



**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Capital Expenditures	<u>200,000</u>	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	<u>(54,000)</u>	<u>(66,000)</u>	<u>(66,000)</u>	<u>(66,000)</u>	<u>(66,000)</u>
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u>146,000</u>	<u>(66,000)</u>	<u>(66,000)</u>	<u>(66,000)</u>	<u>(66,000)</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes \_\_\_\_\_ No X  
 Budget Account No: Fund 4100 Department 120 Unit 8430 R-Source 4413/4462  
 Reporting Category \_\_\_\_\_

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

Approval of this item will result in additional annual revenues of \$66,000, and rent credits of \$200,000 to refurbish the traveler services center. Annual rental rates may vary. The base retail contract provides annual revenues of \$2.4 million in total in concession sales in PBIA, previously approved by the Board.

C. Departmental Fiscal Review: *Chris Simon*

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development and Control Comments:**

*John B. White* 8-20-08  
 OFMB  
 V O  
 8/15

*John J. Jones* 8/21/08  
 Contract Dev. and Control  
 8/21/08

**This amendment complies with our review requirements.**

**B. Legal Sufficiency:**

*Anne Delaney* 8/21/08  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

(Continued from Page 1)

**Background and Justification:** Traveler concession services are currently provided through a separate concession agreement as a convenience for airport passengers; however, the concession revenues have historically been low. The existing operator pays the County a flat fee of approximately \$1065 per month for the right to provide traveler concession services at PBIA and 5% of ATM transaction surcharges. Few operators have been willing to propose on the concession as a result of low revenues. ATM services will be provided through a separate concession agreement, which provides for payment of an initial minimum annual guarantee of \$50,000 or 55% of ATM transaction surcharges. Requiring Paradies to provide traveler concession services will ensure high quality traveler services are available at PBIA.

**FIRST AMENDMENT  
TO RETAIL CONCESSION AGREEMENT**

**THIS FIRST AMENDMENT TO RETAIL CONCESSION AGREEMENT** (this "Amendment") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between Palm Beach County, a political subdivision of the State of Florida ("County"), and Paradies-Palm Beach, LLC ("Company"), a Florida limited liability company, having its office and principal place of business at 5950 Fulton Industrial Blvd., Atlanta, Georgia 30336.

**WITNESSETH:**

**WHEREAS**, the County, by and through its Department of Airports (the "Department"), owns and operates the Palm Beach International Airport, located in Palm Beach County, Florida (the "Airport"); and

**WHEREAS**, the parties entered into that certain Retail Concession Agreement dated November 6, 2007 (R-2007-2052) (the "Agreement"); and

**WHEREAS**, Section 4.07 of the Agreement authorizes the County to require Company to offer Traveler Services to the general public in the Terminal; and

**WHEREAS**, Company requires use of additional storage space within the Terminal; and

**WHEREAS**, the parties hereto desire to amend the Agreement in accordance with the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants herein contained and for such other good and valuable consideration, the receipt of which the parties hereby expressly acknowledge, the parties hereto covenant and agree to the following terms and conditions:

1. The recitals set forth above are true and correct and incorporated herein by this reference. Terms not defined herein shall have the meaning ascribed to them in the Agreement.

2. Article 1 of the Agreement is hereby amended to delete the definition of "Annual Rent" and to replace it with the following:

Concession Fee has the meaning provided in Section 6.02.

3. Article 1 of the Agreement is hereby amended to delete the definition of "Commencement Date" and replace it with the following:

Commencement Date means the dates specific units or spaces comprising the Leased Premises become available for use and occupancy by Company. The Commencement Date for:

A. Unit B-1 (New York Times Bookstore), C-3 (CNBC News) and CS-1 shall be the date the Department notifies Company in writing that such Units are available for use and occupancy by Company.

B. Units MT-4 (Kids Zoo) and B-3 (Tropical News) shall be the Effective Date of this Agreement.

C. all other units, including the Office and Storage Space, shall be October 1, 2008.

4. Article 1 of the Agreement is hereby amended to add the following to the definition of "Gross Receipts":

For purposes of Foreign Currency Exchange and Florida Lottery Ticket sales, the term Gross Receipts shall mean any and all commissions, payments, fees or other amounts payable to Company, whether or not paid, for the provision of such services and sales.

5. Article 1 of the Agreement is hereby amended to delete the definition of "Monthly Percentage Rent" in its entirety and to replace it with the following:

Monthly Privilege Fee means the percentage of monthly Gross Receipts paid by Concessionaire for the privilege of operating the retail concession at the Airport and shall be equal to the sum of the following:

A. twelve percent (12%) of monthly Gross Receipts for all sales derived from Units MT-1 (PGA Tour Shop), MT-2A (Brighton/Brooks Brothers) and MT-3 (Tech Showcase), excluding sales of Personal Services and Traveler Services from such Units. The Units identified in this paragraph A shall be Locally or Nationally Branded Specialty Retail Stores;

B. twelve percent (12%) of monthly Gross Receipts for all sales derived from the sale of Personal Services;

C. twenty percent (20%) of monthly Gross Receipts for all sales derived from Units MT-2B (Palm Beach Expressions), B-1 (New York Times Bookstore), C-2 (New York Times Bookstore), MT-3A (Service Center) and MT-4 (Kids Zoo), excluding sales of Personal Services and Traveler Services from such Units;

D. twenty two percent (22%) of monthly Gross Receipts for all sales derived from Units MT-2C (Worth Avenue News), MT-5 (Oceanfront News), B-2 (Coral Cove News), B-3 (Tropical News kiosk), C-1 (Coral Cove News), C-3 (CNBC News), Mobile Kiosks and temporary concession Units, excluding sales of Personal Services and Traveler Services from such Units and Mobile Kiosks; and

E. ten percent (10%) of monthly Gross Receipts for all sales derived from the sale Traveler Services.

Notwithstanding the foregoing, the Monthly Privilege Fee for sales from Units MT-2A and MT-2B shall remain twenty two percent (22%) of Gross Receipts until completion of construction of the new Units and introduction of the new concepts. In the event the Units identified in paragraph A above cease operating as Locally or Nationally Branded Specialty Retail Store(s), the percentage of monthly Gross Receipts for all sales derived from such Unit(s) shall be increased to the percentage provided for in paragraph C above.

6. Article 1 of the Agreement is hereby amended to delete the definition of "Percentage Rent" in its entirety and replace it with the following:

Privilege Fee means the percentage of annual Gross Receipts paid by Concessionaire for the privilege of operating the retail concession at the Airport and shall be equal to the sum of the following:

A. twelve percent (12%) of annual Gross Receipts for all sales derived from Units MT-1 (PGA Tour Shop), MT-2A (Brighton/Brooks Brothers), and MT-3 (Tech Showcase), excluding sales of Personal Services and Traveler Services from such Units. The Units identified in this paragraph A shall be Locally or Nationally Branded Specialty Retail Stores;

B. twelve percent (12%) of annual Gross Receipts for all sales derived from the sale of Personal Services;

C. twenty percent (20%) of monthly Gross Receipts for all sales derived from Units MT-2B (Palm Beach Expressions), B-1 (New York Times Bookstore), C-2 (New York Times Bookstore), MT-3A (Service Center) and MT-4 (Kids Zoo), excluding sales of Personal Services and Traveler Services from such Units;

D. twenty two percent (22%) of annual Gross Receipts for all sales derived from Units MT-2C (Worth Avenue News), MT-5 (Oceanfront News), B-2 (Coral Cove News), B-3 (Tropical News kiosk), C-1 (Coral Cove News), C-3 (CNBC News), Mobile Kiosks and temporary concession Units, excluding sales of Personal Services and Traveler Services from such Units; and

E. ten percent (10%) of annual Gross Receipts for all sales derived from the sale Traveler Services.

Notwithstanding the foregoing, the Privilege Fee for sales from Units MT-2A and MT-2B shall remain twenty two percent (22%) of Gross Receipts until completion of construction of the new Units and introduction of the new concepts. In the event the Units identified in paragraph A above cease operating primarily as Locally or Nationally Branded Specialty Retail Store(s), the percentage of annual Gross Receipts for all sales derived from such Unit(s) shall be increased to the percentage provided for in paragraph C above. Upon Company's request, the County may agree to reduce the Privilege Fee (and associated Monthly Privilege Fee) for sales at other locations to the percentage provided for in paragraphs A and B above; provided that the concepts at such locations will be modified to be Locally or Nationally Branded Specialty Retail Store(s) or provide Personal Services and Company can demonstrate that payment of a higher Privilege Fee is not feasible. In the event the County agrees to such a reduction, the parties shall enter into an amendment to this Agreement providing for such concept modifications and Privilege Fee reductions. Notwithstanding the foregoing, the County shall have no obligation whatsoever to agree to a reduction in the Privilege Fee.

7. Article 1 of the Agreement is hereby amended to delete the definition of "Traveler Services" in its entirety and replace it with the following:

Traveler Services include, but shall not limited to, travel insurance, foreign currency exchange, facsimile and photocopy services, Florida Lottery ticket sales, shoe shine services, mailbox facilities, travel information, pre-paid telephone cards, flower and balloon sales, hotel reservations, notary services, conference room rental, US money orders, money wire transfer services, pre-paid cellular airtime refills, security mail-back services, change machines, overnight delivery shipping services, data port hook up, or other similar traveler services, which are in public demand.

8. Section 2.01 of the Agreement is hereby deleted in its entirety and replaced with the following:

2.01 Description of Leased Premises.

Subject to the terms, conditions and covenants set forth herein, the County hereby leases to Company, and Company hereby agrees to lease from the County the Leased Premises. Company acknowledges that the square footages of the concession units identified in Exhibit "A" are estimates and that the actual size of the concession units may vary based upon build-out of the units. The County shall have the right to re-measure the concession units after the date of Beneficial Occupancy to determine the actual square footage of the concession units. The parties shall enter into an amendment to replace Exhibit "A" to this Agreement to reflect the actual square footages of the concession

units as determined by the County. The Airport Director may execute an amendment entered into by the parties pursuant to this Section 2.01 on behalf of the Board of County Commissioners.

9. Article 2 of the Agreement is hereby amended to add the following:

2.04 Concept Changes. The parties acknowledge and agree that Company shall provide one (1) or more alternative concepts for replacement of the 10-Minute Manicure concept for approval by the Airport Director. The Airport Director shall have no obligation whatsoever to approve an alternative concept. In the event the Airport Director approves an alternative concept to replace the 10-Minute Manicure concept, the parties shall enter into an amendment to this Agreement to replace Exhibit "A" to reflect the location of the alternative concept, if any, approved by the Airport Director. The fees payable to the County hereunder for any alternative concept shall be in accordance with the percentages established in this Agreement for similar concepts. The Airport Director may execute an amendment entered into by the parties pursuant to this Section 2.04 on behalf of the Board of County Commissioners.

10. Article 4 of the Agreement is hereby amended to add the following:

4.10 Traveler's Services.

A. Commencing October 1, 2008, Company shall provide the following Traveler Services to the general public in the Terminal:

1. Foreign Currency Exchange;
2. Money Orders;
3. Copier/Facsimile;
4. Florida Lottery Ticket Sales;
5. Post-security Mail Back Services;
6. Travelers Checks (United States and foreign);
7. Money Wire Transfer;
8. Travel Insurance;
9. Prepaid Currency Cards;
10. International Phone Cards;
11. Shoe Shine Services; and
12. Postage.

B. Company shall have the non-exclusive right, but not the obligation, to provide the following Traveler Services:

1. Flowers and Balloons;
2. Pre-Paid Cellular Airtime Refills;
3. Conference Rooms Rental;
4. Overnight Delivery Shipping Services;
5. Notary Services;
6. Hotel Reservations;
7. Baggage Storage/Baggage Sales; and
8. Internet Services, subject to prior written approval of the Department. Company acknowledges and agrees that the Department shall have the right to limit or condition such approval in its sole and absolute discretion.

C. Company shall provide Foreign Currency Exchange services for those currencies reasonably determined by the Department to be in demand by the traveling public at the Airport.

D. Company shall not provide any Traveler Services, which are not specifically authorized herein, without the prior written consent of the County. Such consent shall be in the form of an amendment to this Agreement, which may be executed by the Airport Director on behalf of the County.

E. Company may provide all or a portion of the Traveler Services provided by Company hereunder in Unit MT-3A; provided, however, Company shall ensure the Traveler Services required pursuant to 4.10(A), with the exception of Post-security Mail Back Services, shall be available in pre-security locations.

F. Company agrees to Refurbish (as hereinafter defined) Unit MT-3A, which shall be completed on or before February 1, 2009. For purposes of this subsection, the term "Refurbish" or "Refurbishment" means the construction or installation of Leasehold Improvements for the purpose of introducing new concepts, updating, reconditioning, and/or improving Unit MT-3A. Leasehold Improvements to Unit MT-3A shall be of attractive design and construction and take into account the décor of the Terminal. The costs of Refurbishment of Unit MT-3A shall be included in the Statement of Costs prepared in accordance with Section 7.02. As reimbursement for Refurbishment of Unit MT-3A, Company shall be entitled to credit against amounts payable to the County hereunder for all reasonable and necessary costs of Leasehold Improvements installed in Unit MT-3A ("Unit MT-3A Costs") in an amount not to exceed Two Hundred Thousand Dollars (\$200,000). Company shall provide evidence reasonably satisfactory to the County documenting the Unit MT-3A Costs have been incurred by Company. The method of allocating the credit for the Unit MT-3A Costs shall be mutually acceptable to the Department and Company. Company acknowledges and agrees that Company shall not be entitled to payment pursuant to Sections 2.02 or 18.06 for costs of any Leasehold Improvements that the County has reimbursed Company for pursuant to this subsection and County shall be considered the owner of such Leasehold Improvements for purposes of Sections 2.02 and 18.06. In addition, the Unit MT-3A Costs shall not be counted towards Company's required Minimum Initial Investment and shall be considered Excluded Costs.

11. Article 6 of the Agreement is hereby deleted in its entirety and replaced with the following:

#### **ARTICLE 6 – CONCESSION FEE AND ACCOUNTING RECORDS**

##### **6.01 Privilege Fee during Transition Period.**

During the Transition Period, Company shall pay to the County the Monthly Privilege Fee. The Monthly Privilege Fee shall be due on or before the fifteenth (15<sup>th</sup>) day of each and every month for the preceding month during the Transition Period and shall be delivered with the Statement of Gross Receipts.

##### **6.02 Concession Fee after Beneficial Occupancy.**

Commencing on Beneficial Occupancy, Company shall pay to County an amount equal to the greater of the Minimum Annual Guarantee or Privilege Fee ("Concession Fee"). Concession Fee shall be payable on a monthly basis as provided for herein and shall be reconciled on an annual basis in accordance with the provisions of Section 6.14 below.

##### **6.03 Minimum Annual Guarantee.**

A. The Minimum Annual Guarantee for each Lease Year shall be as follows:



Time Period	Minimum Annual Guarantee
First Lease Year	\$1,350,000
Second Lease Year	Ninety percent (90%) of the Concession Fee for the first Lease Year, or the Minimum Annual Guarantee for the first Lease Year, whichever is higher.
Third Lease Year and each Lease Year thereafter through remainder of the Term	Ninety percent (90%) of the Concession Fee for the prior Lease Year, or the Minimum Annual Guarantee for the prior Lease Year, whichever is higher.

B. Commencing on the date of Beneficial Occupancy and on the first (1<sup>st</sup>) day of each and every month thereafter, Company shall pay to the County one-twelfth (1/12) of the Minimum Annual Guarantee for the applicable Lease Year, without demand, deduction, holdback or setoff.

C. In the event the date of Beneficial Occupancy or the termination date of this Agreement occurs on a day other than the first or last day of a calendar month, the monthly Minimum Annual Guarantee payment payable pursuant to Section 6.03(B) shall be prorated based on the number of days in that month.

**6.04 Statement of Gross Receipts.**

On or before the fifteenth (15<sup>th</sup>) day of each month, Company shall deliver to the County a correct accounting statement, in a form and detail satisfactory to the Department, which includes the information, required in this Section 6.04 and is signed by Company or Company's responsible agent under penalty of perjury ("Statement of Gross Receipts"). Each Statement of Gross Receipts shall: (i) state the Monthly Privilege Fee due for the preceding calendar month; (ii) state the total amount of Gross Receipts for the preceding calendar month; (iii) state the total amount of Gross Receipts attributable to each concession unit located within the Leased Premises for the preceding calendar month; (iv) state the total amount of Gross Receipts attributable to the sale of Personal Services by category of service and concession unit; (v) state the total amount of Gross Receipts attributable to the sale of Traveler Services by category of service; and (vi) separately identify any exclusions from Gross Receipts. Upon thirty (30) days prior written notice, the Department may require Company to change the form of the Statement of Gross Receipts and/or require the Company to submit additional information pertaining to Gross Receipts. Company agrees to modify the Statement of Gross Receipts upon the Department's written request and to provide any such additional information the Department may request in writing. The Department may require the Statement of Gross Receipts to be delivered electronically.

**6.05 Privilege Fee.**

After Beneficial Occupancy, in the event the Monthly Privilege Fee is greater than (1/12) of the Minimum Annual Guarantee for the applicable Lease Year, Company shall pay the difference to the County. Such payment shall be delivered with the Statement of Gross Receipts on or before the fifteenth (15<sup>th</sup>) day of the month.

**6.06 Rent for Additional Office and Storage Space.**

In the event Company desires to lease additional office and/or storage space within the Terminal, Company shall be required to pay rental for the use of

such space in addition to the rental provided for herein. The parties shall enter into an amendment to this Agreement to provide for the rental of any additional office and/or storage space to Company.

6.07 Place of Payment and Filing.

All payments required to be made by Company and all reports required to be filed hereunder shall be delivered to:

Palm Beach County Department of Airports  
ATTN: Accounting Section  
846 Palm Beach International Airport  
West Palm Beach, Florida 33406-1470

The designated place of payment and filing may be changed at any time by the Department upon ten (10) days prior written notice to Company. Payments made by check shall be payable to "Palm Beach County". Company assumes all risk of loss if payments are made by mail.

6.08 Form of Payment.

All payments due under this Agreement shall be paid in lawful money of the United States of America, without offset or deduction or prior notice or demand. No payment by Company or receipt by the County of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed to establish an accord and satisfaction, and the County may accept such check or payment without prejudice to the County's right to recover the balance of said amount due or pursue any other remedy available under this Agreement.

6.09 Performance Guarantee.

Prior to the Effective Date, Company shall deliver a surety bond or a clean, irrevocable letter of credit in favor of the County in a form and issued by a company satisfactory to the County (the "Performance Guarantee"). The Performance Guarantee shall be in an amount equal to: (i) Six Hundred, Seventy-Five Thousand Dollars (\$675,000) during the Transition Period; and (ii) fifty percent (50%) of the Minimum Annual Guarantee for the then current Lease Year from Beneficial Occupancy through the remainder of the Term. The Performance Guarantee shall be continuously maintained throughout the Term and secure Company's full and faithful performance and observance of all of Company's obligations under this Agreement and under any other written agreement between Company and the County. The Performance Guarantee shall not be considered to be held in trust by the County for the benefit of Company, and shall not be considered an advance payment of any fees or rentals or a measure of the County's damages in the case of an event of default by Company. The County may, but shall not be obligated to, draw upon and apply the Performance Guarantee to: (i) satisfy any payment not made on or before the date it was due and the County shall not be required to give notice or opportunity to cure before drawing on the Performance Guarantee; and/or (ii) remedy any other violation of this Agreement, after Company has received notice and opportunity to cure. Further the County may draw down the entire Performance Guarantee immediately, without notice to Company, upon receipt of a notice of non-renewal of the form of the Performance Guarantee. If the County applies any of the Performance Guarantee to any of the above, Company shall, immediately upon demand, replenish the Performance Guarantee to its full amount. If Company fully performs all of its obligations under this Agreement, the Performance Guarantee, or any balance remaining, will be released within thirty (30) days from the expiration or termination of this Agreement and delivery of the Leased Premises to the County. However, if any question exists

concerning Company's full compliance with this Agreement or if there is any obligation under this Agreement to be performed after the expiration or earlier termination of this Agreement, the County shall be entitled to require that the Performance Guarantee remain in place until the County is fully satisfied that there has been no violation of the Agreement and all obligations due under this Agreement have been fully performed, even if it takes the County longer than thirty (30) days to make such a determination to the County's satisfaction.

6.10 Delinquent Payments.

Without waiving any other right or action available to the County, in the event any payment due to the County pursuant to this Agreement is not received by the County by the due date, Company shall pay to the County interest thereon at the rate of one and one-half percent (1.5%) per month or the maximum legal rate, whichever is greater, from the date such payment was due and payable until paid. Acceptance of interest on any overdue payment (or any portion of the overdue payment) by the County shall not constitute a waiver of Company's default with respect to such overdue payment, or prevent the County from exercising any of the other rights and remedies granted hereunder.

6.11 Sales and Use Tax.

Company shall pay monthly to the County any sales, use or other tax, or any imposition in lieu thereof (excluding State and/or Federal Income Tax) now or hereinafter imposed upon the rents, payments, use or occupancy of the Leased Premises imposed by the United States of America, the State of Florida, or Palm Beach County, notwithstanding the fact that the statute, rule, ordinance or enactment imposing the same may endeavor to impose the tax on the County. The County acknowledges that Company intends to obtain a binding opinion from the State of Florida's Department of Revenue regarding the applicability of sales tax to the privileges fees payable hereunder and that Company will continue to remit sales tax on all payments made hereunder to the County until such time as the Florida Department of Revenue advises Company that all or a portion of fees are not subject to sales tax under Florida law.

6.12 Accounting Records.

Company shall keep, throughout the Term of this Agreement, all books of accounts and records customarily used in this type of operation, and as from time to time may be required by the Department, in accordance with Generally Accepted Accounting Principles prescribed by the American Institute of Certified Public Accountants or any successor agency thereto. Such books of accounts and records shall be retained and be available for three (3) years from the end of each Lease Year, including three (3) years following the expiration or termination of this Agreement. The County shall have the right to audit and examine during normal business hours all such books of accounts and records relating to Company's operations hereunder. If the books of accounts and records are kept at locations other than the Airport, Company shall, at its sole cost and expense, arrange for them to be brought to a location convenient to the auditors for the County in order for the County to conduct the audits and inspections as set forth in this Article. Failure to maintain books of accounts and records as required under this Article shall be a material default of this Agreement. The obligations arising under this Section shall survive the expiration or termination of this Agreement until satisfied.

6.13 Audit Requirements for Transition Period.

Within ninety (90) days after Beneficial Occupancy, Company shall provide the County with an audit report on all Gross Receipts from operations at the Airport and from the operations of any of Company's subsidiaries, contractors, management companies, or related or affiliated companies involved

in providing services covered by this Agreement. The audit report shall cover the entire Transition Period. The audit report shall be in the format required by the Department and shall be prepared by an independent Certified Public Accountant, not a regular employee of Company, in accordance with Generally Accepted Auditing Standards prescribed by the American Institute of Certified Public Accountants or any successor agency thereto. The audit report shall include the following:

- A. The total amount of Gross Receipts for the Transition Period;
- B. A schedule of Gross Receipts by month attributable to each concession unit, which shall also detail any exclusions from Gross Receipts;
- C. A schedule of Gross Receipts by month attributable to the sale of Personal Services by category of service and concession unit, which shall also detail any exclusion from Gross Receipts;
- D. A schedule of Gross Receipts by category of service and month attributable to the sale of Traveler Services, which shall also detail any exclusion from Gross Receipts;
- E. A schedule of payments made to the County; and
- F. The audit report shall include an opinion on: the total amount of Gross Receipts for the Transition Period; the schedule of all Gross Receipts by concession unit and by month; the schedule of Gross Receipts by month attributable to the sale of Personal Services by category of service and concession unit; the schedule of Gross Receipts by category and month attributable to the sale of Traveler Services; the schedule of payments to the County; any exclusions from Gross Receipts; and the calculation of payments.

Delivery of an audit report containing a qualified opinion, an adverse opinion, or a disclaimer of opinion, as defined by the American Institute of Certified Public Accountants or any successor agency thereto, shall be deemed to be a material breach of this Agreement. If the audit report indicates that the total amount (together with any sales taxes thereon) due and owing for the Transition Period is greater than the amount paid by Company to the County during the Transition Period, Company shall pay the difference to County with the audit report. If the total amount actually paid by Company to County during the Transition Period exceeds the total amount due and owing for the Transition Period, the County shall credit the overpayment in the following order: (i) against any past due amounts owed to the County by Company, including interest and late fees; (ii) against currently outstanding, but not yet due, payments owed to the County by Company; and (iii) against any other sums payable by Company

#### 6.14 Audit Requirements after Beneficial Occupancy.

Within ninety (90) days after the end of each Lease Year, Company shall provide the County with an audit report on all Gross Receipts from operations at the Airport and from the operations of any of Company's subsidiaries, contractors, management companies, or related or affiliated companies involved in providing services covered by this Agreement. The audit report shall cover the preceding Lease Year. The audit report shall be in the format required by the Department and shall be prepared by an independent Certified Public Accountant, not a regular employee of Company, in accordance with Generally Accepted Auditing Standards prescribed by the American Institute of Certified Public Accountants or any successor agency thereto. The audit report shall include the following:

- A. The total amount of Gross Receipts for the preceding Lease Year;

B. A schedule of Gross Receipts by month attributable to each concession unit, which shall also detail any exclusion from Gross Receipts;

C. A schedule of Gross Receipts by month attributable to the sale of Personal Services by category of service and concession unit, which shall also detail any exclusion from Gross Receipts;

D. A schedule of Gross Receipts by category of service and month attributable to the sale of Traveler Services, which shall also detail any exclusion from Gross Receipts;

E. A schedule of payments made to the County; and

F. The audit report shall include an opinion on: the total amount of Gross Receipts for the preceding Lease Year; the schedule of all Gross Receipts by concession unit and by month; the schedule of Gross Receipts by month attributable to the sale of Personal Services by category of service and concession unit; the schedule of Gross Receipts by category of service and month attributable to Traveler Services; the schedule of payments to the County; any exclusions from Gross Receipts; and the calculation of payments.

Delivery of an audit report containing a qualified opinion, an adverse opinion, or a disclaimer of opinion, as defined by the American Institute of Certified Public Accountants or any successor agency thereto, shall be deemed to be a material breach of this Agreement. If the audit report indicates that the Concession Fee (together with any sales taxes thereon) due and owing for any Lease Year is greater than the amount paid by Company to the County during such Lease Year, Company shall pay the difference to the County with the audit report. If the Concession Fee actually paid by Company to the County during any Lease Year exceeds the Concession Fee due and owing for such Lease Year, the County shall credit the overpayment in the following order: (i) against any past due amounts owed to the County by Company, including interest and late fees; (ii) against currently outstanding, but not yet due, payments owed to County by Company; and (iii) against any other sums payable by Company to the County. Notwithstanding the foregoing, in the event of an overpayment by Company during the last Lease Year, the County shall credit the overpayment against any remaining amounts owed to County, including interest and late fees, and refund to Company any overpayment amount in excess of the credit. The obligations arising under this Section 6.14 shall survive the expiration or earlier termination of this Agreement until satisfied.

#### 6.15 Audit by County.

Notwithstanding any provision in this Agreement to the contrary, the County or its representative(s) may at any time perform audits of all or selected operations performed by Company under the terms of this Agreement. In order to facilitate the audit performed by the County, Company agrees to make suitable arrangements with the Certified Public Accountant, who is responsible for preparing the audit reports on behalf of Company pursuant to Sections 6.13 and 6.14, to make available to the County's representative(s) any and all working papers relevant to the audit performed by the Certified Public Accountant. The County or its representative(s) shall make available to Company a copy of the audit report prepared by or on behalf of the County. Company shall have thirty (30) days from receipt of the audit report from the County or its representative(s) to provide a written response to the Department regarding the audit report. Company agrees that failure of Company to submit a written response to the audit report in accordance with the requirements of this Section shall constitute acceptance of the audit report as issued.

#### 6.16 Abatement of Minimum Annual Guarantee.

In the event the number of passengers enplaning on scheduled airline flights at the Airport during any calendar month shall be less than seventy percent (70%) of the number of such enplaning passengers in the same month in the base calendar year of 2006, Company shall not be required to pay to the County that portion of the Minimum Annual Guarantee that would otherwise be due and payable in accordance with the requirements of this Agreement for that month. During the abatement period, Company shall continue to pay to the County the Monthly Privilege Fee with the Statement of Gross Receipts, and, if applicable, the County shall credit Company a pro-rated portion of any payment of the Minimum Annual Guarantee as may have been paid in advance. Company acknowledges and agrees that Company shall remain liable for payment of the full Privilege Fee notwithstanding any reduction in the Minimum Annual Guarantee for that year.

#### 6.17 Storage Spaces.

A. In addition to any other fees, charges and rentals payable hereunder, Company shall commence payment of rental for the storage areas identified in Exhibit "A" as MT-S5, MT-S6 and MT-S7 on October 1, 2008 and for the storage area identified in Exhibit "A" as C-S1 upon the date of the Department's written notice to Company that storage area C-S1 is available for use and occupancy by Company. The initial annual rental for the storage areas is currently estimated to be: (i) Nineteen Dollars and 82/100 (\$19.82) per square foot for storage areas MT-S5, MT-S6 and MT-S7; and (ii) Fifty Five Dollars and 48/100 (\$55.48) for storage area C-S1. Rental for storage spaces shall be payable at the offices of the Department in equal monthly installments, in advance, without demand or any deduction, holdback or setoff whatsoever, by the first day of each and every month throughout the Term. Any rental payment due pursuant to this Section 6.17 for a fractional month shall be calculated and paid on a per diem basis (calculated on the basis of a thirty (30) day month).

B. Each October 1<sup>st</sup>, the rental rate applicable to storage areas shall be adjusted in accordance with the standard form Airline Use and Lease Agreement adopted by County's Board of County Commissioners ("Board") pursuant to Resolution No. 2006-1906, as such agreement may be amended from time to time or any successor resolution or agreement adopted by the Board establishing rental rates for similar space within the Terminal ("Airline Agreement"). Storage areas MT-S5, MT-S6 and MT-S7 shall be considered Type Five (5) space and storage area C-S1 shall be considered Type Four (4) space, as such space types are defined in the Airline Agreement. Notwithstanding any provision of this Agreement to the contrary, Company acknowledges and agrees that the County shall have the right to establish and maintain rental rates under this Agreement to ensure compliance with the provisions of Section 710 of the Bond Resolution.

12. Section 18.04 of the Agreement is hereby deleted in its entirety and replaced with the following:

#### 18.04 County's Remedies for Default.

In the event of a material default or breach of this Agreement by Company, the County may, with or without notice or demand, pursue any available right or remedy at law or equity including the right, at its option, to immediately terminate this Agreement. Upon such termination, Company shall immediately surrender the Leased Premises to the County and shall cease its operations at the Airport. Such termination shall be without prejudice to the County to any remedy for arrearages or payments due hereunder or breach of covenant or damages for the balance of the Concession Fee and other sums due hereunder, payable through the full Term of this Agreement, or any other damages or remedies whatsoever. Upon termination of this Agreement whether for default or convenience, the County shall have the right to engage another concessionaire or lessee to provide

the services required hereunder for such period or periods at such fees and upon other terms and conditions as the County may deem advisable.

13. Section 18.06(C) of the Agreement is hereby deleted in its entirety and replaced with the following:

C. Reduction in Minimum Annual Guarantee. In the event of a partial termination, the Minimum Annual Guarantee shall be reduced as hereinafter provided. The Minimum Annual Guarantee reduction shall be calculated as follows and shall apply to the Minimum Annual Guarantee for the Lease Year in which the termination occurs:

$$\text{Minimum Annual Guarantee (as of the date of termination)} \times \frac{\text{Privilege Fee Attributable to the Affected Leased Premises for Prior Year}}{\text{Prior Year's Total Privilege Fee}}$$

*Example of reduction calculation:*

The Minimum Annual Guarantee is \$3,000,000 as of the date of the partial termination. The prior year's total Privilege Fee was \$2,000,000. The portion of the total Privilege Fee attributable to the affected portion of the Leased Premises (i.e., concession unit) was \$200,000 or 10% of the total Privilege Fee. The Minimum Annual Guarantee would be reduced by 10% or \$300,000; therefore, the Minimum Annual Guarantee for that Lease Year would be \$2,700,000. (Stated numerically: \$3,000,000 x \$200,000/\$2,000,000 = \$2,700,000).

Notwithstanding the foregoing, the Minimum Annual Guarantee shall continue to be adjusted annually in accordance with Section 6.03, subject to the reduction provided for in this subsection.

14. Exhibit "A" to the Agreement dated November 6, 2007, is hereby deleted in its entirety and replaced with Exhibit "A" to this Amendment dated September 9, 2008, attached hereto and incorporated herein.

15. Except as specifically modified herein, all of the terms and conditions of the Agreement shall remain unmodified and in full force and effect and are hereby ratified and confirmed by the parties hereto.

16. This Amendment shall be considered effective when signed by all parties and approved by the Palm Beach County Board of County Commissioners.

{Remainder of page intentionally left blank.}

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment as of the day and year first above written.

ATTEST:

Sharon R. Bock, Clerk & Comptroller

By: \_\_\_\_\_  
Deputy Clerk

PALM BEACH COUNTY, a political subdivision of the State of Florida, by its Board of County Commissioners

By: \_\_\_\_\_  
Addie L. Greene, Chairperson

(SEAL)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: \_\_\_\_\_  
County Attorney

APPROVED AS TO TERMS AND CONDITIONS

By: *Jim Kelly*  
Director, Department of Airports

ATTEST:

Signed, sealed and delivered in the presence of two witnesses for Company:

*Charlene B. Yde*  
Signature  
Charlene B. Yde  
Name (type or print)

*Suzanne Westfall*  
Signature  
SUZANNE WESTFALL  
Name (type or print)

Paradies-Palm Beach, LLC, a Florida limited liability company

By: *Lou Bottino*  
Lou Bottino  
Name (type or print)  
Chief Operating Officer  
Title

(Seal)



**EXHIBIT "A" to Retail Concession Agreement  
PARADIES – PALM BEACH, LLC**

**LEASED PREMISES  
Palm Beach International Airport**

<b>MAIN TERMINAL, PRE-SECURITY</b>	
<b>Existing Locations</b>	
<b>Unit No.</b>	<b>Approximate Size (Sq. Ft.)</b>
MT – 1 (PGA Tour Shop)	871
MT – 2A (Brighton/Brooks Bros Women)	1,045
MT – 2B (Palm Beach Expressions)	1,311
MT – 2C (Worth Avenue News)	1,609
MT – 3 (Tech Showcase)	1,010
MT – 3A (Business Center)	1,267
MT – 5 (Oceanfront News)	2,445
<b>New Locations</b>	
<b>Unit No.</b>	<b>Approximate Size (Sq. Ft.)</b>
MT – 4 (Kids Zoo)	1,246

<b>CONCOURSE B, POST-SECURITY</b>	
<b>Existing Locations</b>	
<b>Unit No.</b>	<b>Approximate Size (Sq. Ft.)</b>
B – 1 (New York Times Bookstore)	687
B – 2 (Coral Cove News)	1,437
<b>New Locations</b>	
<b>Unit No.</b>	<b>Approximate Size (Sq. Ft.)</b>
B – 3 (Tropical News Kiosk)	305

<b>CONCOURSE C, POST-SECURITY</b>	
<b>Existing Locations</b>	
<b>Unit No.</b>	<b>Approximate Size (Sq. Ft.)</b>
C – 1 (Coral Cove News)	1,307
C – 2 (New York Times Bookstore)	389
<b>New Locations</b>	
<b>Unit No.</b>	<b>Approximate Size (Sq. Ft.)</b>
C – 3 (CNBC News)	2,000

<b>OFFICE &amp; STORAGE AREAS</b>	
<b>Unit No.</b>	<b>Approximate Size (Sq. Ft.)</b>
MT – S1	1,445
MT – S2	414
MT – S3	261
MT – S4	1,173
MT – S5	550
MT – S6	1,162
MT – S7	381
C – S1	450

*The square footage listed on this Exhibit "A" are estimated and may vary upon completion and build-out of the concession units.*

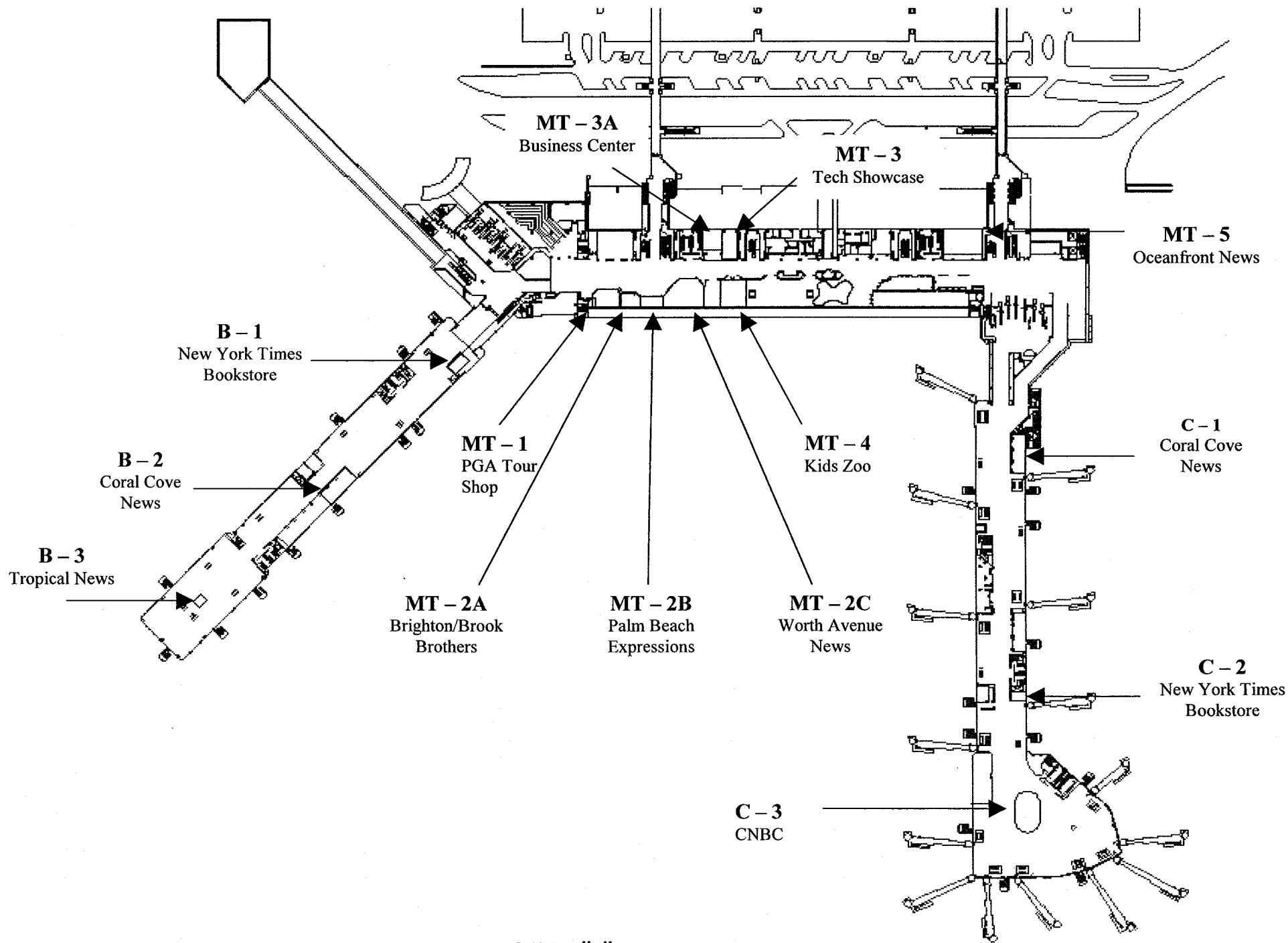


Exhibit "A" to Retail Concession Agreement

September 9, 2008

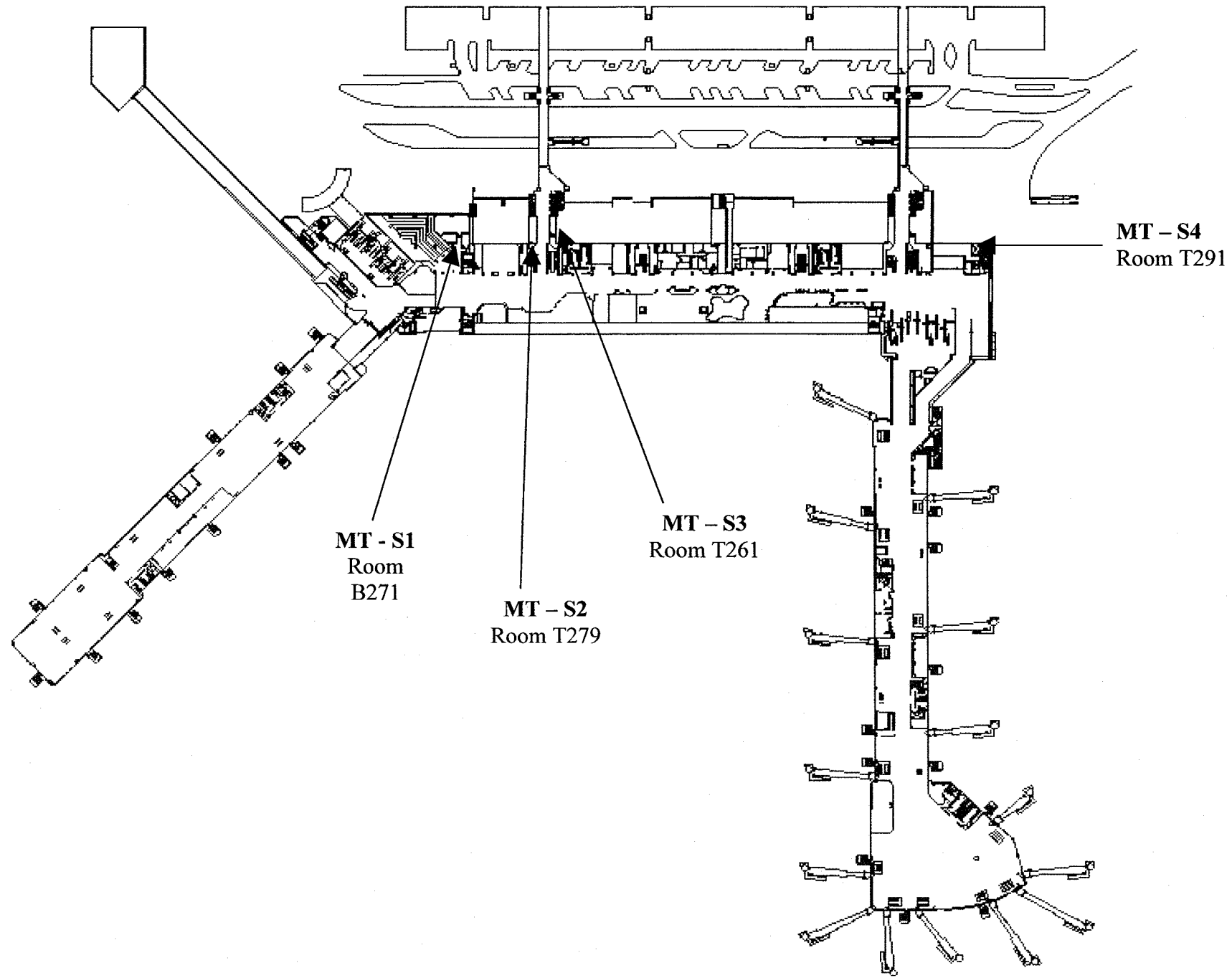
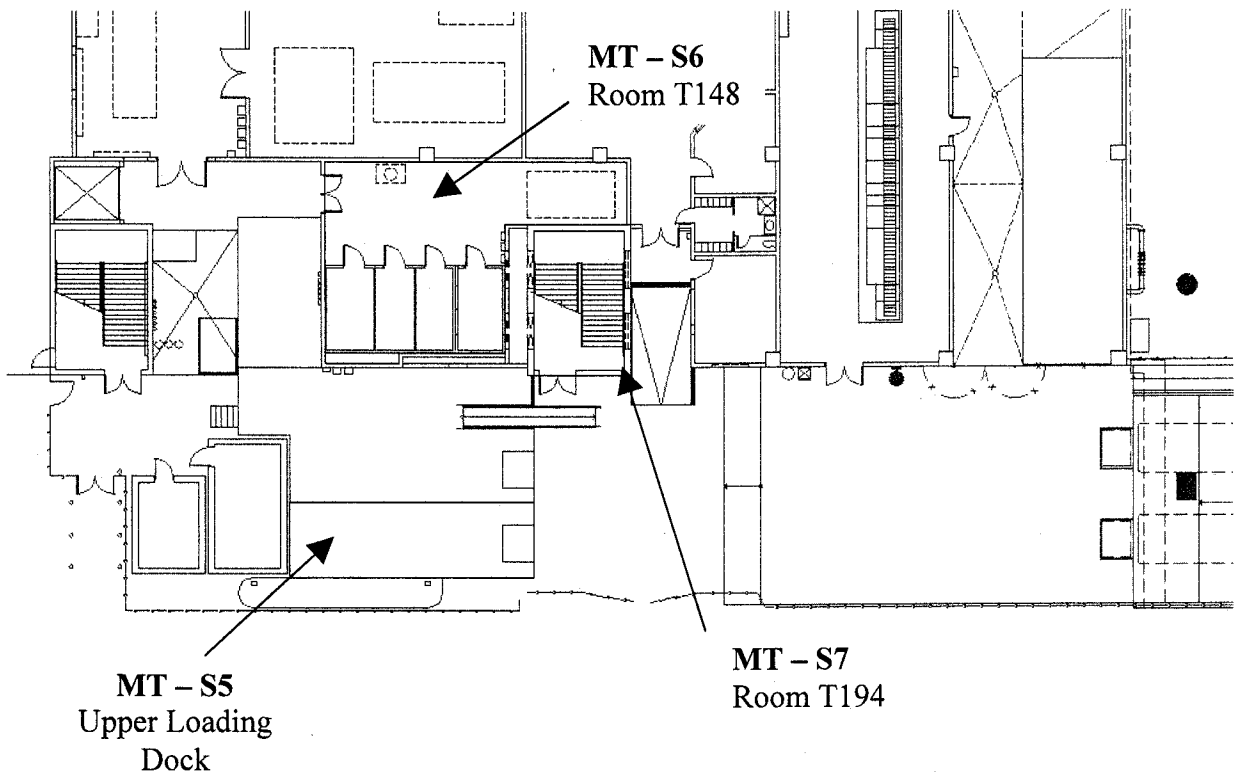
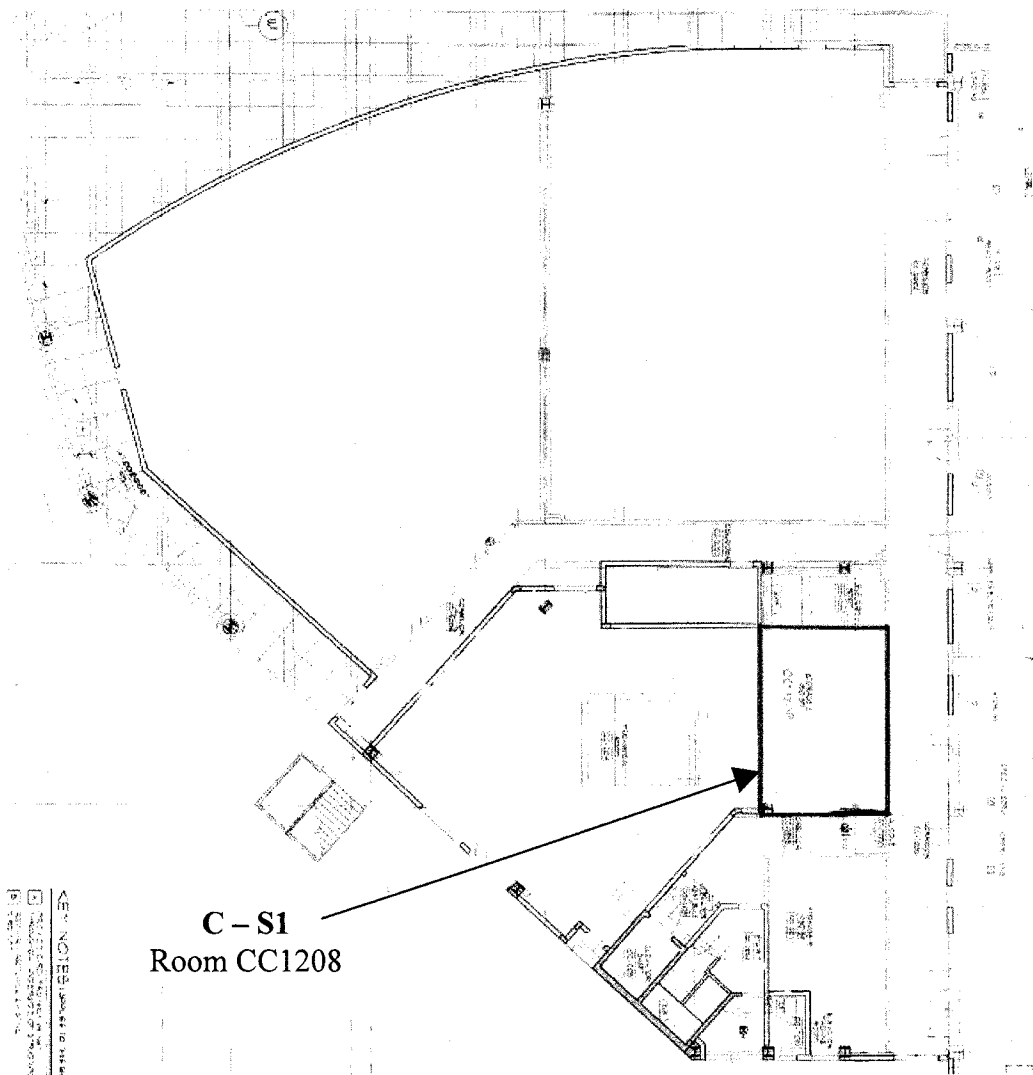


Exhibit "A" to Retail Concession Agreement  
September 9, 2008

Loading Dock Area



1<sup>st</sup> Level - Concourse C



BOARD OF COUNTY COMMISSIONERS  
 PALM BEACH COUNTY, FLORIDA  
 BUDGET TRANSFER

ADV #  
 BGEX121081208/3264

08

FUND 4111 - AIRPORTS IMPROVEMENT AND DEVELOPMENT FUND

Use this form to provide budget for items not anticipated in the budget.

ACCT. NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED as of 08/12/2008	REMAINING BALANCE
<b>EXPENDITURE</b>								
	<b>AIRPORT EXPENDITURES</b>							
121-A212-6211	Terminal Improvements	2,000,000	3,414,959	200,000		3,614,959	2,480,081	1,134,878
121-A900-9909	Reserves Improvement Program	7,213,811	8,529,170	0	200,000	8,329,170	0	8,329,170
	<b>TOTAL EXPENDITURES</b>	<u>9,213,811</u>	<u>11,944,129</u>	<u>200,000</u>	<u>200,000</u>	<u>11,944,129</u>		

Department of Airports / Finance.....

Initiating Department / Division

Administration / Budget Department Approval..

Finance Department - Posted.....

Signatures

Dates

*Michael Semin* 8/12/08

By Board of County Commissioners

At Meeting of 06/06/08

Deputy Clerk to the  
 Board of County Commissioners



THE PARADIES SHOPS

LOU BOTTINO  
Senior Vice President/  
Chief Operating Officer

April 10, 2008

Mr. Bruce Pelly  
Director of Airports  
Palm Beach International Airport  
Building 846  
West Palm Beach, FL 33406-1491

Dear Mr. Pelly:

Enclosed you will find the letter from FAO Schwarz outlining their change of strategy. This change will not allow us to fulfill our plans to open an FAO Schwarz at Palm Beach International Airport.

We have provided you with an alternative childrens/toy concept for this area.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Lou Bottino

LB/sw

cc: Laura Beebe  
Jan McCarter  
Charlene Yde  
Bruce Feuer  
Rick Lillie

# F·A·O·SCHWARZ

875 Avenue of the Americas, 20th Floor, New York, NY 10001 (212) 239-7363 FAX (212) 239-7211 FAO.COM

August 7, 2007

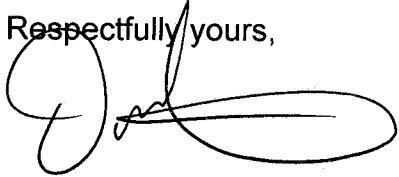
Rick Lillie  
Vice President  
The Paradies Shops  
5950 Fulton Industrial Blvd SW  
Atlanta, GA 30336

Dear Rick:

After internal reviews and discussions we have decided to discontinue our interest in pursuing the opening up of Airport Shop locations at this time. Based on that decision we will not be going forward with plans for West Palm Beach or any other locations that were potential sites for us. There are several other opportunities that we plan to prioritize ahead of the Airport Shops -- they include our Dept Store Strategy of "Shop in Shops" as well as executing some Licensing concepts.

We still believe that conceptually the opening of these types of locations may be of interest to us in the future. If and when we would like to resume these expansion plans we will certainly be in contact with your organization. You and your team at Paradies have been a great source of information for us and have been professional in every aspect.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Dino Martin", with a large, stylized flourish extending to the right.

Dino Martin  
Sr Vice President  
FAO Schwarz



LILLY PULITZER®  
VIA PALM BEACH

April 2, 2008

Jeff Brown  
The Paradies Shops  
5950 Fulton Industrial Boulevard  
Atlanta, GA 30336

Dear Jeff,

It was nice to meet you several weeks ago on our trip to Atlanta. The Paradies Shops is a terrific organization and we admire what you have done with your stores and brands - congratulations are in order!

After our visit, the Company has come to the conclusion that, if our product were to be distributed through airport locations, The Paradies Shops would be our partner of choice. Unfortunately, at this time, management does not believe that the appropriate distribution for the brand is in the Palm Beach International Airport. Thank you for the opportunity and we are sorry for any inconvenience this may have caused The Paradies Shops or the Palm Beach County Airport Authority.

Sincerely,

Michael S. Wallace  
Vice President of Wholesale





July 29, 2008

Mr. Lou Bottino  
The Paradies Shops, Inc.  
5950 Fulton Industrial Boulevard, SW  
Atlanta, Georgia 30336

**Re: :10 Minute Manicure, Paradies and PBI**

Dear Lou:

Thank you to all of you at The Paradies Shops for providing us with the opportunity of placing two :10 Minute Manicure locations at Palm Beach International Airport. We value our relationship with your company and appreciate all you have done and continue to do for us at :10 Minute Manicure. Regrettably, at this time, :10 Minute Manicure will not be able to move forward with this opportunity. Many factors influenced this decision including:

1. The current economic climate
2. The continued flight reductions by major carriers and uncertainty
3. The additional costs of providing custom units for PBI
4. The inability to pool contractor costs on this project
5. The estimated costs per square foot of this project which exceeds other larger projects by approximately \$50,000.00.

We certainly appreciate all of your assistance and patience in attempting to bring this project to fruition and hope that there may be an opportunity in the future at PBI when the timing is right for all involved.

Kind regards,

**Lorraine Brennan O'Neil**

Lorraine Brennan O'Neil  
CEO  
:10 Minute Manicure