of all suppliers, material suppliers, laborers or subcontractors employed in the project.
- 7.2 Concessionaire agrees to abide by and include the following provisions in all contracts it enters into with contractors in connection with the construction and completion of any Improvements to the Assigned Areas:

"Contractor shall indemnify and hold harmless County, its officers, and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees to the extent caused by the negligence, recklessness or intentional wrongful conduct of Contractor and other persons employed or utilized by Contractor in the performance of this Agreement. To the extent considered necessary by the Director of Aviation and County Attorney, any sums due Contractor under this Agreement may be retained at the direction of the County until all of County's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved, and any amount withheld shall not be

subject to payment of interest by County. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement."

7.3 Insurance Requirements for Construction Contracts.

- (a) Concessionaire shall, at all times during the term of this Agreement (unless otherwise provided), require all contractors and subcontractors working on Concessionaire's premises or in connection with the premises, to obtain and maintain the appropriate and necessary insurance coverages for the insured work and project. Unless otherwise agreed to in writing by the County and Concessionaire, said coverages shall include, but not be limited to, general liability, automobile, worker's compensation, builder's risk, and environmental/pollution. Said insurance coverages shall be in accordance with the terms and conditions required by this Article. Such policy or policies shall be issued by companies authorized to do business in the State of Florida, and having agents upon whom service of process may be made in Broward County, Florida.
- (b) Concessionaire agrees to include the appropriate and necessary insurance language in any agreement it enters into with any contractors and subcontractors performing work at the Advertising Locations and Assigned Areas, and Concessionaire further agrees to provide to County (prior to commencement of any Improvements and by no later than the pre-construction meeting held by the Aviation Department with the Concessionaire) with certificates of insurance evidencing the contractor's compliance with the requirements of this section.

Such policies shall be issued by companies authorized to do business in the State of Florida, with a minimum AM Best financial rating of A-. Coverage shall be afforded on a form no more restrictive than the latest edition of the respective Insurance Services Office policy. Concessionaire shall specifically protect the County by naming Broward County as an additional insured/loss payee, under the primary and non-contributory General Liability Policy, Business Automobile Liability, Excess Liability, Builder's Risk and any Property or Environmental Insurance policies. The official title of the certificate holder is Broward County and shall be used in all insurance documentation. Contractor's certificate of insurance shall be in a form that is satisfactory to the County's Risk Manager or Risk Management Division.

- (c) Coverage is not to cease and is to remain in force (subject to cancellation notice) until all performance required of contractor is completed. All policies must be endorsed to provide County with at least thirty (30) days' notice of cancellation and/or restriction. If any of the insurance coverages will expire prior to the completion of the work, copies of certificates of insurance for the renewal of the insurance policies shall be furnished at least thirty (30) days

prior to the date of their expiration. Any insurance coverage that is written on a "claims made" basis must remain in force for two (2) years after the termination of this Agreement.

- (d) Concessionaire shall provide to County, not less than ten (10) days prior to commencement of any Improvements at the Premises, certificates of insurance evidencing the insurance coverage as specified above. The required certificates of insurance shall not only name the types of coverage provided, but also shall refer specifically to this Agreement with the type of insurance which is being furnished, and shall state that such insurance is as required by such sections of this Agreement. If the initial insurance expires prior to the completion of the Improvements, renewal certificates of insurance shall be furnished at least thirty (30) days prior to the date of their expiration. Insurance shall not be canceled, modified, or restricted without at least thirty (30) days' prior written notice to County, and must be endorsed to provide same. The aforesaid minimum limits of insurance shall be reviewed from time to time by County and may be adjusted if County determines that such adjustments protect County's interest. When such certificates have been delivered by the Concessionaire to the County as aforesaid and at any time or times thereafter, the County may notify the Concessionaire, in writing, that the insurance represented thereby does not conform to the provisions hereof because of the amount or because of the insurance company or for any other reason, and the Concessionaire shall have fifteen (15) days in which to cure any such defect.

- 7.4 Provision of Documents. Concessionaire shall provide the Aviation Department with the certificates of insurance, policies of insurance and any other documentation required by this Article VII.

ARTICLE VIII OPERATIONAL STANDARDS

- 8.1 The installation of advertising units, maintenance and service shall take place whenever possible during hours of minimum passenger and visitor activity and at such times as approved by the Aviation Department.
- 8.2 Concessionaire shall prepare a standard form of advertising contract to be utilized by Concessionaire and shall submit same to the Aviation Department for approval prior to offering any advertising services.
- 8.3 Concessionaire agrees to implement the Marketing Plan and the Management Plan (collectively, "Plans"), developed and submitted to County as part of the Proposal Documents and further agrees to update such Plans if directed by the Aviation Department and submit such updated Plans for consent by the Aviation Department. Concessionaire shall not modify or deviate from any of the Plans submitted in the Proposal Documents without the prior written approval of the

Aviation Department. The burden of proving compliance with the Plans rests with Concessionaire, and a failure by Concessionaire to comply with the Plans approved by the Aviation Department shall be a default under this Agreement entitling the County to exercise any and all remedies available hereunder.

- 8.4 Concessionaire shall ensure that the management, maintenance, and operation of the advertising units installed at the Advertising Locations shall at all times be under the supervision and direction of a qualified general manager ("Manager") who shall at all times be an employee of Concessionaire and subject to the direction and control of Concessionaire. The Manager shall be available twenty-four (24) hours per calendar day, seven (7) calendar days per week with the ability to be at the Airport within thirty (30) minutes if necessary. Concessionaire shall provide the Aviation Department with emergency telephone numbers at which Concessionaire's Manager or designee may be reached twenty-four (24) hours a day, seven (7) days a week. The Manager shall make, at a minimum, weekly inspections of all advertising units and shall take all necessary actions to maintain the advertising units in "as new" condition.
- 8.5 Concessionaire further agrees to assign a qualified employee to be in charge of the services and facilities offered under this Agreement and to be available in the absence of the Manager.
- 8.6 Concessionaire shall forward to the Aviation Department, on a monthly basis, a written report which contains a list of any complaints, whether the complaints were made verbally or in writing, and an explanation of Concessionaire's resolution of all such complaints. Questions or complaints regarding the quality of services or rates of Concessionaire which are received by the Aviation Department may be submitted to Concessionaire for response and resolution. Concessionaire shall respond, in writing, to all complaints within seven (7) calendar days following receipt of a complaint and contemporaneously provide the Aviation Department with a copy of the response. Concessionaire shall include its Manager's email address on all customer receipts in order to enable customer comments or complaints to be addressed to the Manager.
- 8.7 At the Aviation Department's request, Concessionaire shall meet with the Aviation Department to review any complaints or concerns and, thereafter, immediately comply with any action the Aviation Department directs Concessionaire to take to further correct and resolve any complaint. The Aviation Department's determination as to quality of operation or services shall be conclusive and binding on County and Concessionaire.
- 8.8 Concessionaire shall develop a policy outlining the rules, regulations, and operating procedures ("Operations Manual") which shall apply to its employees. Within sixty (60) calendar days of the Effective Date, Concessionaire shall submit its Operations Manual to the Aviation Department for review and consent. Concessionaire shall not modify or deviate from the Operations Manual without the

prior consent of the Aviation Department. If County fails to respond in thirty (30) days, the Operations Manual shall be deemed to have been approved.

- 8.9 The operations of Concessionaire and Concessionaire's employees, invitees, suppliers and contractors shall be conducted in an orderly and proper manner so as not to annoy, disturb, or be offensive to others. At all times, Concessionaire and Concessionaire's employees, invitees, suppliers and contractors are required to conduct themselves in a courteous manner toward the public and in accordance with the Operations Manual.
- 8.10 Concessionaire shall at all times retain qualified employees at the Airport to conduct Concessionaire's operations. Concessionaire shall maintain a cooperative relationship with other concessionaires at the Airport and shall not engage in open or public disputes, disagreements, or conflicts tending to deteriorate the quality of the services offered at the Airport, or be incompatible to the best interest of the public or the Airport.
- 8.11 Concessionaire and Concessionaire's Parties shall not engage in soliciting any business from any area of the Airport, including any area in front of the Assigned Areas, other than the normal conducting of business as contemplated hereunder from the Assigned Areas.
- 8.12 County 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 Assigned Areas, and Concessionaire shall observe and obey such rules, regulations, and standards. County may amend such rules or regulations and operating performance standards from time to time and shall provide copies thereof to Concessionaire.
- 8.13 Concessionaire shall operate and maintain a standard of service and quality at least equal to that high standard provided at comparable international airports, while at the same time operating in a commercially reasonable and legally required manner. The County's determination as to quality of service that is required of Concessionaire shall be conclusive and binding, and shall be accepted and performed by Concessionaire.
- 8.14 Concessionaire shall be responsible for ensuring that all Advertising Locations and Assigned Areas are maintained in a clean, safe, and orderly manner and free of debris and trash.
- 8.15 Concessionaire shall inform each of its employees of the pertinent rules and regulations of the Airport and the applicable provisions of this Agreement and instruct such employees as to the methods and procedures used at the Airport.
- 8.16 Concessionaire and its subcontractors agree that no solicitations for private business shall be carried on at the Airport premises, except as may be specifically

allowed hereunder. No other type or kind of business or activity, except that provided herein, shall be conducted at the Airport by Concessionaire.

- 8.17 Upon request by the Aviation Department, Concessionaire shall provide the Aviation Department with emergency evacuation and hurricane plans consistent with the County's plans for the Airport. These plans shall be detailed procedures of actions to be taken by Concessionaire if an evacuation is need or hurricane alert warning is present. Hurricane plans are to be updated annually if requested by the Aviation Department.
- 8.18 Should a conflict arise between Concessionaire and other concession operators at the Airport regarding the scope of concession privileges, the Aviation Department's decision on the matter shall be final and conclusive. Concessionaire agrees to abide by the Aviation Department's decision.
- 8.19 Concessionaire shall be required to resolve vandalism and fraud problems in connection with Concessionaire's Advertising locations at Concessionaire's sole cost and expense, and vandalism and fraud shall be at the sole risk and expense of the Concessionaire. Further, Concessionaire shall assume all financial responsibility for dishonored credit cards, fraudulent calls, and loss of funds or non-collected funds. None of the foregoing costs shall permit or entitle Concessionaire to any deductions from or credits against the Privilege Fees payable to the County.
- 8.20 The following table sets forth a schedule of Disincentive Fees for violations of operating standards or failure to adhere to contractual requirements. Written notice of any violation shall be given by the Aviation Department to Concessionaire. If the violation requires the payment of a Disincentive Fee, said fee shall be paid by Concessionaire within ten (10) calendar days after receipt of notice. Each infraction in a category is considered a violation and a subsequent infraction is considered a 2nd or 3rd, etc. violation. Concessionaire acknowledges and agrees that the damages that would be incurred by County upon Concessionaire's nonperformance are difficult to quantify and not readily ascertainable. Concessionaire acknowledges and agrees that the Disincentive Fees are fair and reasonable. Concessionaire waives any and all challenges and legal defenses to the validity of any Disincentive Fee amounts, including that the Disincentive Fees are void as penalties. The imposition of a Disincentive Fee shall not operate to limit or otherwise affect County's rights under this Agreement, or at law or in equity, for Concessionaire's breach of this Agreement, or as a limit on County's damages for any breach except for those enumerated below.

<u>Infraction</u>	<u>Agreement Reference</u>	<u>1st Violation</u>	<u>2nd Violation</u>	<u>3rd (or further) Violation</u>
A. Failure to remove advertising products deemed offensive by the Aviation Department.	Article III including without limitation 3.3	Written Warning Notice	\$50 per item per location following 48 hours of Written Warning Notice	\$250 per item per location after 48 hours of Written Warning Notice
B. Failure to maintain Assigned Areas in a clean and orderly manner	Article VIII including without limitation 8.14 and Section 9.2	Written Warning Notice	\$100 per day	\$200 per day
C. Failure to maintain LCD monitors or any electronic advertising media	Article VIII Article IX	Written Warning Notice	\$50 per item per location following 48 hours of Written Warning Notice	\$250 per item per location after 48 hours of Written Warning Notice
D. Use of any space at the Airport not included in Exhibit A , or which has not been approved in writing by the Aviation Department.	Article III	Written Warning Notice	\$100 per day	\$200 per day
E. Failure to report actual monthly advertising concession sales accurately.	Article IV including without limitation 4.4	Written Warning Notice	\$250 per misreported sales amount	\$500 per misreported sales amount
F. Commence construction of Improvements without the prior written approval of the Aviation Department.	Article VI including without limitation 6.2	\$1,000 per incident	\$2,500 per incident (within 6 months of 1 st violation)	\$5,000 per incident (within 1 year of 1 st violation)

<u>Infraction</u>	<u>Agreement Reference</u>	<u>1st Violation</u>	<u>2nd Violation</u>	<u>3rd (or further) Violation</u>
G. Failure to deliver required post-construction documentation within 90 days of completion.	Article VI including without limitation 6.16	Written Warning Notice	\$100 per day and document per location	\$100 per day and document per location
H. Failure to respond within 48 hours to a customer complaint or service issue raised by the Aviation Department.	Article VIII including without limitation 8.6 & 8.7	Written Warning	\$250 per incident	\$500 per incident
I. Failure to comply with stocking, delivery device, and associated trash handling procedures.	Article VIII including without limitation 8.21	Written Warning Notice	\$100 per incident (within 3 months of 1 st violation)	\$250 per incident (within 6 months of 1 st violation)
J. Failure to timely submit required quarterly ACDBE reports.	Article XXI including without limitation 21.7	Written Warning Notice	\$100 per day late (within 3 months of 1 st violation)	\$250 per day late (within 6 months of 1 st violation)

8.21 The Aviation Department has the right to conduct or have conducted regular performance audits to evaluate Concessionaire's performance on operating standards, including but not limited to cleanliness, in-stock condition, signage, and displays. Performance below minimum standards will subject Concessionaire to the imposition of Disincentive Fees.

8.22 Intentionally not used.

8.23 The Aviation Department shall establish the times when, locations where, and the manner in which merchandise may be delivered to the Airport. All vendors traveling on the apron or other nonpublic area must be escorted by an employee or agent of Concessionaire approved by the TSA and Aviation Department. Concessionaire and all its vendors must comply with the requirements of the TSA and with any Airport security plan promulgated by the Aviation Department. No delivery totes, boxes, or other containers shall be allowed to sit in public areas, unless they are being actively loaded or unloaded.

- 8.24 Concessionaire shall participate in all Airport-wide recycling programs for cardboard, paper, glass, and other products.

ARTICLE IX
MAINTENANCE

- 9.1 Concessionaire is responsible for all maintenance and repairs to all Advertising Locations and any other Assigned Areas of any nature except:
- 9.1.1 Cleaning the exterior of any Airport Terminal windows; and
 - 9.1.2 Structural repairs to the roof, floor and exterior walls and windows of the Airport Terminals; and
 - 9.1.3 All HVAC supply mains and electrical power supply stubbed up to Concessionaire's Assigned Areas.
- 9.2 During the Term of this Agreement, Concessionaire shall, at its sole expense, maintain in good repair and keep the Advertising Locations and any other Assigned Areas in a clean and orderly condition and appearance, and free of debris and trash, including, without limitation, all Personalty and Improvements located on and within the Assigned Areas, whether installed by Concessionaire or by County. County shall determine, in its sole discretion, the quality of such maintenance.
- 9.3 Concessionaire shall maintain and make all necessary repairs, structural or otherwise, to the interior of all Advertising Locations and any other Assigned Areas and the fixtures and equipment therein and appurtenances thereto, including, without limitation, the interior windows, doors and entrances, both interior and exterior of storefronts, signs, show cases, floor covering, interior walls and ceiling, the interior surface, the surfaces of interior columns exclusive of structural deficiencies, any columns erected by Concessionaire, and partitions and lighting within the Assigned Areas. The maintenance conducted by Concessionaire as required under this Agreement shall be in such a manner to preserve the original theme and design, in accordance with the original Approved Plans for the Assigned Areas.
- 9.4 County shall not be liable to Concessionaire for any damage to merchandise, trade fixtures or personal property of Concessionaire in the Assigned Areas caused by water leakage from the roof, water lines, sprinklers, or heating and air conditioning equipment. Further, County shall not be liable to Concessionaire for any damage to persons or property of any kind caused by any other damage or disrepair to the structural or permanent portions of the Assigned Areas or of the Terminals, unless: (a) County has had reasonable opportunity to perform repairs after being notified in writing of the need for same by Concessionaire; and (b) any such damage or disrepair shall not have been due to any actions, inaction or negligence of Concessionaire or any of its agents, employees, assignees, subconcessionaires, contractors, subcontractors, vendors, representatives, or invitees.

- 9.5 Concessionaire shall provide at its own expense such janitor, toilet, and cleaning services and supplies as may be necessary or required in the operation and maintenance of the Assigned Areas.
- 9.6 Concessionaire shall keep and maintain in good condition all service lines and electrical equipment and fixtures located at or in the Assigned Areas.
- 9.7 County, its employees, agents, and representatives, shall have the right to enter the Concessionaire's Assigned Areas for the following purposes:
 - 9.7.1 Conduct inspections during Concessionaire's regular business hours, or at any time in case of emergency as determined by the Aviation Department in its sole discretion.
 - 9.7.2 Perform at Concessionaire's cost, any obligations, other than monetary payments, which Concessionaire has failed to satisfy, pursuant to the terms of this Agreement.
 - 9.7.3 Notwithstanding the above, in the event of an emergency, as determined in the sole discretion of the Aviation Department, County shall have the right to enter the Assigned Areas at any time and without notice.
 - 9.7.4 If Concessionaire refuses or neglects to undertake any maintenance, repair, or replacements requested by the Aviation Department or other representatives of County, or if County is required to make any repairs necessitated by an emergency as determined by the Aviation Department, or necessitated by the negligent acts or omissions of Concessionaire or Concessionaire's Parties, County shall have the right to make such repairs on behalf of and for Concessionaire. Concessionaire shall pay for such work within thirty (30) calendar days following demand for said payment at County's standard rates, plus any overhead.
- 9.8 In a timely manner, Concessionaire will provide for the adequate sanitary handling and removal of all trash, garbage, and other refuse caused by the Concessionaire's operations. Concessionaire shall arrange for trash removal directly with a company, as may be authorized by the Aviation Department, to provide such service at the Airport. Concessionaire shall provide and use suitable covered receptacles for the storage of all garbage, trash and other refuse in all Assigned Areas. Food-related garbage shall be handled and stored in accordance with all applicable health and safety laws. Piling of boxes, cartons, barrels, or similar items shall not be permitted in any public area.
- 9.9 Concessionaire agrees to provide adequate control of rodents, insects, and other pests on the Assigned Areas. In the event Concessionaire's rodent, insect, and pest control program is not acceptable or sufficient, as determined by the Aviation

Department at its sole discretion, the Aviation Department may seek to control such rodents, insects, and pests by other means, at Concessionaire's expense. Concessionaire shall reimburse County no later than thirty (30) calendar days following demand for any expenses incurred by County due to conditions within the Assigned Areas.

- 9.10 The Aviation Department reserves the right to recover the cost of repair or maintenance of any property, fixtures, improvements, or systems that are damaged or adversely impacted by Concessionaire's failure to properly complete its maintenance obligations hereunder, plus an administrative fee as permissible under the Broward County Administrative Code. Such cost recovery payments will be due and payable from Concessionaire within thirty (30) calendar days of delivery of an invoice for such work.

ARTICLE X COMPLIANCE

- 10.1 Concessionaire shall comply with all Applicable Laws and Regulations including, without limitation, Airport rules and regulations and Aviation Department minimum standards applicable to Concessionaire or the operations conducted at the Assigned Areas which are in effect now or at any time during the Term of this Agreement.
- 10.2 Concessionaire agrees to permit entry, inspection, and testing, at all reasonable times, by inspectors of any federal, state, or County agency having jurisdiction under any law, rule, regulation, or order applicable to the Assigned Areas or the operations at the Assigned Areas. This right of entry, inspection, and testing shall impose no duty on County to take any such action and shall impart no liability on County should it not take any such action.
- 10.3 Concessionaire agrees that it will obtain and keep in full force and effect all licenses, permits, and authorizations required by any federal, state, County, or local governmental authority having jurisdiction over the business or activities conducted by Concessionaire at the Assigned Areas. Concessionaire agrees that it will pay any taxes that may be levied on rights or interests granted to it hereunder and on its Improvements.
- 10.4 The obligation of Concessionaire to comply with governmental requirements is provided herein for the purpose of assuring proper safeguards for the protection of persons and property.

ARTICLE XI ASSIGNMENT

- 11.1 Concessionaire shall not sell, transfer, assign, sublet, pledge, mortgage, or otherwise encumber this Agreement or any portion of the Assigned Areas, or any rights or obligations hereunder, or allow same to be assigned by operation of law

or otherwise contract for the performance of any of the services to be provided by Concessionaire under this Agreement (any such action being called an "assignment") without the prior written consent of County, which consent may be conditioned upon such additional terms and conditions as may be imposed in the reasonable discretion of County or the Aviation Department acting on behalf of County. Concessionaire's request for consent to an assignment shall include copies of all documentation pertaining to the assignment. In addition, Concessionaire shall provide the Aviation Department with such additional information and documentation as may be reasonably requested. The factors upon which the decision on whether to grant such consent are based shall include, but not be limited to: (a) an assessment of whether the proposed assignee meets standards of creditworthiness; (b) whether the assigned space will only be used for the purposes described herein; and (c) an assessment of the ability of the proposed assignee to perform the obligations under this Agreement. In the event of any assignment, Concessionaire shall not be released of any liability hereunder. In the event Concessionaire shall seek County's consent to an assignment to an Affiliate of Concessionaire, then, as a condition of such assignment, Concessionaire (or those persons or entities that have majority ownership of Concessionaire, directly or indirectly) may be required to execute an irrevocable Guaranty of Payment and Performance of this Agreement which shall be in form and substance satisfactory to the Aviation Department, and the Broward County Attorney's Office.

- 11.2 In no case will an assignment be permitted if a default hereunder remains uncured.
- 11.3 An "assignment" includes any transfer of this Agreement by merger, consolidation, liquidation, or by operation of law, or if Concessionaire is a corporation, any change in control of, or ownership of, or power to vote a majority of, the outstanding voting stock of Concessionaire or of any parent corporation of Concessionaire, from the owners of such stock or those controlling the power to vote such stock on the Effective Date (whether occurring as a result of a single transaction or as a result of a series of transactions), or if Concessionaire is a limited or a general partnership or joint venture, any transfer of an interest in the partnership or joint venture (or a transfer of an interest in a corporate general partner or corporate joint venturer) which results in a change in control (either directly or indirectly) of such partnership or joint venture from those controlling such partnership or joint venture on the Effective Date (whether occurring as a result of a single transaction or as a result of a series of transactions). Notwithstanding the foregoing, a transfer of stock among current stockholders or among current stockholders and their immediate families, any transfer of stock resulting from the death of a stockholder, a transfer of partnership or joint venture interests among existing partners or among existing partners or joint venturers and their immediate families, or any transfer of such an interest resulting from the death of a partner or joint venturer, shall not be deemed an assignment for purposes of this Article XI. The provisions of this Article XI shall not apply to any public trades of registered stock of

Concessionaire or any parent corporation of Concessionaire that occurs on a national stock exchange.

- 11.4 In the event any action specified hereunder shall be taken without the prior written consent of County, then any such assignment or other action shall be null and void and of no force or effect, and, in addition to all other available remedies, County shall be entitled to terminate this Agreement immediately. Any written consent or approval required hereunder shall not be effective unless evidenced by a written document signed by the authorized representative of County.

ARTICLE XII
INSURANCE AND INDEMNIFICATION

- 12.1 Concessionaire shall at all times hereafter indemnify, hold harmless, and defend County and all of County's current, former and future officers, agents, servants, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorneys' fees, court costs, and expenses (collectively, a "Claim"), raised or asserted by any person or entity not a party to this Agreement, which Claim is caused or alleged to be caused, in whole or in part, by any intentional, reckless or negligent act or omission of Concessionaire, its current or former officers, employees, agents, or servants, arising from, relating to, or in connection with this Agreement. In the event any Claim is brought against an Indemnified Party, Concessionaire shall, upon written notice from County, defend each Indemnified Party against each such Claim by counsel satisfactory to County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Aviation Department and the County Attorney, any sums due Concessionaire under this Agreement may be retained by County until all of County's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.
- 12.2 Concessionaire shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement (unless otherwise provided), the insurance coverages set forth in **Exhibit H**, in accordance with the terms and conditions required by this Article. Such policy or policies shall be issued by companies authorized to do business in the State of Florida and having agents upon whom service of process may be made in Broward County, Florida.
- 12.2.1. Such policies shall be issued by companies authorized to do business in the State of Florida, with a minimum AM Best financial rating of A-. Coverage shall be afforded on a form no more restrictive than the latest edition of the respective Insurance Services Office policy. Concessionaire shall specifically protect the County by naming Broward County as an

additional insured/loss payee under the primary and noncontributory General Liability Policy, Business Automobile Liability, Excess Liability, and any Property or Environmental Insurance policies. The official title of the certificate holder is Broward County. This official title shall be used in all insurance documentation.

- 12.2.2. All policies of insurance required herein shall be endorsed to provide County with thirty (30) days prior written notice of cancellation and/or non-renewal and/or restriction, and shall be evidenced by a Certificate of Insurance. County reserves the right to obtain a copy of any policy required by this Article within fourteen (14) days of a written request to Concessionaire, either by a personal inspection of the policy at Concessionaire's office at the Airport or by receiving a copy of the policy. Any insurance coverage that is written on a "claims made" basis must remain in force for two (2) years after the termination of this contract. Commercial General Liability Insurance shall be written on an "occurrence" basis only.
- 12.2.3. Review by County. The aforesaid insurance coverage shall be reviewed from time to time by the County Risk Management Division and may be adjusted if the Risk Management Division determines that such adjustments are necessary to protect County's interest. When such policies or certificates have been delivered by the Concessionaire to the County as aforesaid and at any time or times thereafter, the County may notify Concessionaire in writing that the insurance represented thereby does not conform to the provisions of this Article due to the amount of coverage, the insurance company, or for any other reason, and the Concessionaire shall have five (5) days in which to cure any such defect. Compliance with the requirements of this Article as to the carrying of insurance shall not relieve the Concessionaire of its liability under any other provision of this Agreement.
- 12.2.4. Subrogation. Notwithstanding anything to the contrary herein, Concessionaire waives any right of recovery against County for any loss or damage to the extent the same is required to be covered by Concessionaire's insurance hereunder. Concessionaire shall obtain from its insurers a waiver of subrogation in favor of the County in connection with any loss or damage covered by Concessionaire's insurance.
- 12.2.5 Any contractor or subcontractor performing work for Concessionaire on the Premises shall have Broward County listed as a certificate holder for all coverages. Concessionaire and or contractor shall require all appropriate and necessary insurance coverage in their respective agreements.

ARTICLE XIII
SECURITY DEPOSIT

- 13.1 Concessionaire shall post a Security Deposit ("Security Deposit") with the County in an amount equal to one half ($\frac{1}{2}$) of the MAG. The Security Deposit for the first Contract Year shall be Five Hundred and Five Thousand Dollars (\$505,000.00). The Security Deposit shall serve as security for the payment of all monies due to County and shall also secure the performance of all obligations of Concessionaire to the County. The Security Deposit shall be either in the form of cash, an Irrevocable Letter of Credit ("Letter of Credit"), in form and substance satisfactory to the County, or a Payment and Performance Bond ("Bond"), in form and substance satisfactory to County. No interest shall be paid on said Security Deposit. The Security Deposit shall be submitted to the County simultaneously with the execution of this Agreement by the Concessionaire. In the event of any failure by Concessionaire to pay when due any fees or other charges hereunder or upon any other failure to perform its obligations hereunder or upon any other default hereunder, then in addition to any other rights and remedies available to County at law or in equity, County shall be entitled to draw down up to the full amount of the Security Deposit and apply same to all amounts owed by Concessionaire to County. Upon notice of any such draw, Concessionaire shall immediately replace the Security Deposit with a new Letter of Credit or Bond or cash in the full amount of the Security Deposit required hereunder. The Aviation Department may require an increase in the amount of the Security Deposit to reflect any increases in the monies payable hereunder. Concessionaire shall comply with the request for increase within fourteen (14) calendar days' of written notice. In addition, the Aviation Department may require an increase in the amount of the Security Deposit equal to up to four (4) additional months' amount of MAG payments because of increased obligations hereunder, or if upon a review of Concessionaire's payment or performance history at the Airport, the Aviation Department determines an increase should be required. Concessionaire shall comply with the request for increase within fourteen (14) calendar days' of written notice.
- 13.1.1 The Security Deposit shall be kept in full force and effect throughout the Term of this Agreement and for a period of six (6) months thereafter. Not less than one hundred twenty (120) calendar days prior to any expiration date of a Letter of Credit or Bond, Concessionaire shall submit evidence in form satisfactory to County that said security instrument has been renewed. A failure to renew a Letter of Credit or Bond, or to increase the amount of the Security Deposit, if required pursuant hereto, shall (i) entitle the County to draw down the full amount of such Security Deposit, and (ii) be a default of this Agreement entitling County to all available remedies. The Security Deposit shall not be returned to the Concessionaire until all obligations under this Agreement are performed and satisfied.

- 13.1.2 Each Letter of Credit provided hereunder or under any other section or provision of this Agreement shall be provided by a financial institution of recognized standing authorized to do business in the State of Florida. Each letter of credit shall be in form and substance satisfactory to the County.
- 13.1.3 Each bond provided hereunder or under any other article, section, or provision of this Agreement shall be executed by a surety company of recognized standing authorized to do business in the State of Florida. Each bond shall be in form and substance satisfactory to County. Furthermore, such surety company must have at least an "A-" minimum rating in the latest revision of Best's Insurance Report.
- 13.2 In addition to the Security Deposit, Concessionaire agrees that before commencing any work or construction in its Assigned Area it shall provide the County with a construction bond and a labor and materials bond in form and substance satisfactory to the County for any construction or Capital Investments undertaken by Concessionaire during the Term of this Agreement and in a sum equal to the full amount of the construction contract award.

ARTICLE XIV
DEFAULT BY CONCESSIONAIRE, TERMINATION

- 14.1 In addition to all other remedies available to County, this Agreement, at the option of County, shall be subject to immediate termination by County should any one or more of the following events of default occur:
 - 14.1.1 By or pursuant to or under authority of any legislative act, resolution, or rule or any order or decree of any court or governmental board, agency, or officer having jurisdiction, a receiver, trustee, or liquidator takes possession or control of all or substantially all of the property of Concessionaire, and such possession or control continues in effect for a period of thirty (30) calendar days; or
 - 14.1.2 Any lien, claim, or other encumbrance which is filed against any Airport property is not removed or if County is not adequately secured by bond or otherwise, within thirty (30) calendar days after Concessionaire has received notice thereof; or
 - 14.1.3 Concessionaire fails to pay any Percentage Fees or Privilege Fees owed to County within ten (10) calendar days after written notice thereof; or
 - 14.1.4 Concessionaire fails to pay any other monetary obligation required hereunder within ten (10) calendar days after written notice thereof; or

- 14.1.5 Concessionaire fails to maintain or meet any insurance obligation including but not limited to the types of coverages and in the amounts as specified in this Agreement and fails to cure same within twenty-four (24) hours after notice by phone, email, or fax; or
 - 14.1.6 Concessionaire makes any assignment without the prior written consent of County; or
 - 14.1.7 Concessionaire fails to keep, perform, and observe each and every other non-monetary promise, covenant, and provision set forth in this Agreement on its part to be kept, performed, or observed within thirty (30) calendar days after receipt of notice of default thereunder (except where fulfillment of its obligation requires activity over a greater period of time and Concessionaire shall have commenced to perform whatever may be required for fulfillment within thirty (30) calendar days after receipt of notice and continues such performance without interruption); or
 - 14.1.8 Concessionaire voluntarily abandons, deserts, or vacates any of the Assigned Areas or discontinues its operation at the Airport for a period of two (2) consecutive calendar days unless said abandonment is the result of a cause beyond control of Concessionaire; or
 - 14.1.9 Any lien, claim, or other encumbrance which is filed against the Assigned Areas is not removed if County is not adequately secured by bond or otherwise, within thirty (30) calendar days after Concessionaire has received notice thereof; or
 - 14.1.10 If the Concessionaire purposefully misstates or inaccurately reports sales or revenues from its operation, including reporting estimated sales; or
 - 14.1.11 If Concessionaire fails to make the Capital Investment required in this Agreement; or
 - 14.1.12 If Concessionaire is deemed a habitual violator as that term is defined in 14.10 below.
- 14.2 Upon the occurrence of any event set forth above, or at any time thereafter during the continuance thereof, County may at its option immediately terminate this Agreement, unless a cure period is required pursuant to Section 14.1 above, and all rights of Concessionaire hereunder, by giving written notice thereof, which termination shall be effective upon the date specified in such notice and/or County may exercise any and all other remedies available to County hereunder or at law or in equity. In the event of any such termination, Concessionaire shall immediately quit and surrender the Assigned Areas to County pursuant to the provisions of this Agreement, and shall cease operations at the Airport. Any such termination shall be without prejudice to any remedy otherwise available to County.

Upon any termination pursuant to this Article XIV, Concessionaire shall have no right to any reimbursements from County.

- 14.3 Upon termination of this Agreement, County shall have the right to engage another concessionaire to provide the services Concessionaire is authorized to provide hereunder, for such period or periods (which may extend beyond the Term of this Agreement) and at such fees and upon such other terms and conditions as County may, in good faith, deem advisable. County shall not be liable and Concessionaire's liability shall not be affected or diminished in any way whatsoever by the failure of County to obtain another concessionaire or by the failure of County to collect any fees or other sums due from any such other concessionaire.
- 14.4 If this Agreement terminates for any reason (including expiration of its Term or a default hereunder), Concessionaire, and those holding under Concessionaire, if any, shall forthwith remove their Personalty from the Airport. If Concessionaire or any such claimant fails to effect such removal within fourteen (14) calendar days following termination of this Agreement, then, at the County's option, title to same shall vest in the County, at no cost to the County, or County may remove such property to a public warehouse for deposit, or County may retain the same in its own possession and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage, and sale; second, to any sums owed by the Concessionaire to the County with any balance remaining to be paid to the Concessionaire; or County may dispose of any such property in any other manner provided by law. If the expenses of such removal, storage, or sale exceed the proceeds of sale, the Concessionaire shall pay such excess to the County upon demand.
- 14.5 Concessionaire shall be responsible for all costs of removal, storage, and sale, and County shall have the right to reimburse itself from the proceeds of any sale for all such costs paid or incurred by County. If any surplus sale proceeds shall remain after such reimbursement County may deduct from such surplus any other sum due to County hereunder and shall pay over to Concessionaire any remaining balance of such surplus sale proceeds.
- 14.6 If proceedings are commenced against Concessionaire by County under this Agreement, and compromise or settlement is effected either before or after judgment whereby Concessionaire is permitted to continue to operate under this Agreement, then such compromise or settlement shall not constitute a waiver of any condition or agreement contained herein or of any subsequent event of default.
- 14.7 Any amount paid or expense or liability incurred by County on account of Concessionaire shall, at the option of County, be deemed to be additional Privilege Fees due hereunder, and the same may, at the option of County, be added to any Privilege Fees then due or thereafter falling due hereunder.

- 14.8 Concessionaire hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of any termination of this Agreement. The rights given to County herein are in addition to any rights that may be given to County by statute or otherwise.
- 14.9 In the event of any termination of this Agreement upon the occurrence of an event of default hereunder, Concessionaire shall have no further rights hereunder and shall cease forthwith all operations upon the Airport premises and shall pay in full the balance of all Privilege Fees and other charges as set forth in this Agreement for the full term hereof. The Concessionaire's Security Deposit may be applied by the County to any sums due to County under this Agreement.
- 14.10 Habitual Default. Notwithstanding the foregoing, in the event that the Concessionaire has, in the sole discretion of the Aviation Department, frequently, regularly, or repetitively defaulted in the performance of or breached any of the terms, covenants, and conditions required herein to be kept and performed by the Concessionaire, and regardless of whether the Concessionaire has cured each individual condition of breach or default, the Concessionaire may be determined by the Aviation Department to be an "habitual violator." At the time that such determination is made, the Aviation Department shall issue to the Concessionaire a written notice advising of such determination and citing the circumstances. Such notice shall also advise Concessionaire that there shall be no further notice or grace periods to correct any subsequent breaches or defaults and that any subsequent breaches or defaults 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 County may terminate this Agreement upon the giving of written notice of termination to the Concessionaire. Such termination shall be effective upon delivery of the notice to the Concessionaire.

ARTICLE XV
REMEDIES TO BE NON-EXCLUSIVE

No remedy herein conferred upon or reserved to County is intended to be exclusive of any other remedy herein provided or otherwise available, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

ARTICLE XVI
SURRENDER, ACCEPTANCE OF SURRENDER,
REMOVAL OF PROPERTY, AND HOLDOVER

- 16.1 Upon the expiration or earlier termination of the Term of this Agreement, as provided for herein, Concessionaire agrees to yield and deliver peaceably and promptly to County the possession of the Assigned Areas. Concessionaire shall

surrender the Assigned Areas in the condition required under Article IX Maintenance. All maintenance and repairs shall be completed prior to surrender. Concessionaire shall deliver to County all keys to the Assigned Areas upon surrender. Concessionaire shall, at its expense, take all actions required by all Applicable Laws and Regulations to remove from the Assigned Areas any hazardous substances or other materials, whether stored in drums, or found in vats, containers, distribution pipelines, drains or the like or discharged into the ground. All such substances shall be removed by Concessionaire in a manner that complies with all Applicable Laws and Regulations and the provisions of Article XVI shall be applicable.

- 16.2 No agreement of surrender or to accept a surrender of this Agreement shall be valid unless and until same shall have been reduced to writing and signed by the Aviation Director or designee and Concessionaire. Except as expressly provided in this Agreement, neither the doing of nor any omission to do any act or thing by any of the officers, agents, or employees of County shall be deemed an acceptance of a surrender of letting under this Agreement.
- 16.3 Concessionaire shall have the right at any time during the letting to update or replace its inventories, and trade fixtures and other personal property from the Assigned Areas. Concessionaire shall immediately repair any damage to the Assigned Areas caused by its removal of any personal property or trade fixtures. If Concessionaire shall fail to remove its inventories, trade fixtures, and personal property by the termination or expiration of this Agreement, then Concessionaire shall be considered to be holding over and subject to charges under Section 16.4, hereof, and after fourteen (14) calendar days following said termination or expiration, at County's option: (a) title to same shall vest in County, at no cost to County; or (b) County may remove such property to a public warehouse for deposit; or (c) County may retain same in its own possession and sell same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage; and sale; second, to any sums owed by Concessionaire to County; or (d) County may dispose of such property in any manner permitted by law. If the expenses of such removal, storage, and sale exceed the proceeds of sale, Concessionaire shall pay such excess to County upon demand.
- 16.4 It is agreed and understood that there shall be no holding over of Concessionaire in any rented space after the termination of this Agreement and Concessionaire shall immediately vacate the rented space. County reserves the right to pursue all remedies available to it under applicable law and regulations as a result of Concessionaire's failure to vacate. It is expressly agreed that acceptance of fees or any other payments by County in the event Concessionaire fails or refuses to surrender possession shall not operate as County's consent to Concessionaire's continued possession nor shall it constitute a waiver by the County of its right to immediate possession of the Assigned Areas. At the sole option of County, and upon written notice to Concessionaire by the Aviation Department, Concessionaire shall be required to pay to County during any holdover period monthly fees equal

to double the amount of the monthly payment due and payable to County for the month immediately preceding the termination date of this Agreement.

- 16.5 Concessionaire shall be responsible for vacating all subconcessionaires, holdovers, or other occupants, legal or otherwise, from the Assigned Areas upon any expiration or earlier termination of this Agreement, as provided for herein. In the event any occupants have not vacated the Assigned Areas upon the termination or expiration of the Agreement, as set forth herein, then Concessionaire shall revert to a Concessionaire at sufferance, as prescribed in this Article XVI and shall be subject to double fees and any other legal or equitable remedies available to County hereunder and at law and in equity.
- 16.6 In the event Concessionaire fails to surrender the property in the above required condition or has failed to complete any of the obligations due under this Agreement or any future amendments thereto, County shall not be obligated to accept Concessionaire's surrender of the Assigned Areas until same have been satisfied. During the period of time from the date of the termination or expiration of this Agreement and until County is satisfied, in its sole discretion, with Concessionaire's surrender of the Assigned Areas and County reduces its Acceptance of Surrender to writing as provided for below, Concessionaire shall be considered a holdover Concessionaire under the terms set forth in herein.
- 16.7 A final exit walkthrough inspection shall be conducted by Concessionaire and the Aviation Department to determine compliance with this provision and the Aviation Department's acceptance of the condition of the Assigned Areas. In the event Concessionaire fails to comply with the terms of this Article XVI, County reserves the right to perform all necessary work to bring the Assigned Areas to its original condition prior to Concessionaire's occupancy, normal wear and tear excepted, and Concessionaire shall reimburse County for all expenses incurred.
- 16.8 The provisions of this Article XVI shall survive the expiration or termination of this Agreement.

ARTICLE XVII
FIRE AND OTHER DAMAGE

- 17.1 In the event that structural or permanent portions of the Assigned Areas are partially damaged by fire or other casualty for which Concessionaire is not responsible, Concessionaire shall give immediate notice thereof to County and the same shall be repaired at the expense of County without unreasonable delay unless County determines that the damage is so extensive that the repair or rebuilding is not feasible. From the date of such casualty until said portion of the Assigned Areas is so repaired, the monthly installments of the Minimum Annual Guarantee hereunder shall abate in such proportion as the part of the area thus destroyed or rendered untenable, within the Assigned Areas, provided, however, that if any area is so slightly injured in any such casualty as not to be rendered unfit for occupancy, such

installment payments shall not cease or be abated during any repair period. In the event that the damage to the impacted portion of the Assigned Areas should be so extensive as to render it untenable, the monthly installments of the Minimum Annual Guarantee for the impacted portion of the Assigned Areas shall be abated until such time it shall again be put in repair, but in the event of the area being damaged by fire or other casualty to such an extent as to render it necessary in the exclusive judgment of County not to rebuild the same, then, at the option of County and upon notice to Concessionaire, the damaged area may be removed from the Agreement. In the event of any abatement of installments of the Minimum Annual Guarantee with respect to the Assigned Areas or any portion of the Assigned Areas, Concessionaire shall be required to pay to County the Percentage Fees described in Article IV, hereof.

- 17.2 County's obligations to rebuild or repair under this Article XVII shall be limited to restoring only the structural or permanent portions of the building in which the Assigned Areas are located to substantially the condition that existed prior to the casualty, and shall further be limited to the extent of the insurance proceeds available to County for such restoration. Concessionaire agrees that if County elects to repair or rebuild as provided in this Article XVII, then Concessionaire will proceed with reasonable diligence and at its sole cost and expense to rebuild, repair, and restore its signs, fixtures, furnishings, equipment, improvements and other items provided or installed by Concessionaire in or about the Assigned Areas in a manner and to a condition at least equal to that which existed prior to its damage or destruction.
- 17.3 In the event said damage is caused by the act or omission of Concessionaire or Concessionaire's Parties, Concessionaire's payments shall not abate and Concessionaire shall be responsible, at its expense, for making all the necessary repairs as approved by the Aviation Department. If Concessionaire fails to make the necessary repairs in a timely manner as determined by the Aviation Department, then Aviation Department may, at its option, cause such repairs to be completed and Concessionaire shall reimburse the Aviation Department for the costs and expenses incurred in such repair, plus an administrative fee as permissible under Broward County Administrative Code.

ARTICLE XVIII NOTICES

- 18.1 Except as otherwise provided for in this Agreement, whenever either party desires to give notice to the other, such notice must be in writing, sent by: certified United States Mail, postage prepaid, return receipt requested; by express, overnight delivery (with a signed receipt required) by a company such as Federal Express, United Parcel Service, or similar; or by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this Section 18.1. Notice shall be deemed to have been given upon receipt of signature

from the receiving party or seven (7) days after the mailing of the notice, whichever occurs first. For the present, the parties designate the following:

County:

Broward County Aviation Department
Director of Aviation
Fort Lauderdale-Hollywood International Airport
2200 SW 45th Street, Suite 101
Dania Beach, FL 33312
Email: ygovin@broward.org

with a copy to:

County Administrator
Governmental Center
115 S. Andrews Avenue
Fort Lauderdale, FL 33301
Email: bhenry@broward.org

Concessionaire:

Clear Channel Airports
Attn: President
7450 Tilghman Street, Suite 104
Allentown, PA 18106
Email: Mortengotterup@clearchannel.com

with a copy to:

Clear Channel Airports
7601 Riviera Boulevard
Miramar, FL 33023
Email: jonabeln@clearchannel.com

Contemporaneously with the execution of this Agreement, County and Concessionaire shall provide the other party with an appropriate email address for the purposes of satisfying the notice requirements, as set forth in the sections of this Agreement that permit email as a means of providing notice.

- 18.2 Except as otherwise provided for in this Agreement, all notices, approvals, and consents required hereunder must be in writing to be effective.

ARTICLE XIX
ENVIRONMENTAL COMPLIANCE,
ENVIRONMENTAL CONTAINMENT AND REMOVAL

- 19.1 Concessionaire shall provide the Aviation Department, if requested at any time, with a list of all pollutants or hydrocarbon contaminates, hazardous materials, or other

contaminants or regulated materials (collectively, "Materials") stored, used, generated, or disposed of on Airport property by Concessionaire.

- 19.2 Concessionaire agrees to comply with all existing and future federal, state, local, and County environmental laws, ordinances and regulations, and the requirements of any Development Order covering the Airport issued to County pursuant to Chapter 380, Florida Statutes, including without limitation those addressing the following:
 - 19.2.1 Proper use, storage, treatment, and disposal of Materials, including contracting with a licensed hazardous waste transporter and/or treatment and disposal facility to assure proper transport and disposal of hazardous waste and other regulated Materials;
 - 19.2.2 Proper use, disposal, and treatment of storm water runoff, including the construction and installation of adequate pre-treatment devices or mechanisms, if applicable;
 - 19.2.3 Adequate inspection, licensing, insurance, and registration of existing and future storage tanks, storage systems, and ancillary facilities to meet all County, local, state, and federal standards, including the installation and operation of adequate monitoring devices and leak detection systems;
 - 19.2.4 Adequate facilities for management and, as necessary, pretreatment of industrial waste, industrial wastewater, and regulated Materials and the proper disposal thereof; and
 - 19.2.5 Compliance with reporting requirements of Title III of the Superfund Amendment and Chapter 27 of the Broward County Code, as applicable, and as such laws may be amended from time to time.
- 19.3 The release of any Materials on Airport or at the Assigned Areas as a result of Concessionaire's operations at the Airport that is in an amount that is in violation of any federal, state, County or local law, rule or regulation or in violation of an order or directive of any federal, state, or local court or governmental authority, by Concessionaire or Concessionaire's Parties, whether committed prior to or subsequent to the date of execution of this Agreement, shall be Concessionaire's expense, and upon demand of County or any of its agencies or any local, state, or federal regulatory agency, immediately contained or removed to meet the requirements of applicable environmental laws, rules and regulations. If Concessionaire does not take action immediately to have such Materials contained, removed and abated, County or any of its agencies may upon reasonable notice to Concessionaire (which notice shall be written unless an emergency condition exists) undertake the removal of the Materials; however, any such action by County or any of its agencies shall not relieve Concessionaire of its obligations under this or any other provision of this Agreement or as imposed by law. No action taken by either Concessionaire or County to contain or remove Materials, or to abate a release,

whether such action is taken voluntarily or not, shall be construed as an admission of liability as to the source of or the person who caused the pollution or its release. As use in this Agreement, "Concessionaire's operations" and "Concessionaire's actions" and words of similar import, shall include all actions and inaction by Concessionaire or Concessionaire's Parties.

- 19.4 Concessionaire shall provide the Aviation Department with notice of release of Materials occurring on account of Concessionaire's operations at the Airport in accordance with the requirements of the Aviation Department's policies and procedures manual. Concessionaire shall maintain a log of all such notices to the Aviation Department and shall also maintain all records required, all Applicable Laws and Regulations, and also such records as are reasonably necessary to adequately assess environmental compliance in accordance with all Applicable Laws and Regulations.
- 19.5 As required by law, Concessionaire shall provide the federal, state, County and local regulatory agencies with notice of spills, release, leaks, or discharges (collectively, "release") of Materials on the Airport property which meet or exceed an amount required to be reported to any local, County, state, or federal regulatory agency under applicable environmental laws, rules, and regulations, which notice shall be in accordance with applicable environmental laws, rules, and regulations. Concessionaire shall further provide the Aviation Department and County Growth Management and Environmental Protection (or successor agency) with written notice within one (1) calendar day following commencement of the curative measures, remediation efforts and/or monitoring activities to be effected. Concessionaire shall have an updated contingency plan in effect relating to such release, which provides minimum standards and procedures for storage of regulated Materials and other Materials, prevention and containment of spills and release, and transfer and disposal of regulated Materials and other Materials. The contingency plan shall describe design features, response actions, and procedures to be followed in case of release or other accidents involving hazardous Materials, bio-hazardous Materials or petroleum products or other Materials. Concessionaire agrees to permit entry of any Assigned Areas it occupies at the Airport at all reasonable times, by inspectors of County Department of Planning and Environmental Protection or (successor agency) and of other regulatory authorities with jurisdiction.
- 19.6 The Aviation Department, upon reasonable written notice to Concessionaire, shall have the right to inspect all documents relating to the environmental condition of the Assigned Areas used by Concessionaire at the Airport, including without limitation, the release of any Materials, or any curative, remediation, or monitoring efforts, and any documents required to be maintained under applicable environmental laws, rules, and regulations or any development order issued to the County pertaining to the Airport, pursuant to Chapter 380, Florida Statutes, including, but not limited to, manifests evidencing proper transportation and disposal of Materials, environmental site assessments, and sampling and test results. Concessionaire agrees to allow inspection of the Assigned Areas, by appropriate federal, state, County, and local

agency personnel in accordance with applicable environmental laws, rules, and regulations and as required by any development order issued to County pertaining to the Airport, pursuant to Chapter 380, Florida Statutes.

- 19.7 If County arranges for the removal of any Materials at the Airport that were released by Concessionaire or Concessionaire's Parties, all costs of such removal incurred by County shall be paid by Concessionaire to County within ten (10) calendar days of County's written demand, with interest at the rate of eighteen percent (18%) per annum thereafter accruing.
- 19.8 Nothing herein shall relieve Concessionaire of its general duty to cooperate with County in ascertaining the source of and, containing, removing and abating any Materials at the Airport. The Aviation Department and its employees, contractors, and agents, upon reasonable written notice to Concessionaire, and the federal, state, local, and other County agencies, and their employees, contractors, and agents, at times in accordance with all Applicable Laws and Regulations, shall have the right to enter any Assigned Areas used by Concessionaire at the Airport for the purposes of the foregoing activities and conducting such environmental assessments (testing or sampling), inspections and audits as it deems appropriate.
- 19.9 The provisions of this Article XIX shall survive the expiration or other termination of this Agreement.

ARTICLE XX
SECURITY

- 20.1 Airport Security Program and Aviation Regulations. Concessionaire agrees to observe all security requirements and other requirements of the Federal Aviation Regulations applicable to Concessionaire, including without limitation, all regulations of the United States Department of Transportation (USDOT), the Federal Aviation Administration (FAA) and the Transportation Security Administration (TSA), and Concessionaire agrees to comply with the County's Airport Security Program, any security training program that may be instituted, and the Air Operations Area (AOA) Vehicle Access Program, and any amendments thereto, and to comply with such other rules and regulations as may be reasonably prescribed by the County, and to take such steps as may be necessary or directed by the County to insure that subcontractors, employees, invitees, and guests observe these requirements. If required by the Aviation Department, Concessionaire shall conduct background checks of its employees in accordance with applicable federal regulations. If as a result of the acts or omissions of Concessionaire, its subcontractors, employees, invitees, or guests, the County incurs any fines and/or penalties imposed by any governmental agency, including without limitation, the USDOT, the FAA or the TSA, or any expense in enforcing any federal regulations, including without limitation, airport security regulations, or the rules or regulations of the County, and/or any expense in enforcing the County's Airport Security Program, then Concessionaire agrees to pay and/or

reimburse to County all such costs and expenses, including all costs of administrative proceedings, court costs, and attorney's fees and all costs incurred by County in enforcing this provision. Concessionaire further agrees to rectify any security deficiency or other deficiency as may be determined as such by the County or the USDOT, FAA, the TSA, or any other federal agency with jurisdiction. In the event Concessionaire fails to remedy any such deficiency, the County may do so at the sole cost and expense of Concessionaire. The County reserves the right to take whatever action is necessary to rectify any security deficiency or other deficiency.

- 20.2 Access to Security Identification Display Areas and Identification Media. Concessionaire shall be responsible for requesting the Aviation Department to issue airport issued identification media ("Airport Issued Identification Media") to all employees including those who are authorized access to Security Identification Display Areas ("SIDA") on the Airport, as designated in the Airport Security Program. In addition, Concessionaire shall be responsible for the immediate reporting of all lost or stolen Airport Issued Identification Media and the immediate return of the Airport Issued Identification Media of Concessionaire's personnel transferred from the Airport, or terminated from the employ of Concessionaire, or upon termination of this Agreement. Before an Airport Issued Identification Media is issued to an employee, Concessionaire shall comply with the requirements of applicable federal regulations with regard to fingerprinting for criminal history record checks and security threat assessments, and shall require that each employee complete security training programs conducted by the Aviation Department. The Concessionaire shall pay or cause to be paid to the Aviation Department such charges as may be established from time to time for lost or stolen Airport Issued Identification Media and those not returned to the Aviation Department in accordance with these provisions. The Aviation Department shall have the right to require Concessionaire to conduct background investigations and to furnish certain data on such employees before the issuance of Airport Issued Identification Media, which data may include the fingerprinting of employee applicants for such media.
- 20.3 Operation of Vehicles on the AOA. Before the Concessionaire shall permit any employee of Concessionaire or of any subconsultant/subcontractor to operate a motor vehicle of any kind or type on the AOA (and unless escorted by an Aviation Department approved escort), Concessionaire shall ensure that all such vehicle operators possess current, valid, and appropriate Florida driver's licenses. In addition, any motor vehicles and equipment of Concessionaire or of any subconsultant/subcontractor operating on the AOA must have an appropriate vehicle identification permit issued by the Aviation Department, which identification must be displayed as required by the Aviation Department.
- 20.4 Consent to Search/Inspection. Concessionaire agrees that its vehicles, cargo, goods, and other personal property are subject to being inspected and searched when attempting to enter or leave and while on the AOA. Concessionaire further

agrees on behalf of itself and its subconsultant/subcontractors, that it shall not authorize any employee or other person to enter the AOA unless and until such employee or other person has executed a written consent-to-search/inspection form acceptable to the Aviation Department. Concessionaire acknowledges and understands that the foregoing requirements are for the protection of users of the Airport and are intended to reduce incidents of cargo tampering, aircraft sabotage, thefts, and other unlawful activities at the Airport. For this reason, Concessionaire agrees that persons not executing such consent-to-search/inspection form shall not be employed by Concessionaire or by any subconsultant/subcontractor at the Airport in any position requiring access to the AOA or allowed entry to the AOA by Concessionaire or by any subconsultant/subcontractors.

ARTICLE XXI
NONDISCRIMINATION, EQUAL OPPORTUNITY EMPLOYMENT AND
AMERICANS WITH DISABILITIES ACT

- 21.1 Nondiscrimination Requirements. To the extent applicable, Concessionaire agrees to comply with the nondiscrimination requirements set forth on Exhibit E, attached hereto and made a part hereof.
- 21.1.1 This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 CFR Parts 23 and 26. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, gender, color, national origin, religion, sexual orientation, marital status, political affiliation, age, or physical or mental disability in connection with the award or performance of this Agreement, which is covered by 49 CFR, Parts 23 and 26. Concessionaire agrees to include the above statements in any subsequent agreement that it enters into for services under this Agreement and shall cause those subcontractors to similarly include the statements in their subcontractor agreements.
- 21.1.2 Concessionaire shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of the funds or any portion of the funds in fulfilling its obligations under this Agreement. Concessionaire shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by County, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Concessionaire shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.
- 21.1.3 Concessionaire's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation (Broward County Code, Chapter

16 ½), national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.

- 21.1.4 Concessionaire shall not engage in or commit any discriminatory practice in violation of the Broward County Human Rights Act (Broward County Code, Chapter 16 ½) in performing any services pursuant to this Agreement.
- 21.2 Concessionaire shall take affirmative action to ensure that applicants are employed and employees are treated without regard to race, gender, color, familial status, national origin, religion, sexual orientation, marital status, political affiliation, age or physical or mental disability during employment. Such actions shall include, but are not limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility. Concessionaire agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - 21.2.1 County shall also require that any contractor selected to perform work on a County project include the foregoing or similar language in its contracts with any subcontractors, except that any project assisted by U.S. Department of Transportation funds shall comply with the nondiscrimination requirements in 49 CFR Parts 23 and 26, as amended. Subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause. Failure to comply with above requirements is a material breach of the Agreement, and may result in the termination of this Agreement or such other remedy as County deems appropriate.
 - 21.2.2 Concessionaire shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment.
 - 21.2.3 By execution of this Agreement, Concessionaire represents that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes). County hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle Aviation Department to terminate this Agreement and may result in debarment from County's competitive procurement activities.
- 21.3 Airport Concession Disadvantaged Business Enterprise. The Airport Concession Disadvantaged Business Enterprise ("ACDBE") regulations (49 CFR Part 23) establish requirements for setting an overall goal for ACDBE participation in all concessions activities. This rule requires recipients of federal funds to use a methodology based on demonstrable data of relevant market conditions, and is designed to reach a goal the recipient would expect ACDBE's to achieve in the

absence of discrimination. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Parts 23 and 26. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, gender, color, national origin, religion, sexual orientation, marital status, political affiliation, age or physical or mental disability in connection with the award or performance of this Agreement, which is covered by 49 CFR, Parts 23 and 26. Concessionaire agrees to include the above statements in any subsequent agreements that it enters into for services under this Agreement and shall cause those businesses to similarly include the statements in further agreements.

21.3.1 The Concessionaire has committed to **10.4% ACDBE** participation to be achieved pursuant to Concessionaire's ACDBE participation plan as set forth in **Exhibit F-1** attached hereto and made a part hereof.

21.3.2 Broward County has a Federal Aviation Administration (FAA) approved nondiscriminatory management agreement and corresponding County policy governing ACDBE participation in County contracts and other selected activities which includes management contracts. Broward County has established a policy relating to Disadvantaged Business Enterprises ("DBE") participation in all County contracts and other selected activities, which includes concessions under an ACDBE program. In order for the concession to be considered an ACDBE under federal requirements, firms must be certified ACDBE.

It is the policy of Broward County to ensure that ACDBE's, as defined in 49 CFR Part 23, can compete fairly for opportunities as subcontractors and suppliers on all contracts awarded by the County to ensure a level playing field.

21.4 Contract Assurances. In the event the following clauses conflict with any other terms or provisions of this Agreement section, the clauses set forth in this Airport Concession Disadvantaged Business Enterprise shall control.

21.4.1 Nondiscrimination/Remedies. Concessionaire or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Concessionaire shall carry out applicable requirements of 49 CFR Part 23 in the award and administration of contracts subject to USDOT requirements. Failure by Concessionaire to carry out these requirements is a material breach of this contract which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

21.4.2 Participation by ACDBE's. It is the policy of Broward County that ACDBE firms, as defined herein, can compete fairly for opportunities as Concessionaire, prime contractor, subcontractors, and suppliers on all

contracts awarded by the County to ensure a level playing field. Concessionaire hereby agrees to take all necessary and reasonable steps, including compliance with the matters set forth in this Section 21 in accordance with 49 CFR Part 23, as amended, to ensure that the ACDBE firms have fair opportunity to compete for and perform contracts.

- 21.4.3 Prompt Payment. Concessionaire hereby agrees to pay its subcontractors and suppliers within thirty (30) days following receipt of the service or supplies. A finding of nonpayment to subcontractors and suppliers is a material breach of this Agreement. Concessionaire shall include the foregoing prompt payment language in all of its contracts with subcontractors who participate on County projects subject to the regulations in 49 CFR Part 23 and Part 26, as amended. Designated staff of the OESBD will conduct meetings with parties involved in prompt payment disputes to facilitate an amicable resolution.
- 21.5 Contract Compliance Monitoring. Compliance monitoring shall be conducted to determine if Concessionaire and/or subcontractors are complying with the requirements of the ACDBE Program. Failure of Concessionaire to comply with this provision may result in the County imposing penalties or sanctions pursuant to the provisions of the 49 CFR Part 23 and 26 and the County's ACDBE Program Plan. Contract compliance will encompass monitoring for contract dollar achievement and ACDBE subcontractors utilization. The Office of Economic and Small Business Development shall have the authority to audit and monitor all contracts and contract-related documents related to Broward County projects. The requirements of the ACDBE Program are applicable to Concessionaire and its subcontractors. Concessionaire shall be responsible for ensuring proper documentation with regard to its utilization and payment of ACDBE subcontractors.
- 21.5.1 Concessionaire shall inform the County immediately when a ACDBE subcontractor is not able to perform or if Concessionaire believes the ACDBE subcontractor should be replaced for any other reason, so that the Office of Economic and Small Business Development may review and verify the good faith efforts of Concessionaire to substitute the ACDBE subcontractor with another ACDBE subcontractor. Concessionaire may change its ACDBE subcontractor only upon receiving the prior written approval of the Office of Economic and Small Business Development.
- 21.6 Concessionaire's ACDBE participation plan is set forth in **Exhibit F-1** attached hereto and made a part hereof. Subject to the approval of the OESBD, said participation plan may be revised and updated by Concessionaire, and upon OESBD's approval, **Exhibit F-1** shall be revised and replaced.
- 21.7 Within twenty (20) days of the end of each calendar quarter, Concessionaire shall submit a report detailing its ACDBE participation for the previous calendar quarter. The report shall be on a form provided by the County's OESBD as set forth on

Exhibit F-2 attached hereto and made a part hereof. This report shall be submitted to:

Director, Office of Economic and Small Business Development
115 South Andrews Avenue, A-680
Fort Lauderdale, FL 33301

with a copy provided to:

Small Business Development Specialist
Broward County Aviation Department
2200 SW 45th Street, Suite 101
Dania Beach, FL 33312

and an additional copy to:

Airport Business Manager- Concessions
Fort Lauderdale-Hollywood International Airport
2200 SW 45th Street, Suite 101
Dania Beach, FL 33312

ARTICLE XXII
GENERAL PROVISIONS

- 22.1 Subordination of Agreement. This Agreement and all provisions hereof are subject and subordinate to the terms and conditions of the instruments and documents under which County acquired the Airport from the United States of America and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in such instruments and documents and any existing or subsequent amendments thereto. This Agreement and all provisions hereof are subject and subordinate to any ordinances, rules, or regulations which have been, or may hereafter be, adopted by County pertaining to the Airport. This Agreement and all provisions hereof are subject and subordinate to the provisions of any agreement heretofore or hereafter made between County and the United States Government relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to County for Airport purposes, or the expenditure of federal funds for the improvements or development of the Airport, including, without limitation, the expenditure of federal funds for the development of the Airport under the provisions of the Federal Aviation Act of 1958, as codified in the United States Code, Title 49, as amended. In addition, this Agreement is subordinate and subject to the provisions of all resolutions heretofore and hereafter adopted by County in connection with any revenue bonds issued by County with respect to the operations of the Airport, or any improvements to the Airport or any of its facilities, and to the provisions of all documents executed in connection with any such

bonds, including, without limitation, any pledge, transfer, hypothecation, or assignment made at any time by County to secure any such bonds.

- 22.2 Cooperation with County. Concessionaire acknowledges that County, from time to time, will be seeking regulatory approvals (collectively "Regulatory Approvals") in connection with Airport projects, which may include the following: (i) amendment of development agreements and orders; (ii) agreements with the state of Florida and other agencies; (iii) land use and zoning amendments; (iv) preparation of environmental assessments and environmental impact statements; (v) such permitting as may be required by federal, state, County or local regulations; and (vi) any other Regulatory Approvals as may be required by any governmental authority having jurisdiction over the issuance of permits for the approval and implementation of Airport projects. Concessionaire agrees to cooperate with County in connection with County's efforts to obtain the Regulatory Approvals. From and after the date of execution of this Agreement, Concessionaire covenants and agrees to support County's efforts to obtain the Regulatory Approvals and to execute any documents or instruments reasonably requested by County in order to assist County in obtaining the Regulatory Approvals, provided that Concessionaire shall not be required to bear any expense in connection therewith and Concessionaire shall not be deemed an agent of County.

From and after the date of execution of this Agreement, Concessionaire covenants and agrees (a) to support County's efforts to obtain the Regulatory Approvals; and (b) to execute any documents or instruments reasonably requested by County in order to assist County in obtaining the Regulatory Approvals, provided that Concessionaire shall not be required to bear any expense in connection therewith and Concessionaire shall not be deemed an agent of County.

- 22.3 Right to Amend. In the event that the United States Government, the State of Florida, or any agency or department thereof requires modifications in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, Concessionaire agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be required, and upon any failure of Concessionaire to agree to any such amendments, modifications, revisions, supplements, or deletions, County shall be entitled to terminate this Agreement upon thirty (30) calendar days' notice to Concessionaire.

- 22.4 Police/Regulatory Powers. County cannot, and hereby specifically does not, waive or relinquish any of its regulatory approval or enforcement rights and obligations as it may relate to regulations governing the Assigned Areas, any improvements thereon, or any operations at the Assigned Areas or at any other areas of the Airport. Nothing in this Agreement shall be deemed to create an affirmative duty of County to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with its zoning and land use codes, administrative codes, ordinances,

rules and regulations, federal laws and regulations, state laws and regulations, and grant agreements. In addition, nothing herein shall be considered zoning by contract.

- 22.5 Public Entity Crimes Act. Concessionaire represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to County, may not submit a bid on a contract with County for the construction or repair of a public building or public work, may not submit bids on leases of real property to County, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with County, and may not transact any business with County in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto and may result in debarment from County's competitive procurement activities. In addition to the foregoing, Concessionaire further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Concessionaire has been placed on the convicted vendor list.
- 22.6 Right of Flight. County reserves unto itself, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the Assigned Areas and Terminals and other adjacent County property together with the right to cause in said airspace such noise and other intrusions as may be inherent in the operations of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for aircraft landing on, taking off from, or operating at the Airport.
- 22.7 Compliance with FAR Part 77. All improvements, equipment, objects of natural growth and other obstructions on the Assigned Areas or Airport Terminals or any County property shall be restricted to a height in order to comply with all applicable Federal Aviation Regulations, including but not limited to Part 77. Notwithstanding the foregoing, Concessionaire shall make no above-grade improvements.
- 22.8 No Hazards. Concessionaire expressly agrees for itself, its successors, and assigns to prevent any use of the Assigned Areas which would interfere with or adversely affect the operation or maintenance of the Airport or otherwise constitute a hazard.
- 22.9 No Exclusive Rights. Nothing herein contained shall be deemed to grant Concessionaire any exclusive right or privilege within the meaning of Section 308

of the Federal Aviation Act, as codified in Title 49 USC Section 40103, et seq., for the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof, Concessionaire shall have the right to use the Assigned Areas and Advertising Locations within same pursuant to the provisions of this Agreement. County reserves the right to add other specialty advertising programs.

- 22.10 Right to Develop. County reserves the right to further develop and improve County-owned property, as it sees fit, regardless of the desires or views of Concessionaire, and without interference or hindrance, consistent with applicable laws and regulations.
- 22.11 Protection of Air Space. Nothing contained in this Agreement shall grant to Concessionaire any rights whatsoever in the air space above County property. In that regard, County reserves the right to take any action whatsoever that it considers necessary to protect the aerial approaches of the Airport against obstruction, including, but not limited to, demolition or removal of structures upon the Assigned Areas, together with the right to prevent Concessionaire from erecting or permitting to be erected any improvement which, in the opinion of County, would limit the usefulness of or interfere with the operations at the Airport or constitute a hazard to aircraft.
- 22.12 Drug Free Workplace. Concessionaire shall assure compliance with County's Drug Free Work Place Policy for all personnel employed by or contracted by Concessionaire who operate, maintain, and repair the Assigned Areas.
- 22.13 Independent Contractor. Concessionaire is an independent contractor under this Agreement. Services provided by Concessionaire shall be subject to the supervision of Concessionaire and such services shall not be provided by Concessionaire or its agents as officers, employees, or agents of County. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.
- 22.14 Third Party Beneficiaries. Neither Concessionaire nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this agreement.
- 22.15 Contingency Fee. Concessionaire warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Concessionaire, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Concessionaire, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award

or making of this Agreement. For a breach or violation of this provision, County shall have the right to terminate this Agreement without liability at its discretion, and to recover the full amount of such fee, commission, percentage, gift or consideration.

- 22.16 Waiver of Breach and Materiality. Failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the provisions of this Agreement. County and Concessionaire agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.
- 22.17 Severance. In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless County or Concessionaire elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) calendar days after the finding by the court becomes final.
- 22.18 Law, Jurisdiction, Venue, Waiver Of Jury Trial. This Agreement, as amended, shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. The parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the parties agree that the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, CONCESSIONAIRE AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**
- 22.19 Joint Preparation. Preparation of this Agreement has been a joint effort of County and Concessionaire and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

- 22.20 Non-Liability of Government Representatives. No commissioner, director, officer, agent or employee of County shall be charged personally or held contractually liable under any term or provisions of this Agreement or of any supplement, modification, or amendment to this Agreement or because of any breach thereof or because of its or their execution or attempted execution.
- 22.21 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles I through XXII of this Agreement shall prevail and be given effect.
- 22.22 Amendments. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the County and Concessionaire.
- 22.23 Termination of Prior Agreement on the Effective Date. From and after the Effective Date, this Agreement shall supersede and replace any prior advertising and display concession agreements between the parties. Notwithstanding anything to the contrary in any prior agreement or in this Agreement, from and after the Effective Date, the provisions of the prior agreement shall terminate, be null and void, and no longer of any force or effect except for obligations and liabilities that accrued prior to the Effective Date of this Agreement and for provisions of the prior agreement that by their express terms survive the termination thereof.
- 22.24 Prior Negotiations. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.
- 22.25 Utility Easements. County reserves the right to maintain such utility easements and/or licenses on Assigned Areas as may now or in the future be determined to be necessary to serve the needs of the Airport, and Concessionaire agrees to take this Agreement subject to said easement and/or license requirements. Such easements and/or licenses will be used for, but not limited to, the installation of water distribution, sewage collection, underground electrical and telephone conduits, above ground street lighting, and power poles.
- 22.26 Captions. The headings of the several articles, sections, and subsections of this Agreement 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 provisions of this

Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof. Unless otherwise indicated, a reference herein to a paragraph, subparagraph, subsection, section or article shall mean a reference to the paragraph, subparagraph, subsection, section or article in this Agreement.

- 22.27 Agent for Service of Process. If Concessionaire is not a resident of the State of Florida or is an association or partnership without a member or partner resident of the State of Florida or is a foreign corporation, then Concessionaire must be registered with the Secretary of State of the State of Florida and designate the Florida Secretary of State as its agent for service of process in any court action between Concessionaire and County arising out of or based upon this Agreement, and the service will be made as provided by the laws of the State of Florida for service upon a nonresident who has designated the Florida Secretary of State as agent for service. If for any reason, service of such process is not possible, and as an alternative method of service of process, Concessionaire waives personal service and agrees Concessionaire may be served with process out of the State of Florida by certified mailing to Concessionaire at the address set forth herein. Any such service out of the State of Florida will constitute valid service upon Concessionaire as of the mailing date. Concessionaire consents and agrees to the process so served, submits to the jurisdiction of Florida, and waives any and all objections and protest with respect to such service. If Concessionaire fails to register with the Secretary of State of the State of Florida and contests this waiver of personal service, Concessionaire shall pay Broward County's reasonable attorneys' fees and costs if Broward County successfully enforces this waiver of personal service.
- 22.28 Waiver of Claims. Concessionaire hereby waives any claim against Broward County and its officers, commissioners and employees for any consequential damages, including without limitation any loss of anticipated profits caused by (a) any failure of County to comply with any obligations hereunder; (b) any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part thereof; (c) by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable, or delaying the same or any part thereof from being carried out; or (d) any change in the operation or configuration of, or any change in procedures governing the use of the Airport.
- 22.29 Damage to Airport Facilities. Concessionaire shall be responsible for all damage to the Airport caused by the negligence of Concessionaire or Concessionaire's parties including, but not limited to, damage to the Terminal areas, roadways, and all areas where any activities are performed by Concessionaire.
- 22.30 Survival. Upon termination or expiration of this Agreement, Concessionaire shall remain liable for all obligations and liabilities that have accrued prior to the Termination Date. Notwithstanding any provision of this Agreement to the contrary, no obligation which accrued but has not been satisfied under any prior

agreements between the parties shall terminate or be considered canceled upon execution of this Agreement. Rather, such obligation shall continue as if it had accrued under this Agreement until the obligation is satisfied.

- 22.31 No Recordation of Agreement. Concessionaire shall not record this Agreement or any memorandum thereof in the Official Records of Broward County, Florida, and a violation of this paragraph by Concessionaire shall automatically void those provisions and portions of this Agreement which run to the benefit of Concessionaire.
- 22.32 It is understood and agreed that this Agreement contains the entire agreement between the parties hereto. It is further understood and agreed by Concessionaire that County and County's agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as is expressly set forth in this Agreement, and that no claim or liability or cause for termination shall be asserted by Concessionaire against County for, and County shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement, any other written or parol agreement with County being expressly waived by Concessionaire.
- 22.33 If County incurs any expense in enforcing the provisions of this Agreement, whether suit be brought or not, Concessionaire agrees to pay all such third party out-of-pocket costs and expenses including, but not limited to, court costs, interest, and reasonable attorney's fees and costs, through all trial, appellate, post-judgment, and bankruptcy proceedings.
- 22.34 All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section of this Agreement, such reference is to the section as a whole, including all of the subsections and subparagraphs of such Section, unless the reference is made to a particular subsection or subparagraph of such Section.
- 22.35 Visual Artists Rights Act. With respect to construction or installation of any improvements on Airport Assigned Areas and regarding the requirements of the federal Visual Artists Rights Act of 1990, 17 U.S.C. Sections 106A and 113, as it may be amended from time to time (the "Act"), Concessionaire agrees that it shall not (a) hire any artist or permit any agent, contractor, or other party to hire any artist for the purpose of installing or incorporating any work of art into or at any Airport Assigned Areas, or (b) permit the installation or incorporation of any work of art into or at any Airport Assigned Areas without the prior written approval of County. Concessionaire shall provide such documentation as County may request in connection with any such approval, which approval may be withheld by County

for any reason. Any approval of County may be conditioned upon the execution by the artist of a waiver of the provisions of the Act in form and substance acceptable to County.

- 22.36 Radon Gas. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your County public health unit.
- 22.37 Execution of this Agreement by Concessionaire shall constitute execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of the Agreement are accurate, complete, and current at the time of contracting. The original Agreement price and any additions thereto shall be adjusted to exclude any significant sums by which County determines the Agreement price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such Agreement adjustments shall be made within one (1) year following the end of this Agreement.
- 22.38 No Set Off. Concessionaire acknowledges that, through the Effective Date of this Agreement, it has no claims against Aviation Department with respect to any of the operations of Concessionaire at the Airport or any of the matters covered by this Agreement or any other agreement it may have with the Aviation Department. Concessionaire further acknowledges that it has no right of set off or counterclaims against any of the amounts payable by Concessionaire to Aviation Department under this Agreement or any other agreement it may have with the Aviation Department.
- 22.39 Other Fees and Charges. Concessionaire acknowledges that the Aviation Department may establish, from time to time, additional fees and charges for the use of various facilities, equipment, and services provided by the Aviation Department and not leased to or specifically provided to Concessionaire in this Agreement, and the procedures relating to payment of same. Concessionaire shall pay for its use of such facilities, equipment, and services at the rates and in the manner prescribed by the Aviation Department.
- 22.40 Dishonored Check or Draft. In the event Concessionaire delivers a dishonored check or draft to the Aviation Department in payment of any obligation arising under this Agreement, Concessionaire shall incur and pay a service charge in the amount established by the Aviation Department from time to time, along with interest thereon at eighteen percent (18%) per annum from the original due date of such dishonored check or draft without further demand. In such event, the Aviation Department may require that future payments be made by cashier's check or other means acceptable to the Aviation Department

- 22.41 Late Payments and Interest. The Aviation Department shall be entitled to collect interest at the rate of eighteen percent (18%) per annum from the date due until the date paid on any amounts that are past due under this Agreement.
- 22.42 Any and all reports and other data and documents provided to County by Concessionaire in connection with this Agreement are and shall remain the property of County.
- 22.43 In the event of a breach of any of the terms or conditions of this Agreement, it is specifically acknowledged and agreed that either party shall, in addition to all other remedies which may be available in law or equity, have the right to enforce this Agreement by specific performance, injunctive relief, prohibition, or mandamus to compel the other party to abide by the provisions of this Agreement.
- 22.44 Incorporation by Reference. The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached **Exhibits A, B, C, D, E, F, G, and H** are hereby incorporated into and made a part of this Agreement.
- 22.45 Incorporation of Required Provisions. The parties incorporate herein by this reference all provisions lawfully required to be contained herein by any governmental body or agency.
- 22.46 Incorporation of Proposal Documents. The RLI issued by the County and response of Concessionaire to the RLI, including all documents submitted by Concessionaire to County for evaluation in the concession award process pursuant to which the concession represented by this Agreement was awarded to Concessionaire, is hereby incorporated by reference into this Agreement and made a part hereof (the RLI and all documents filed by Concessionaire in response thereto are called collectively, "Proposal Documents"). Concessionaire shall be bound by all terms, conditions, representations, and commitments contained in the Proposal Documents. In the event Concessionaire shall fail to abide by and comply with any of the terms, conditions, representations, or commitments contained in the Proposal Documents, then, at the option of County, such failure shall be deemed a default of this Agreement. In the event of any conflict between this Agreement and the Proposal Documents, this Agreement shall prevail.
- 22.47 Binding Document. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto where permitted by this Agreement. This Agreement is binding as of the Effective Date. The individuals executing this Agreement on behalf of Concessionaire personally warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.
- 22.48 Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to

be an original, but all of which, taken together, shall constitute one and the same agreement.

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IN WITNESS WHEREOF, the parties hereto have made and executed this ADVERTISING AND DISPLAY CONCESSION AGREEMENT: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the _____ day of _____, 2018 and _____, signing by and through its duly authorized representatives.

COUNTY

ATTEST:

BROWARD COUNTY, by and through its Board of County Commissioners

Broward County Administrator, as
Ex-officio Clerk of the Broward County
Board of County Commissioners

By _____
Mayor

____ day of _____, 2018

Insurance requirements
approved by Broward County
Risk Management Division

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Aviation Office
2200 SW 45 Street, Suite 101
Dania Beach, Florida 33312
Telephone: (954) 359-6100
Telecopier: (954) 359-1292

By _____
Tracy Meyer (Date)

By _____
Nancy Rubin (Date)
Assistant County Attorney

Print Name and Title above

By _____
Alexander J. Williams, Jr. (Date)
Senior Assistant County Attorney

NR/la
Advertising and Display Concession Agreement
17-071.170 5/02/2017
01/22/2018
02/7/2018
02/09/2018

ADVERTISING AND DISPLAY CONCESSION AGREEMENT BETWEEN BROWARD COUNTY AND IN-TER-SPACE SERVICES, INC. D/B/A CLEAR CHANNEL AIRPORTS AT FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT

CONCESSIONAIRE
IN-TER-SPACE SERVICES, INC. D/B/A
CLEAR CHANNEL AIRPORTS

ATTEST:

Secretary

By: _____
Print Name:

Print Name Date:

Title: Date:

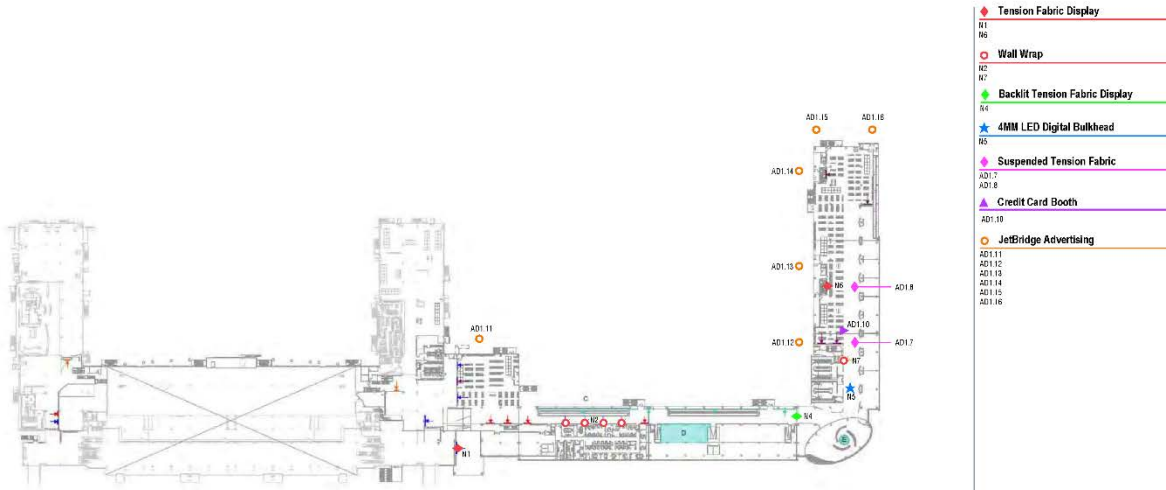
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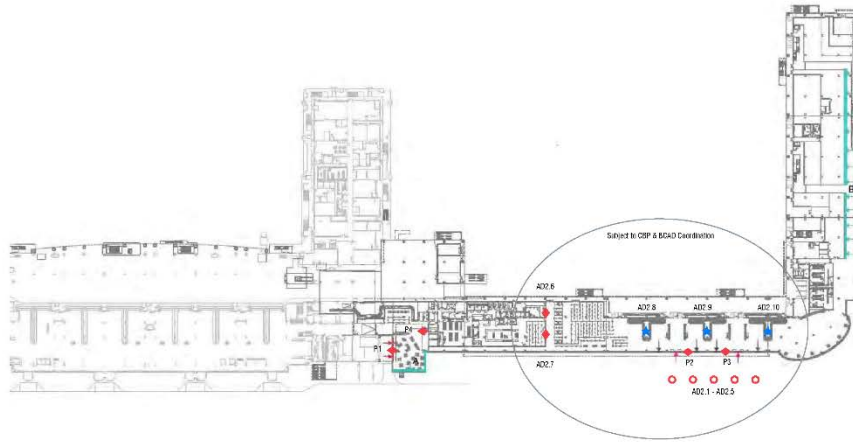
WITNESSES

Print Name and Date:

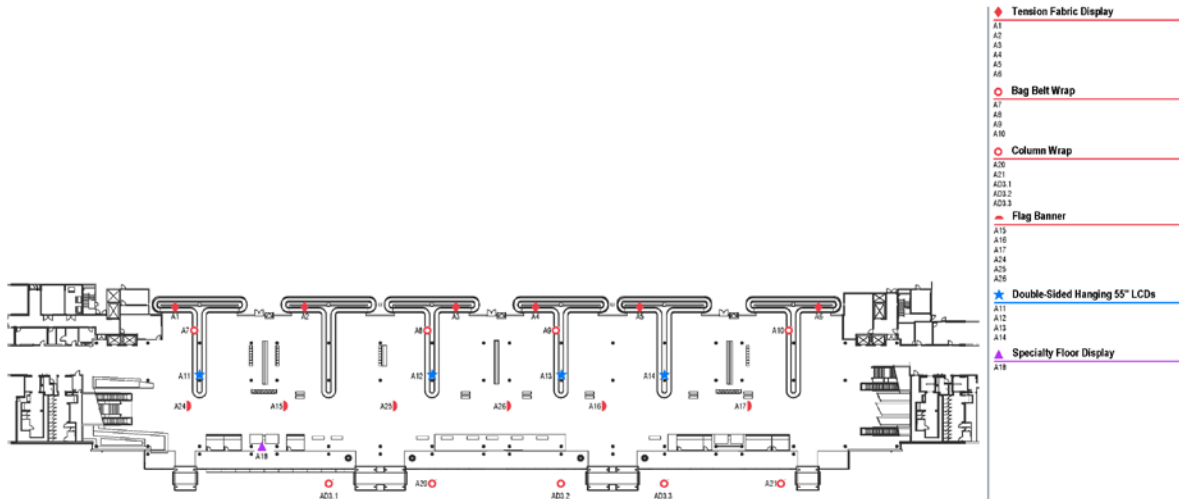
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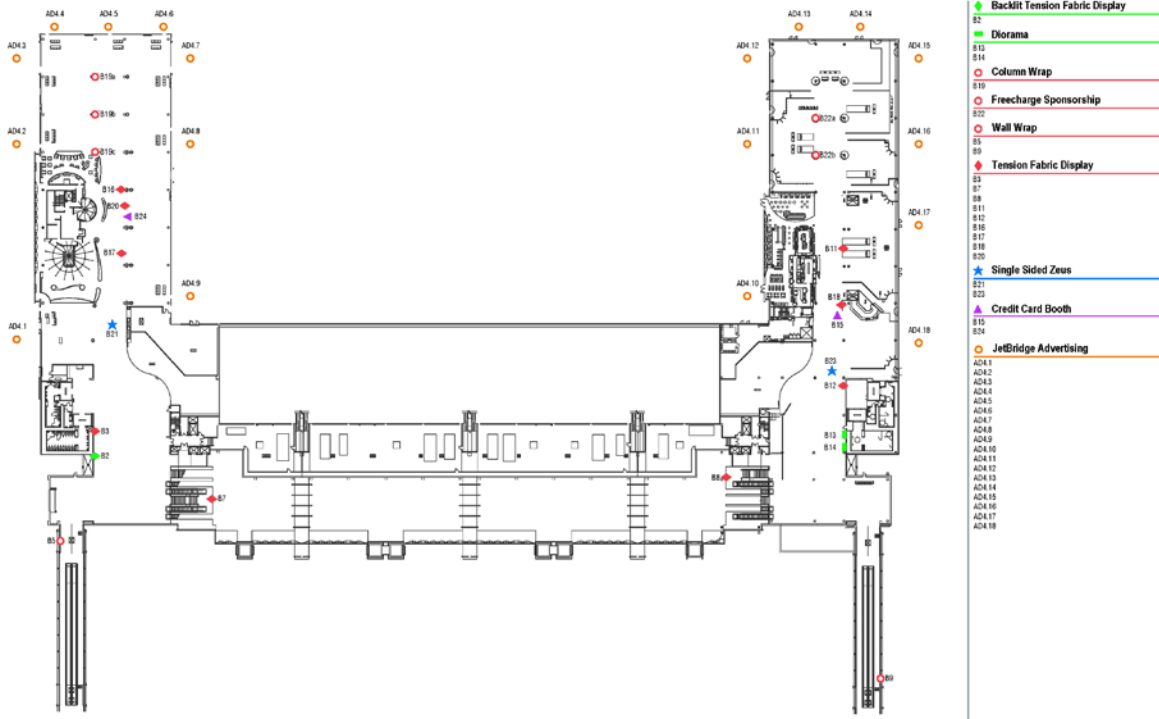
EXHIBIT A ASSIGNED AREA





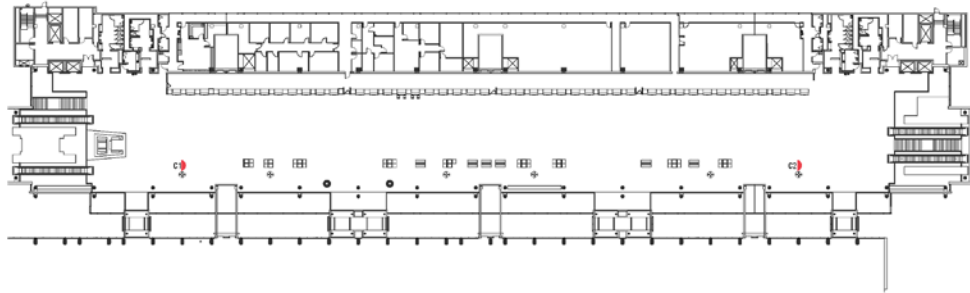
- ◆ Tension Fabric Display
- P1
- P2
- P3
- P4
- A20.6
- A20.7
- Column Wrap
- A20.1
- A20.2
- A20.3
- A20.4
- A20.5
- ★ Double-Sided Hanging 55" LCDs
- A20.8
- A20.9
- A20.10



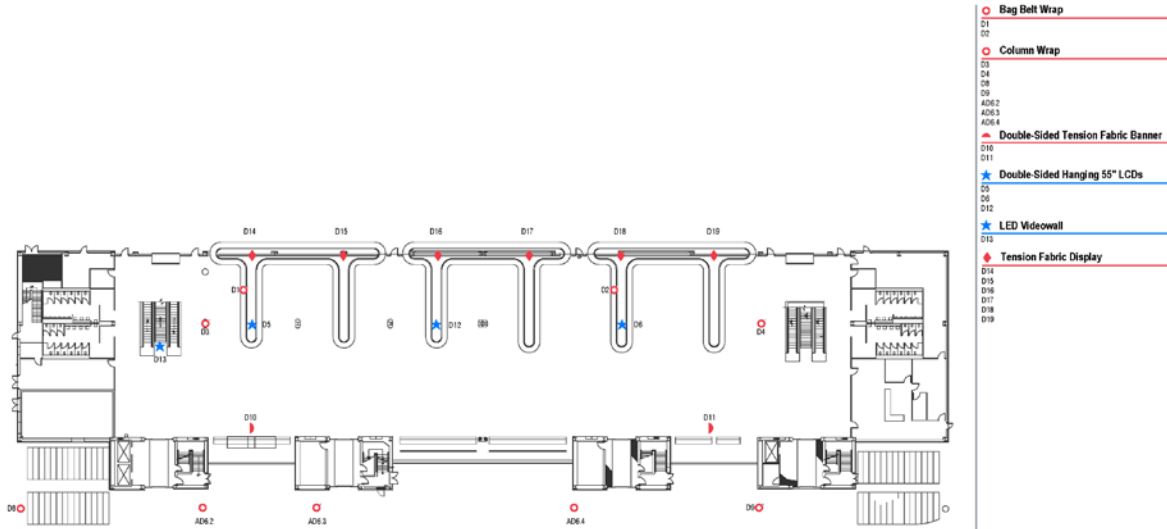


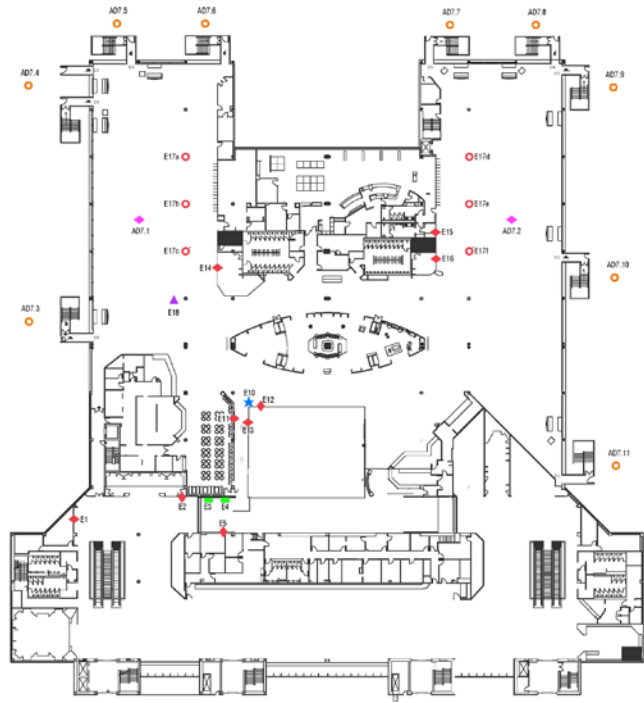
Fort Lauderdale-Hollywood International Airport • FLL • Area of Detail: Terminal 1 Floor Level





Flag Banner

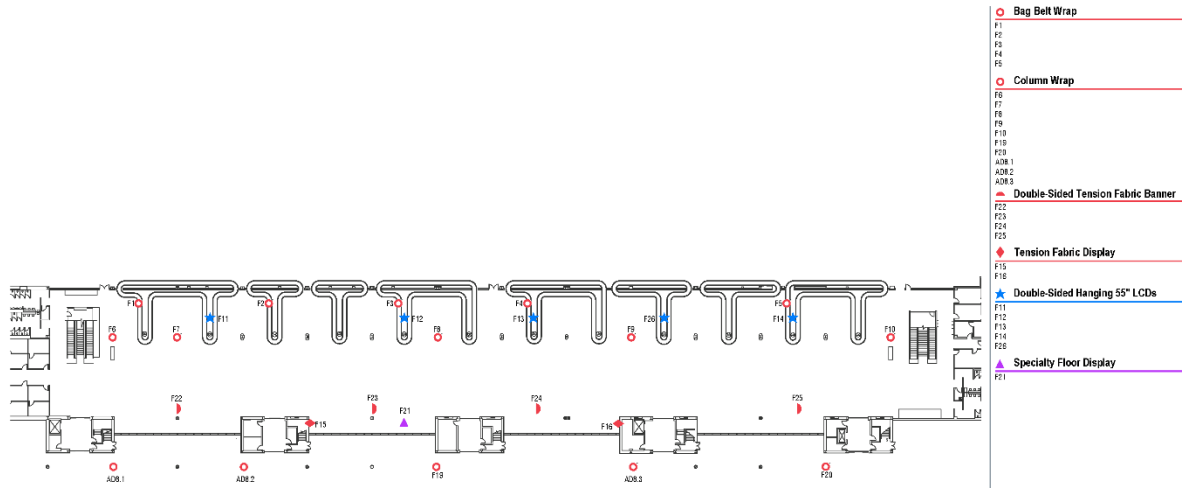


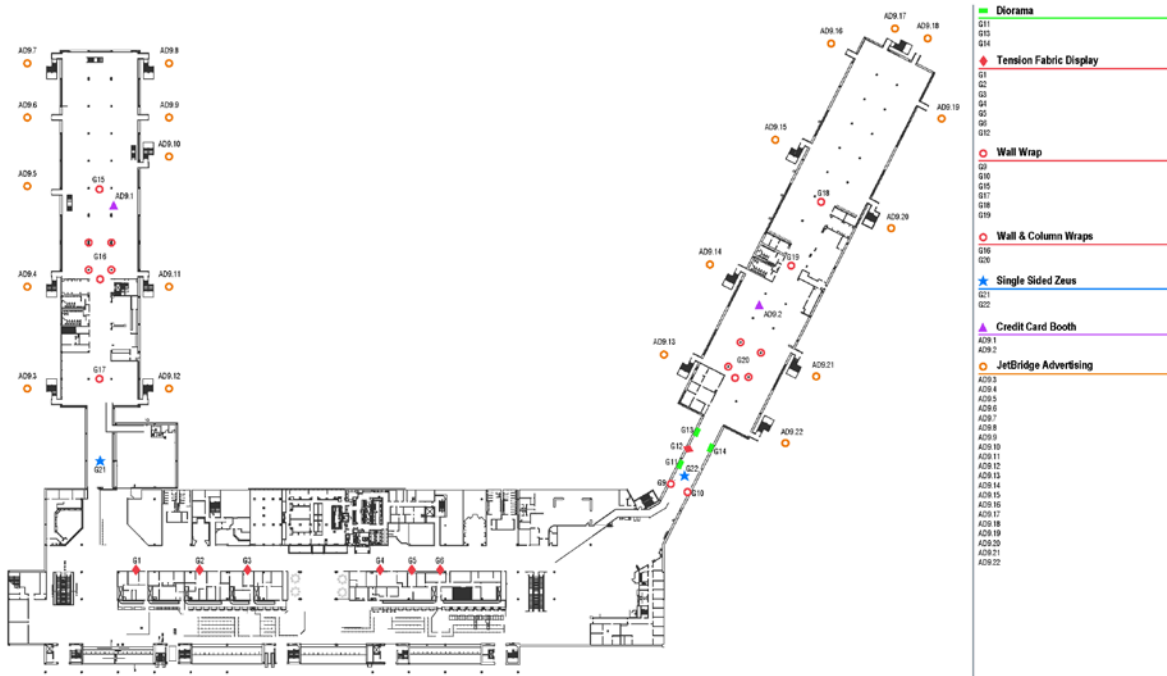


- Diorama
- Column Wraps
- ◆ Tension Fabric Display
- ★ Single Sided Zeus
- ▲ Credit Card Booth
- ◆ Suspended Tension Fabric
- JetBridge Advertising

Fort Lauderdale-Hollywood International Airport • FLL • Area of Detail: Terminal 2 Upper Level

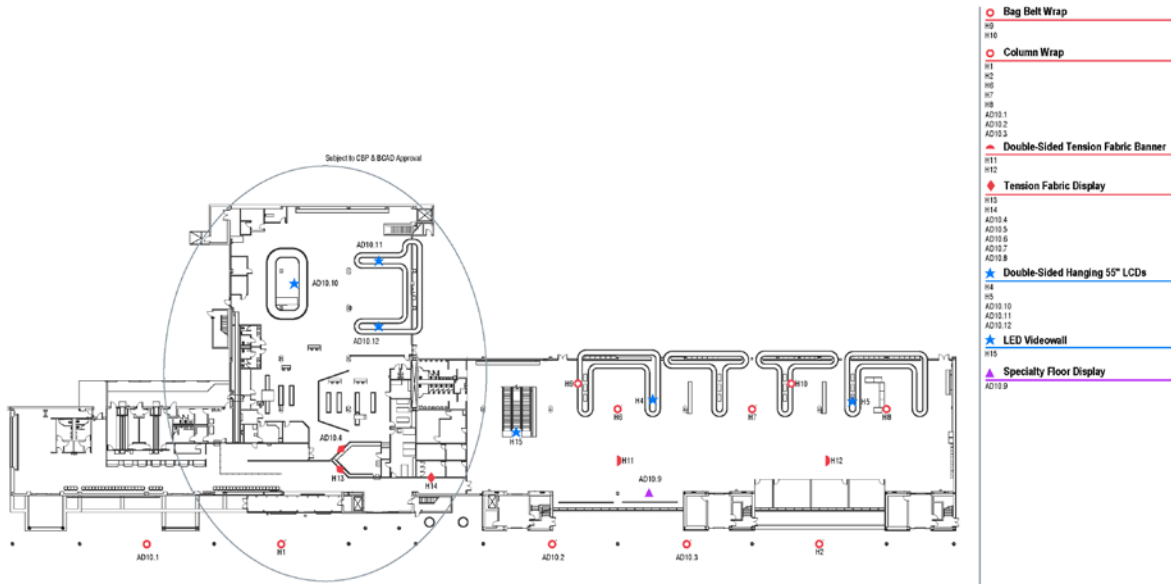


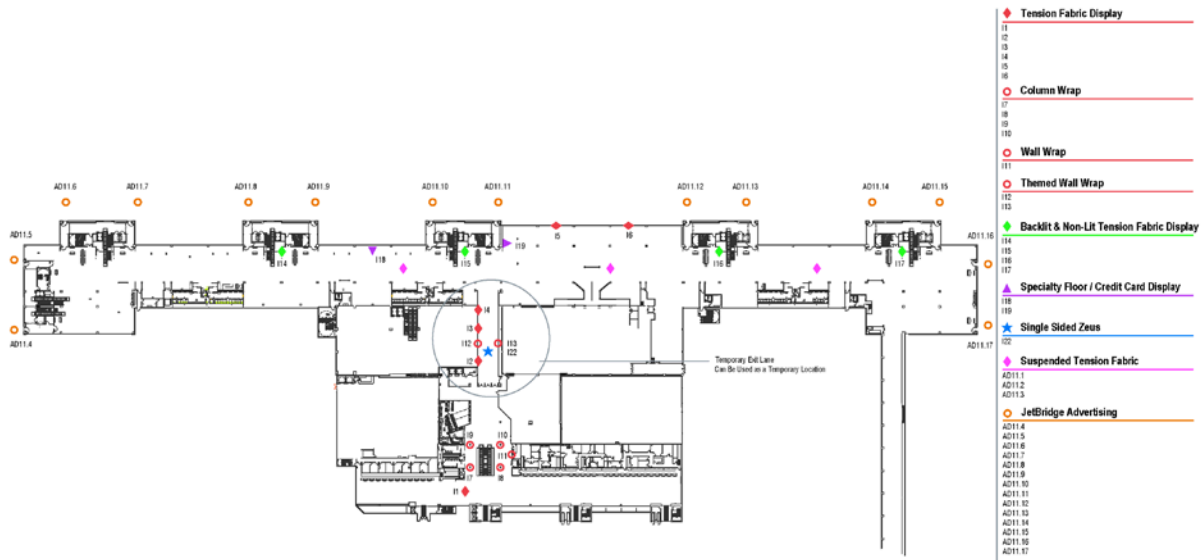


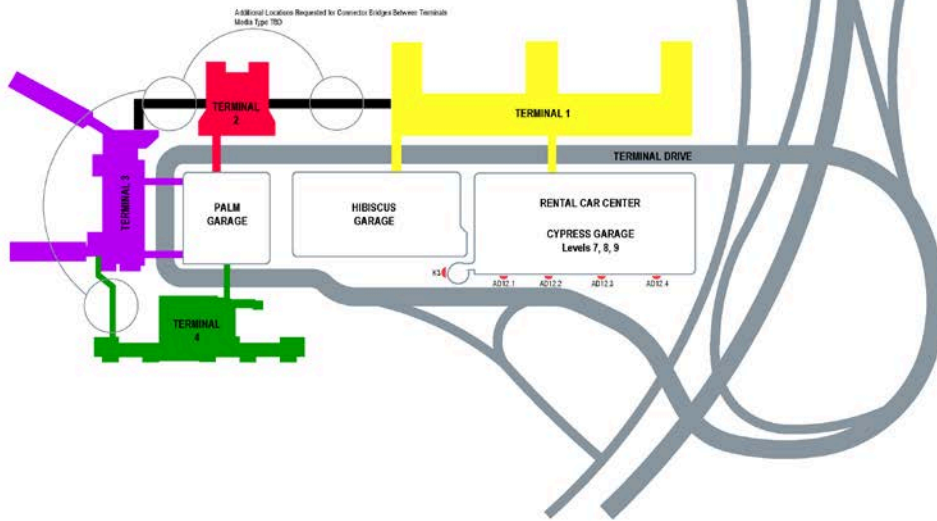


Fort Lauderdale-Hollywood International Airport • FLL • Area of Detail: Terminal 3 Upper Level









- Outdoor Banner
- K3
- WalkWay Wrap
- AD12.5
- AD12.6
- AD12.7
- AD12.8
- General Advertising
- Health & Fitness Walking Trails
- Valid Parking Sponsorships

EXHIBIT B PERMITTED PRODUCT LINES

LCD's (interactive and non-interactive)
LED Video Walls
Hanging LED video structures (Zeus units)
Projection systems on wall and floor
Tension Fabric Displays (illuminated and non-illuminated)
Back lit dioramas
Floor displays and exhibits
Automobile, motorcycle and sailboat display (including other marine type displays)
Interiors and exterior column wraps
Exterior banners
Experiential displays
Valet sponsorships
Branded health and wellness, walking paths and specialty displays
Staffed and non-staffed booths
Wall wraps (interior and exterior)
3d displays and sense of place theming
Suspended banners both vinyl and Tension Fabric displays
Sponsored charging poles and charging stations
Sponsored soft seating
Product display cases
Flag banners
Jet bridge interior and exterior
Train, tram and bus wraps
Escalator and moving sidewalk glass wraps and handrail wraps
Stair wraps
Luggage wraps
Floor wraps
Baggage carousel wraps
Belt stanchion advertising
Security bin wraps
Grid walls
Pet relief areas sponsorships
Children's play area sponsorships
Clock sponsorships
Parking gate arms and booths
Bus shelter and bus wraps
Airport wifi sponsorship
News network
Audience Measurement (Camera Recognition, beacons, mobile recognition)
FID/BID digital and static integration

EXHIBIT C PREVAILING WAGE RATES

Prevailing Wage Rates: On November 17, 1983, the Broward County Board of County Commissioners enacted Ordinance No. 83-72 providing that, in all non-federally funded construction procurement activity of \$250,000 or more, the rate of wages and fringe benefit payments for all laborers, mechanics, and apprentices shall not be less than those payments for similar skills in classifications of work in like industries as determined by the Secretary of Labor and as published in the Federal Register (latest revision).

1. Prevailing Wage Rate Ordinance. This Project is not federally funded. If the construction cost is in excess of \$250,000, the following sections shall apply:
 - 1.1 The rate of wages and fringe benefit payments for all laborers, mechanics, and apprentices shall not be less than those payments for similar skills in classifications of work in a like construction industry as determined by the Secretary of Labor and as published in the Federal Register (latest revision).
 - 1.2 All mechanics, laborers, and apprentices, employed or working directly upon the site of the work shall be paid in accordance with the above-referenced wage rates. Concessionaire shall post notice of these provisions at the site of the work in a prominent place where it can be easily seen by the workers.
 - 1.3 If the parties cannot agree on the proper classification of a particular class of laborers or mechanics or apprentices to be used, Concessionaire shall submit the question, together with its recommendation, to the Aviation Department for final determination.
 - 1.4 In the event it is found by the Aviation Department that any laborer or mechanic or apprentice employed by Concessionaire, or any Subcontractor directly on the site of the work has been or is being paid at a rate of wages less than the rate of wages required by the ordinance, the Aviation Department may: (a) by written notice to Concessionaire terminate its right to proceed with the work or such part of work for which there has been a failure to pay said required wages; and (b) prosecute the work or portion thereof to completion by contract or otherwise. Whereupon, Concessionaire and its sureties shall be liable to County for any excess costs occasioned to County thereby.
 - 1.5 Sections 1.1 through 1.4 above shall apply to this Agreement to the extent that it is: (a) a prime Contract subject to the ordinance; or (b) a subcontract also subject to the ordinance under such prime Contract.

- 1.6 Concessionaire shall maintain payrolls and basic records relating thereto during the course of the work and shall preserve such for a period of three (3) years thereafter for all laborers, mechanics, and apprentices working at the site of the work. Such records shall contain the name and address of each such employee; its current classification; rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits); daily and weekly number of hours worked; deductions made; and actual wages paid.
- 1.7 Concessionaire shall submit, with each requisition for payment, a signed and sworn "Statement of Compliance" attesting to compliance with Broward County Ordinance No. 83-72. The Statement shall be in the form attached as **Exhibit D**.
- 1.8 The Aviation Department may withhold or cause to be withheld from Concessionaire so much of the payments requisitioned as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, watchpersons, and guards employed by Concessionaire or any subcontractor on the work, the full amount of wages required by this Agreement.
- 1.9 If Concessionaire, subconcessionaire or any subcontractor fails to pay any laborer, mechanic, or apprentice employed or working on the site of the work all or part of the wages required by this Agreement, the Aviation Department may, after written notice to Concessionaire, take such action as may be necessary to cause suspension of any further payments or advances until such violations have ceased.

**EXHIBIT D
STATEMENT OF COMPLIANCE
(PREVAILING WAGE RATE ORDINANCE NO. 83-72)**

No. _____

Contract No. _____

Project Title

The undersigned Concessionaire or Project Manager hereby swears under penalty of perjury that, during the period covered by the application for payment to which this statement is attached, all mechanics, laborers, and apprentices, employed or working on the site of the Project, have been paid at wage rates, and that the wage rates of payments, contributions, or costs for fringe benefits have not been less than those required by Broward County Ordinance No. 83-72 and the applicable conditions of this Agreement.

Dated _____, 20____,
Manager

Concessionaire/Project

By _____
(Signature)

By _____
(Name and Title)

STATE OF)
) SS.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ who is personally known to me or who has produced _____ as identification and who did/did not take an oath.

WITNESS my hand and official seal, this _____ day of _____, 20____.

(NOTARY SEAL)

(Signature of person taking acknowledgment)

(Name of officer taking acknowledgment)
typed, printed or stamped

(Title or rank)

My commission expires:

EXHIBIT E NONDISCRIMINATION REQUIREMENTS

1. During the performance of this Agreement, Concessionaire for itself, its personal representatives, assigns, and successors in interest agree as follows:
 - i. Compliance With Regulations. Concessionaire shall comply with the Regulations relative to nondiscrimination in Federally Assisted Programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.
 - ii. Nondiscrimination. Concessionaire shall not discriminate on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation in the selection and retention of subcontractors, including procurement of materials and Agreements of equipment. Concessionaire shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
 - iii. Solicitation for Subcontracts, Including Procurement of Materials and Equipment. In all solicitation either by competitive bidding or negotiation made by Concessionaire for work to be performed under a subcontract, including procurement of materials or Agreements of equipment, each potential subcontractor or supplier shall be notified by Concessionaire of Concessionaire's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation.
 - iv. Information and Reports. Concessionaire shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by County or the Federal Aviation County (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. 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 County or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
 - v. Sanctions for Noncompliance. In the event of Concessionaire's noncompliance with the nondiscrimination provisions of this contract, County shall impose such contract sanctions as it or the FAA may determine

to be appropriate, including, but not limited to: (a) withholding of payments under the contract until there is compliance; and/or (b) cancellation, termination, or suspension of the contract, in whole or in part. In the event of cancellation or termination of the contract (if such contract is an Agreement), County shall have the right to re-enter the Assigned Areas as if said Agreement had never been made or issued. These provisions shall not be effective until the procedures of Title 49 CFR Part 21 are followed and completed, including exercise or expiration of appeal rights.

2. Incorporation of Provisions. Concessionaire shall include the provisions of paragraphs 1.i through 1.v, above, in every subcontract, including procurement of materials and Agreements of equipment, unless exempt by the Regulations or directives issued pursuant thereto. Concessionaire shall take such action with respect to any subcontract or procurement as County or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event Concessionaire becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Concessionaire may request County to enter into such litigation to protect the interests of County and, in addition, Concessionaire may request the United States to enter into such litigation to protect the interests of the United States.
3. Concessionaire, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this contract, for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, Concessionaire shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulation may be amended.
4. Concessionaire, as a part of the consideration hereof, does hereby covenant and agree that: (a) no person on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (b) that in the construction of any improvements on, over, or under the Assigned Areas and the furnishing of services thereon, no person on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (c) that Concessionaire shall use the Assigned Areas in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

5. During the performance of this contract, Concessionaire, for itself, its assignees and successors in interest agrees as follows:

Concessionaire agrees to undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation be excluded from participation in any employment, contracting, or leasing activities covered in 14 CFR Part 152, Subpart E. Concessionaire agrees that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. Concessionaire agrees that it will require its covered suborganizations to provide assurances to the contractor that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations as required by 14 CFR Part 152, Subpart E, to the same effect.

Concessionaire agrees to comply with any affirmative action plan or steps for equal employment opportunity required by 14 CFR Part 152, Subpart E, as part of the affirmative action program, and by any federal, state, County or local agency or court, including those resulting from a conciliation agreement, a consent decree, court order or similar mechanism. Concessionaire agrees that state or County affirmative action plans will be used in lieu of any affirmative action plan or steps required by 14 CFR Part 152, Subpart E, only when they fully meet the standards set forth in 14 CFR 152.409. Concessionaire agrees to obtain a similar assurance from its covered organizations, and to cause them to require a similar assurance of their covered suborganizations, as required by 14 CFR Part 152, Subpart E.

If required by 14 CFR Part 152, Concessionaire shall prepare and keep on file for review by the FAA Office of Civil Rights an affirmative action plan developed in accordance with the standards in Part 152. Concessionaire shall similarly require each of its covered suborganizations (if required under Part 152) to prepare and to keep on file for review by the FAA Office of Civil Rights, an affirmative action plan developed in accordance with the standards in Part 152.

If Concessionaire is not subject to an affirmative action plan, regulatory goals and timetables, or other mechanism providing for short and long-range goals for equal employment opportunity under Part 152, then Concessionaire shall nevertheless make good faith efforts to recruit and hire minorities and women for its aviation workforce as vacancies occur, by taking any affirmative action steps required by Part 152. Concessionaire shall similarly require such affirmative action steps of any of its covered suborganizations, as required under Part 152.

Concessionaire shall keep on file, for the period set forth in Part 152, reports (other than those submitted to the FAA), records, and affirmative action plans, if applicable, that will enable the FAA Office of Civil Rights to ascertain if there has been and is compliance with this subpart, and Concessionaire shall require its covered suborganizations to keep similar records as applicable.

Concessionaire shall, if required by Part 152, annually submit to County the reports required by Section 152.415 and Concessionaire shall cause each of its covered suborganizations that are covered by Part 152 to annually submit the reports required by Section 152.415 to the Concessionaire who shall, in turn, submit same to County for transmittal to the FAA.

6. Concessionaire, for itself, its assignees and successors in interest agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation be excluded from participating in any activity conducted with or benefiting from Federal assistance. This "Provision" obligates Concessionaire or its transferee, for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the Provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this Provision binds the contractors from the bid solicitation period through the completion of the contract.
7. Concessionaire or Concessionaire's contractors shall not discriminate on the basis of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation in the performance of this contract. Failure by Concessionaire to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as County deems appropriate.

**EXHIBIT F
ACDBE**

Please Note:
Exhibit F shall include the following:

**Exhibit F-1 LETTER OF INTENT
Exhibit F-2 ACDBE QUARTERLY ACTIVITY REPORT**

EXHIBIT F-1 ACDBE LETTER OF INTENT



OFFICE OF ECONOMIC AND SMALL BUSINESS DEVELOPMENT

**LETTER OF INTENT BETWEEN BIDDER/OFFEROR AND DISADVANTAGED BUSINESS ENTERPRISE (DBE) /
AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) SUBCONTRACTOR/SUPPLIER**
(Form to be completed and signed for each DBE/ACDBE firm)

Solicitation Number:	Project Title:
----------------------	----------------

Bidder/Offeror Name: _____

Address: _____ City: _____ State: ____ Zip: _____

Authorized Representative: _____ Phone: _____

DBE/ACDBE Subcontractor/Supplier Name: _____

Check one: Address: _____

DBE City: _____ State: ____ Zip: _____ Phone: _____

ACDBE Authorized Representative: _____

- A. This is a letter of intent between the bidder/offeror on this project and a DBE/ACDBE firm for the DBE/ACDBE to perform subcontracting work on this project, consistent with Title 49 CFR Parts 26 or 23 as applicable.
- B. By signing below, the bidder/offeror is committing to utilize the above-named DBE/ACDBE to perform the work described below.
- C. By signing below, the above-named DBE/ACDBE is committing to perform the work described below.
- D. By signing below, the bidder/offeror and DBE/ACDBE affirm that if the DBE/ACDBE subcontracts any of the work described below, it may only subcontract that work to another DBE/ACDBE if it wishes to receive DBE/ACDBE credit for said work.

Work to be performed by DBE/ACDBE Firm			
Description	NAICS [*]	DBE/ACDBE Contract Amount [†]	DBE/ACDBE Percentage of Total Project Value

AFFIRMATION: I hereby affirm that the information above is true and correct.

Bidder/Offeror Authorized Representative

(Signature)
(Title)
(Date)

DBE/ACDBE Subcontractor/Supplier Authorized Representative

(Signature)
(Title)
(Date)

^{*} Visit <http://www.census.gov/eos/www/naics/> to search. Match type of work with NAICS code as closely as possible.
[†] To be provided only when the solicitation requires that bidder/offer include a dollar amount in its bid-offer.

In the event the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

EXHIBIT F-2 ACDBE QUARTERLY ACTIVITY REPORT



Office Economic and Small Business Development
Government Center Annex
115 S. Andrews Avenue, Room A640 • Fort Lauderdale, Florida 33301 • 954-357-6400 • FAX 954-357-6010

AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)

QUARTERLY ACTIVITY REPORT

Reporting Period: 1st Quarter (10/1/___ – 12/31/___) 2nd Quarter (01/1/___ – 03/31/___)
(Please check appropriate reporting period) 3rd Quarter (04/1/___ – 06/30/___) 4th Quarter (07/1/___ – 09/30/___)

Concessionaire: _____

Address: _____

Project Title: _____ Concession Type: _____

Concessionaire's Gross Receipts	<u>Reporting Period</u> <small>(listed above)</small>	<u>Total Reported To Date</u> <small>(for Fiscal Year)</small>
TOTAL	\$	\$

ACDBE Name (s)	Gross Receipts for Reporting Period <small>(listed above)</small>	ACDBE Participation % for this Reporting Period	Total ACDBE Gross Receipts Amount reported to date	Total ACDBE Participation % to Date
1.	\$	%	\$	%
2.	\$	%	\$	%
3.	\$	%	\$	%
TOTAL	\$	%	\$	%

Signature of authorized representative / Date

Phone

Print name of authorized representative

DBE CONCESSION YEAR 10/01/___ THROUGH 09/30/___

OESBD Compliance Form ACDBEQAR F2010

**EXHIBIT G
FORM OF MONTHLY GROSS REVENUES REPORT**

**Clear Channel Airports
Monthly Report As of
Date**

	<u>Terminal 1</u>	<u>Terminal 2</u>	<u>Terminal 3</u>	<u>Terminal 4</u>	<u>Totals</u>
Static Displays	\$	\$	\$	\$	\$
Tech Displays	\$	\$	\$	\$	\$
Total Revenue	\$ -		\$ -	\$	\$
Settlement Revenue	\$	\$	\$	\$	\$
Less Phone Line Charges	<hr/>				<hr/>
Adjusted Gross Revenue	\$	\$	\$	\$	
Payment Due (61%)	\$	\$	\$	\$	
Amount Due With Report					<u><u>\$</u></u>

EXHIBIT H MINIMUM INSURANCE COVERAGE REQUIREMENTS

Minimum Insurance Requirements Advertising

TYPE OF INSURANCE	MINIMUM LIABILITY LIMITS		
		Each Occurrence	Aggregate
COMMERCIAL GENERAL LIABILITY Broad form or equivalent <i>With no exclusions or limitations for:</i> <input checked="" type="checkbox"/> Premises–Operations <input type="checkbox"/> Explosion, Collapse, Underground Hazards <input checked="" type="checkbox"/> Products/Completed Operations - 2 years <input checked="" type="checkbox"/> Contractual Insurance <input checked="" type="checkbox"/> Independent Contractors <input checked="" type="checkbox"/> Personal Injury <input checked="" type="checkbox"/> Mobile Equipment	Bodily Injury		
	Property Damage		
	Combined single limit Bodily Injury & Property Damage	\$ 1 mil	\$ 2 mil
	Personal Injury		
BUSINESS AUTO LIABILITY* COMPREHENSIVE FORM <input checked="" type="checkbox"/> Owned <input checked="" type="checkbox"/> Hired <input checked="" type="checkbox"/> Non-owned <input checked="" type="checkbox"/> Scheduled <input checked="" type="checkbox"/> Any Auto	Bodily Injury (each person)		
	Bodily Injury (each accident)		
	Property Damage		
	Combined single limit Bodily Injury & Property Damage	\$ 300 k non-airside \$ 5 mil airside	
EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> Umbrella Form <input type="checkbox"/> Products/Completed Operations	Combined single limit Bodily Injury & Property Damage		
<input checked="" type="checkbox"/> WORKERS' COMPENSATION <input checked="" type="checkbox"/> EMPLOYERS' LIABILITY	Chapter 440 FS (each accident)	STATUTORY \$ 1 mil	U.S. Longshoremen & Harbor Workers' Act & Jones Act is required for any activities on or about navigable water
The County reserves the right to require cyber insurance.	*****Cyber Insurance shall be determined upon the award of the contract and understanding of the scope and work provided to County*****		
<input type="checkbox"/> PROFESSIONAL LIABILITY RISK – E&O	(each accident)	\$ 1 mil	\$ 5 mil
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES Broward County must be added as an additional insured on the general liability, automobile liability and excess liability policies and loss payee on installation floater and builders risk. Certificate must be signed and all applicable deductibles shown. Indicate Bid #, RLI, or RFP and project manager on the COI. CANCELLATION: Thirty (30) Day written notice of cancellation required to the Certificate Holder. CONTRACTOR RESPONSIBLE FOR ALL DEDUCTIBLES UNLESS OTHERWISE STATED. Contractor responsible for all tools, materials, equipment, machinery, etc. until completion of project and acceptance of the project by County.			
CERTIFICATE HOLDER: Broward County 220 SW 45 th Street Suite 101 Fort Lauderdale, FL 33301 RE: Concessions	<hr style="width: 50%; margin: auto;"/> Aviation Department Risk Manager		