

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	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	* SEE BELOW				
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No _____
 Budget Account No: Fund _____ Department _____ Unit _____ Object _____
 Reporting Category _____

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

* No fiscal impact.

C. Departmental Fiscal Review: CM Senior

III. REVIEW COMMENTS

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

[Signature] 6/1/09
 OFMB
 CN 5/26/09

[Signature] 6/2/09
 Contract Dev. and Control
 6/2/09

B. Legal Sufficiency:

[Signature] 6/3/09
 Assistant County Attorney

C. Other Department Review:

 Department Director

RESOLUTION NO. R-2009-

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA; AUTHORIZING THE COUNTY ADMINISTRATOR OR HIS DESIGNEE TO EXECUTE A STANDARD FORM AGREEMENT FOR RENTAL CAR LEASE AND CONCESSION AT THE PALM BEACH INTERNATIONAL AIRPORT; PROVIDING FOR ESTABLISHMENT OF THE MINIMUM ANNUAL GUARANTEE FOR THE FIRST CONTRACT YEAR; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, the Board of County Commissioners desires to authorize the County Administrator or his designee to execute a new standard form agreement for on-airport rental car concessions at PBIA; and

WHEREAS, the delegation to the County Administrator or his designee of the authority to execute the standard form agreement for on-airport rental car concessions would eliminate delays caused by requiring such items to be brought before the Board of County Commissioners for approval and would therefore be consistent with the goal of the Board of County Commissioners to streamline the agenda process.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

1. **Recitals.** The foregoing recitals are true and correct and incorporated herein. Terms not defined herein shall have the meaning ascribed to them in the Agreement (as hereinafter defined).
2. **Standard Form Document.** The Board of County Commissioners hereby authorizes the County Administrator or his designee to execute the standard form "Agreement for Rental Car Lease and Concession at the Palm Beach International Airport" (the "Agreement"), attached hereto and incorporated herein as Attachment "A", on behalf of the Board of County Commissioners for the operation of an on-airport rental car concession at PBIA. The County Administrator or his designee is hereby authorized to execute standard form Agreements that include non-material

changes. For purposes of this Resolution, "non-material changes" means changes that do not modify the substantive obligations of the County. For purposes of this Resolution, the Director of the Department of Airports shall be considered to be a designee of the County Administrator.

3. Establishment of Minimum Annual Guarantee for the First Contract Year.

The Minimum Annual Guarantee (MAG) for the First Contract Year of the Agreement shall be the lesser of: (i) 95% of the MAG established for each rental car concessionaire in FY2008; or (ii) 95% of each rental car concessionaire's Annual Percentage Payment for FY2008. Notwithstanding the foregoing, the MAG may be increased for any reason whatsoever, including, without limitation, for the purpose of accommodating additional brands of rental car companies at existing counter facilities.

4. Severability. If any section, sentence, clause, phrase, or word of this Resolution is held invalid or unconstitutional by a Court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Resolution.

5. Effective Date. This Resolution shall become effective immediately upon adoption.

The remainder of this page is left intentionally blank.

The foregoing Resolution was offered by
Commissioner _____, who moved its adoption. The motion was
seconded by Commissioner _____, and upon being put to a vote,
the vote was as follows:

Commissioner John F. Koons, Chairman -
Commissioner Burt Aaronson, Vice Chairman -
Commissioner Karen T. Marcus -
Commissioner Shelley Vana -
Commissioner Steven L. Abrams -
Commissioner Jess R. Santamaria -
Commissioner -

The Chairperson thereupon declared the Resolution duly passed and
adopted this _____ day of _____, 2009.

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

SHARON R. BOCK, CLERK & COMPTROLLER

By: _____
Deputy Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
Assistant County Attorney

Attachment "A"
TO
RESOLUTION

**AGREEMENT FOR RENTAL CAR LEASE AND CONCESSION
AT THE PALM BEACH INTERNATIONAL AIRPORT**

This Agreement is made and entered into _____, 2009, by and between Palm Beach County, a political subdivision of the State of Florida (the "County"), and _____, a corporation organized under the laws of the State of _____, having its office and principal place of business at _____ (the "Concessionaire").

WITNESSETH:

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

WHEREAS, Concessionaire operates a rental car concession at the Airport, which includes the non-exclusive right to lease space in the terminal for the purpose of conducting Concessionaire's business; and

WHEREAS, Concessionaire has indicated a willingness and demonstrated the ability to properly finance, operate, and manage an Airport concession in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the premises and of 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:

ARTICLE 1
RECITALS

The foregoing recitals are true and correct and are hereby incorporated herein by reference.

ARTICLE 2
DEFINITIONS

- 2.01 "Airport" means the Palm Beach International Airport.
- 2.02 "Annual Percentage Payment" means ten percent (10%) of Concessionaire's annual Gross Revenues.
- 2.03 "Assigned Premises" means _____ square feet of reservation counter and office area in the Terminal, as more particularly described on Exhibit "A".
- 2.04 "Bond Resolution" means the Palm Beach County Airport System Revenue Bond Resolution dated April 3, 1984 (R-84-427), as amended and supplemented, which is hereby incorporated herein by reference and made a part hereof.
- 2.05 "Brand" means a word, mark, symbol, design, term or combination of these used for the purpose of identifying a product or service.

- 2.06 "Concession" means the rental car concession operated by Concessionaire pursuant to the terms and conditions of this Agreement.
- 2.07 "Concession Fees" means the fees payable by Concessionaire to County pursuant to Article 5.01(A) and (B).
- 2.08 "Contract Year" means the twelve (12) month period, beginning on October 1, 2009 and ending on September 30, 2010, and each twelve (12) month period thereafter, until the termination of this Agreement.
- 2.09 "Department" means the Palm Beach County Department of Airports.
- 2.10 "Disadvantaged Business Enterprise" or "DBE" has the same meaning as set forth in Title 49, Part 23 of the Code of Regulations, as now or hereafter amended or any successor regulation.
- 2.11 "FAA" means the Federal Aviation Administration.
- 2.12 "Facility Rental" means the annual rental rate payable by Concessionaire to County for Concessionaire's use and occupancy of the Assigned Premises pursuant to Article 5.03.
- 2.13 "Gross Revenues" means all monies due Concessionaire, whether paid or unpaid, from any and all customers for the use, rental or lease of vehicles and any additional services or accessories contracted for, delivered, supplied or rented at or from the Airport regardless of where, how (cash, credit, barter or otherwise) or by whom payment is made; whether the customer is transported from the Airport to an off-Airport place of business; or where the vehicle is picked up or returned. Unless revenues are expressly and specifically excluded from Gross Revenues, all revenues derived from, arise out of or become payable on account of the Concession, whether directly or indirectly, shall be included in Gross Revenues. Gross Revenues shall include, but shall not be limited to:
1. the time and/or mileage charges, after discounts, assessed by Concessionaire to its customers;
 2. the premiums on any and all insurance sold, including personal accident insurance, personal effects and cargo insurance, life insurance and any other insurance sold in connection with a vehicle rental;
 3. any and all add-on fees and charges including extra driver coverage, underage driver coverage and vehicle upgrade charges;
 4. any and all fees and charges for equipment, supplies and incidental items which are made available and charged for separate from the vehicle including, but not limited to, sporting equipment, cellular telephones, pagers, child restraint seats, video equipment, and any

other incidental items and services;

5. charges commonly referred to as "drop charges" or "intercity fees"; and
6. any fee or charge to Concessionaire's customers related to the Concession Fee, including, but not limited to Concession Recoupment Fees as defined in Article 5.13.

Gross Revenues shall not include:

1. the amount of any sales taxes or other similar excise taxes, now or hereafter levied or imposed, which are separately stated and collected from customers;
2. sums received from customers for Collision Damage Wavier (CDW) protection and Loss Damage Waiver (LDW) protection;
3. any sums received as insurance proceeds, or payments from Concessionaire's customers or insurers for damage to vehicles or other property of Concessionaire;
4. sums received as the result of the loss, conversion, or abandonment of Concessionaire's vehicles;
5. sums received from the sale of vehicles or other equipment used in the operation of the Concession, the use of which Concessionaire wishes to discontinue;
6. amounts charged to customers for fuel; or
7. Local Revenue.

2.14 "Local Revenue" means revenue derived from a vehicle rental transaction with a customer who has not deplaned at the Airport, as evidenced by the customer's drivers license number, the zip code included on the customer's drivers license indicating the customer resides in Palm Beach County and the certification provided in Article 5.10 below.

2.15 "Minimum Annual Guarantee" means a minimum amount to be paid to County on an annual basis during each Contract Year as set forth in Article 5.01(A).

2.16 "Monthly Percentage Payment" means ten percent (10%) of Concessionaire's monthly Gross Revenues.

2.17 "Terminal" means the passenger terminal building located at the Airport.

2.18 "TSA" means the Transportation Security Administration.

ARTICLE 3
EFFECTIVE DATE AND TERM

- 3.01 Effective Date. This Agreement shall become effective when signed by the parties hereto.
- 3.02 Term. The term of this Agreement shall be for a period of two (2) years, commencing on October 1, 2009 (the "Commencement Date") and terminating on September 30, 2011 (the "Term"), unless sooner terminated as provided herein.

ARTICLE 4
PRIVILEGES AND PREMISES

- 4.01 Description of Specific Privileges, Uses and Rights. County hereby grants to Concessionaire the following non-exclusive specific privileges, uses and rights, all of which shall be subject to the terms, conditions and covenants set forth herein:
- A. To conduct and operate a high quality rental car concession at the Airport from the Assigned Premises.
 - B. To offer for rent additional services or accessories to complement the basic vehicle rental from the Assigned Premises. Such additional services or accessories may include the right to offer for sale related loss and collision damage waiver protection, personal injury and accident insurance, supplemental liability, uninsured motorist, and personal effects insurance; and to provide customer service features such as baby car seats and cellular telephones.
 - C. To load and unload its customers into and from its courtesy shuttle vehicles within locations at the Airport designated by the Department.
- 4.02 Description of General Privileges, Uses and Rights. In addition to the specific privileges granted pursuant to Article 4.01, County hereby grants to Concessionaire:
- A. the nonexclusive use of the public areas within the Terminal for Concessionaire, its employees, contractors, patrons, invitees, suppliers of service, agents and authorized sublessees, if any, in connection with its operations hereunder. For purposes of this Agreement, "Public Areas" means the public corridors, restrooms and other areas within the Terminal that the general public has the right to access. Public Areas shall at all times be subject to the exclusive control and management of County. County shall the full right and authority to make all rules and regulations as County may in its sole discretion deem proper, pertaining to the proper operation and maintenance of the Public Areas; and

- B. the nonexclusive right of ingress to and egress from the Terminal over and across public roadways and walkways serving the Airport for Concessionaire, its employees, contractors, patrons, invitees, suppliers of service, agents and authorized sublessees, if any, in connection with its operations hereunder.

Nothing herein contained shall be construed to grant to Concessionaire, its employees, contractors, patrons, invitees, suppliers of service, agents or authorized sublessees, if any, the right to use or occupy any space or area at the Airport improved or unimproved that is leased or assigned to a third party, or, except as expressly set forth in Article 4.02(A) and (B) above, County has not leased to Concessionaire pursuant to this Agreement. The general privileges, uses and rights granted in this Article 4.02 shall be subject to the terms, conditions and covenants set forth herein.

- 4.03 Restrictions of Privileges, Uses and Rights. The rights granted hereunder are expressly limited to the operation and management of a rental car concession. Concessionaire covenants and agrees that the Assigned Premises shall be used solely for the uses permitted in Articles 4.01 and 4.02 above and for no other purposes whatsoever. Concessionaire acknowledges and agrees that Concessionaire shall not have the exclusive right to conduct a rental car concession at the Airport, and County may arrange with others for similar activities at the Airport. Concessionaire acknowledges that County may enter into agreements and/or permits with companies providing rental car services from off-Airport locations.
- 4.04 Condition of the Assigned Premises and Airport. Concessionaire expressly acknowledges that it has inspected the Assigned Premises and Airport and accepts the same "As Is, Where Is" in the condition existing as of the Effective Date, together with all defects latent and patent, if any. Concessionaire further acknowledges that County has made no representations or warranties of any nature whatsoever regarding the Airport or the Assigned Premises, including, but not limited to, the physical and/or environmental condition of the Assigned Premises, or any improvements located thereon, or the value of the Assigned Premises or improvements, or the suitability of the Assigned Premises, or any improvements, or Concessionaire's legal ability to use the Assigned Premises for Concessionaire's intended use thereof.
- 4.05 Dual Branding. Concessionaire acknowledges and agrees that Concessionaire shall not be entitled to substitute, modify or add to the Brands of rental car service companies being marketed or operated from the Assigned Premises during the Term. The Brand(s) permitted be marketed or operated from the Assigned Premises shall be _____. In the event Concessionaire markets or operates two (2) Brands of rental car services companies from the Assigned Premises, Concessionaire shall provide a separate Statement of Gross Revenues (as hereinafter defined) for each Brand pursuant to Article 5.09 below and shall provide separate schedules of revenues and vehicle transactions for each Brand pursuant to Article 5.11(A) and (B) below.

ARTICLE 5
CONCESSION FEES, FACILITY RENTAL AND ACCOUNTABILITY

5.01 Concession Fees. For the concession privileges granted hereunder, Concessionaire shall pay to County Concession Fees equal to the greater of the Minimum Annual Guarantee or Annual Percentage Payment for each Contract Year throughout the Term of this Agreement. Concession Fees shall be payable in advance by installment as provided for herein and shall be reconciled on an annual basis in accordance with the provisions of Article 5.11 below.

A. Minimum Annual Guarantee. Concessionaire shall pay to County commencing upon the Commencement Date and on the first day of each and every month throughout the Term of this Agreement, one-twelfth (1/12) of the Minimum Annual Guarantee for the applicable Contract Year without demand, deduction, holdback or setoff. Concessionaire agrees the Minimum Annual Guarantee for each of the following Contract Years shall be as follows:

Contract Year	Minimum Annual Guarantee
First Contract Year	\$ TBD
Second Contract Year	Ninety percent (90%) of the Annual Percentage Payment for the first Contract Year, or the Minimum Annual Guarantee for the first Contract Year, whichever is higher.

B. Percentage Payment. Within twenty (20) days after the beginning of each and every month throughout the Term of this Agreement, Concessionaire shall deliver a Statement of Gross Revenues (as hereinafter defined) for the preceding month to the Department. In the event the Monthly Percentage Payment is greater than (1/12) of the Minimum Annual Guarantee for the applicable Contract Year, Concessionaire shall pay the difference to County with the Statement of Gross Revenues.

5.02 Abatement of Minimum Annual Guarantee. In the event for any reason the number of passengers deplaning on scheduled airline flights at the Airport during any calendar month shall be less than seventy-five percent (75%) of the number of such deplaning passengers in the same month in the base calendar year of 2001, Concessionaire shall not be required to pay to County that portion of the Minimum Annual Guarantee that would otherwise be due and payable in accordance with the requirements of Article 5.01(A) above for that month. During the abatement period, Concessionaire shall continue to pay to County the Monthly Percentage Payment with the Statement of Gross Revenues (as hereinafter defined), and, if applicable, County shall credit Concessionaire a pro-rated portion of any payment of the Minimum Annual Guarantee as may have been paid in advance. Concessionaire acknowledges and agrees that Concessionaire shall remain liable for payment of the full Annual Percentage Payment notwithstanding County's waiver of its right to receive any portion of the Minimum Annual Guarantee.

- 5.03 Facility Rental. In addition to the Concession Fees, Concessionaire shall pay to County for the use and occupancy of the Assigned Premises, an annual Facility Rental determined in accordance with this Article 5.03, payable in equal monthly installments, in advance, without demand, deduction, holdback, or setoff, by the first day of each and every month throughout the Term of this Agreement together with applicable sales tax thereon. Payment of Facility Rental by Concessionaire to County shall commence upon the Commencement Date. Each October 1st through the Term of this Agreement, the annual Facility Rental shall be adjusted in accordance with the Airline-Airport Use and Lease Agreement adopted by the Board pursuant to Resolution No. 2006-1906, as such agreement and rates 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, which resolution is hereby incorporated herein by reference and made a part hereof. The Assigned Premises shall be considered Type One (1) Space (ticket counter), as defined in the aforementioned Airline-Airport Use and Lease Agreement, for purposes of rental adjustments under this Article 5.03. This Agreement shall be considered amended to reflect the new annual Facility Rental rate without formal amendment hereto.
- 5.04 Unpaid Fees. In the event Concessionaire fails to make payment of any fees or charges when due and payable in accordance with the terms of this Agreement, interest at the rate of one and one-half percent [1 ½%] per month shall accrue against the delinquent payment(s) from the date due until the date payment is received by the Department. Notwithstanding the foregoing, County shall not be prevented from terminating this Agreement for default in payment due to County pursuant to this Agreement or from exercising any other remedies contained herein or implied by law.
- 5.05 This section has been intentionally left blank.
- 5.06 Sales and Use Tax. Concessionaire shall pay monthly to 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, use or occupancy of the Assigned 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 County.
- 5.07 Net Agreement. This Agreement in every sense shall be without cost or expense to County including without limitation, cost and expenses relating to the development, maintenance, improvements and operation of the Assigned Premises.
- 5.08 Place of Payments. All payments required to be made by the Concessionaire under this Agreement shall be made payable to "Palm Beach County," and shall be paid to the Finance Division, Department of Airports, 846 Palm Beach International Airport, West Palm Beach, Florida 33406-1470, or to such other office or address as may be substituted therefor.

- 5.09 Monthly Reports of Gross Revenues. Within twenty (20) days after close of each month throughout the Term of this Agreement, Concessionaire shall submit to the Department, in a form and detail satisfactory to the Department, a Statement of Gross Revenues that: (1) details Gross Revenues for the prior calendar month and (2) separately identifies any exclusions from Gross Revenues. The Department may require the Statement of Gross Revenues to be submitted electronically.
- 5.10 Accounting Records. Concessionaire 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 Principals 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 Contract Year, including three (3) years following the expiration or termination of this Agreement. County shall have the right to audit and examine during normal business hours all such books of accounts and records relating to Concessionaire's operations hereunder. If the books of accounts and records are kept at locations other than the Airport, Concessionaire shall, at its sole cost and expense, arrange for them to be brought to a location convenient to the auditors for County in order for County to conduct the audits and inspections as set forth in this Article. Concessionaire shall maintain a record of each vehicle rental agreement written at the Airport, including a copy of each original agreement signed by Concessionaire's customer. Concessionaire shall also maintain a copy of the customer's drivers license number and the zip code included on the customer's driver license indicating that the customer resides in Palm Beach County with each vehicle rental agreement resulting in Local Revenue along with a written statement signed by the customer certifying that the customer did not deplane at the Airport prior to renting the vehicle described in the vehicle rental agreement. The vehicle rental agreement shall indicate that the Airport is the originating location. Accountability for the numerical sequence of contracts issued and unissued shall be maintained. Accounting records of Concessionaire shall be stored sequentially, or in such other manner approved by the Department, to provide reasonable and expeditious access for audit purposes hereunder. Failure to maintain books of accounts and records as required under this Article 5.10 shall be deemed to be a material breach of this Agreement. The obligations arising under this Article 5.10 shall survive the expiration or termination of this Agreement
- 5.11 Audit Requirements. On or before December 31st of each year, Concessionaire shall provide to the Department an audit report on all Gross Revenues from operations at the Airport and from the operations of any of Concessionaire'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 Contract 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 Concessionaire, 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. Schedule of all revenues by category and month and a schedule of the payments made to County.
- B. Schedule summarizing the total number of vehicle rental transactions and any sales taxes collected by month.
- C. The total amount of Concession Fees that have been paid to County in accordance with this Agreement.
- D. The audit report shall include an opinion on the schedule of all revenues by category and by month, the schedule of payments to County, and the calculation of Concession Fees during the period.

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 amount of Concession Fees (together with any sales taxes thereon) due and owing for any Contract Year is greater than the amount paid by Concessionaire to County during such Contract Year, the Concessionaire shall pay the difference to County with the audit report. If amount of Concession Fees actually paid by Concessionaire to County during any Contract Year exceeds the Concession Fees due and owing for such Contract Year, the Department shall credit the overpayment in the following order: (i) against any past due amounts owed to County by Concessionaire, including interest and late fees; (ii) against currently outstanding, but not yet due, Concession Fees owed to County by Concessionaire; (iii) against future Concession Fees which will become due during the succeeding Contract Year; and (iv) against any other sums payable by Concessionaire to County. Notwithstanding the foregoing, in the event of an overpayment by Concessionaire during the last Contract Year, the Department shall credit the overpayment against any remaining amounts owed to County, including interest and late fees, and refund to Concessionaire any overpayment amount in excess of the credit.

- 5.12 Audit by County. Notwithstanding any provision in this Agreement to the contrary, County or its representative(s) may at any time perform audits of all or selected operations performed by Concessionaire under the terms of this Agreement. In order to facilitate the audit performed by County, Concessionaire agrees to make suitable arrangements with the Certified Public Accountant, who is responsible for preparing the audit report on behalf of Concessionaire pursuant to Article 5.11 above, to make available to County's representative(s) any and all working papers relevant to the audit performed by the Certified Public Accountant. County or its representative(s) shall make available to Concessionaire a copy of the audit report prepared by or on behalf of County. Concessionaire shall have thirty (30) days from receipt of the audit report from County or its representative(s) to

provide a written response to the Department regarding the audit report. Concessionaire agrees that failure of Concessionaire to submit a written response to the audit report in accordance with the requirements of this Article 5.12 shall constitute acceptance of the audit report as issued.

- 5.13 Concession Pass-Through. County will not prohibit Concessionaire from charging each of its customers the Concession Fees paid by Concessionaire to County (a "Concession Recoupment Fee") attributable to the customer's transaction. Concession Recoupment Fees shall be collected as a percentage of all items leased or sold and services provided to Concessionaire's customers which fall within the definition of Gross Revenues. Concessionaire shall not charge a Concession Recoupment Fee for any transaction resulting in Local Revenue. Concessionaire acknowledges and understands that County does not require or endorse the practice of charging or collecting a Concession Recoupment Fee. Notwithstanding the foregoing, in the event Concessionaire charges a Concession Recoupment Fee to its customers, Concessionaire shall clearly identify the charge in a separate line item on customer invoices as a "Concession Recoupment Fee". Concessionaire shall not refer to or imply the Concession Recoupment Fee is a tax on any customer's invoice nor shall Concessionaire or any of its employees, including its counter personnel and reservation agents, identify, imply or refer to the Concession Recoupment Fee as a tax or County or Airport-imposed charge. Concessionaire agrees that it shall only be entitled to charge and collect a Concession Recoupment Fee to its customers in accordance with the requirements of this Article 5.13. Failure to comply with the requirements of this Article 5.13 shall be deemed a material default of this Agreement.
- 5.14 Security for Payment. Prior to the Effective Date, Concessionaire shall post a security deposit with County in an amount equivalent to fifty percent (50%) of the highest Contract Year Minimum Annual Guarantee ("Security Deposit"). The Security Deposit shall serve as security for the payment of all sums due to County and shall also secure the performance of all obligations of Concessionaire hereunder. The Security Deposit shall be either in the form of a clean, Irrevocable Letter of Credit ("Letter of Credit") or a Surety Bond ("Bond") in form and substance satisfactory to County. In the event of any failure by Concessionaire to pay any sums, rentals or charges to County when due or upon any other failure to perform any of its obligations or other default under this Agreement, then, in addition to any other rights and remedies available to County at law or in equity, County shall be entitled to draw on the Security Deposit and apply same to all amounts owed. Upon notice of any such draw, Concessionaire shall immediately replace the Security Deposit with a new Letter of Credit or Bond in the full amount of the Security Deposit required hereunder. 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 after the termination of this Agreement. Not less than thirty (30) calendar days prior to any expiration date of a Letter of Credit or Bond, Concessionaire shall submit evidence in form satisfactory to County that such security instrument has been renewed. Failure to renew a Letter of Credit or Bond as required by this Article 5.14 shall: (i) entitle County to draw down the full amount of such Security Deposit, and (ii) constitute a default of this Agreement

entitling County to all available remedies. The Security Deposit shall not be returned to Concessionaire until all obligations under this Agreement are performed and satisfied. Prior to consent from County to any assignment of this Agreement by Concessionaire, Concessionaire's assignee shall be required to provide a Security Deposit to County in accordance with the terms and conditions of this Article 5.14. The obligations arising under this Article 5.14 shall survive the expiration or termination of this Agreement.

ARTICLE 6
CONSTRUCTION OF IMPROVEMENTS

- 6.01 Required Improvements. Concessionaire shall, at its sole cost and expense, install all improvements and trade fixtures necessary and customary for the operation of a rental car concession within the Assigned Premises in accordance with the requirements of this Article 6.
- 6.02 Alterations, Improvements or Additions. Concessionaire shall make no alterations, additions or improvements to the Assigned Premises, without the prior written approval of the Department, which approval may be granted or withheld by the Department in its sole discretion.
- 6.03 Construction Requirements. All improvements, alterations and additions made by Concessionaire to the Assigned Premises shall be of high quality and meet all applicable Federal, State and local laws, regulations, rules and requirements. Prior to the commencement of construction, one (1) full and complete set of plans and specifications for all improvements, alterations and/or additions shall be submitted to the Department for approval, which approval may be granted or withheld in the Department's sole discretion. All improvements shall be completed in accordance with construction standards established by the Department and the plans and specifications approved by the Department.
- 6.04 Construction Bonds. Concessionaire shall ensure that all improvements are constructed to completion in accordance with the approved plans and specifications and that all persons or entities performing work or providing materials relating to such improvements including, but not limited to, all contractors, subcontractors, sub-subcontractors, laborers, materialmen, suppliers and professional, are paid in full for such services and materials. Concessionaire, at its sole cost and expense, shall cause to be made, executed and delivered to County prior to commencement of any improvements to the Assigned Premises, a bond, drawn in a form and issued by a company approved by County, guaranteeing compliance by Concessionaire of its obligations arising under this Article 6.
- 6.05 Contractor Requirements. Concessionaire shall require contractors to furnish for the benefit of County a public construction bond as required under Section 255.05, Florida Statutes in a form approved by County. Concessionaire shall also require contractors to furnish satisfactory evidence of statutory Worker's Compensation insurance, comprehensive general liability insurance,

comprehensive auto insurance and physical damage insurance on a Builder's Risk form with the interest of County endorsed thereon, in such amounts and in such manner as County's Risk Management Department may reasonably require. County's Risk Management Department may require additional insurance for any alterations, additions or improvements approved pursuant to this Agreement in such amount(s) as County's Risk Management Department reasonable determines to be necessary.

- 6.06 No Liens. Concessionaire covenants and agrees that nothing contained in this Agreement shall be construed as consent by County to subject the estate of County to liability under the Construction Lien Law of the State of Florida. Concessionaire shall notify any and all parties or entities performing work or providing materials relating to any improvements made by Concessionaire of this provision of this Agreement. If so requested by County, Concessionaire shall file a notice satisfactory to County in the Public Records of Palm Beach County, Florida stating that the County's interest shall not be subject to liens for improvements made by Concessionaire. In the event that a construction lien is filed against the Assigned Premises or other County property in connection with any work performed by or on behalf of Concessionaire, Concessionaire shall satisfy such claim, or transfer same to security within ten (10) days, County may do so and thereafter charge Concessionaire, and Concessionaire shall promptly pay to County upon demand all costs incurred by County in connection with the satisfaction or transfer of such claim, including, but not limited to, attorney's fees.

ARTICLE 7 **TITLE TO IMPROVEMENTS**

- 7.01 Title to Improvements. All fixtures and improvements that are constructed or placed upon the Assigned Premises, excluding furnishings, equipment and trade fixtures, (the "Improvements") shall become the absolute property of County upon termination or expiration of this Agreement and County shall have every right, title, and interest therein, free and clear of any liens, mortgages encumbrances.
- 7.02 Evidence of Transfer of Ownership. Upon the request of County, Concessionaire shall provide County with a bill of sale or other evidence of the transfer of ownership of the Improvements together with evidence satisfactory to County that the Improvements are free from liens, mortgages and other encumbrances.
- 7.03 Removal of Improvements. Notwithstanding anything in this Agreement to the contrary, County shall be entitled, at its option, to have the Assigned Premises returned to County free and clear of some or all of the Improvements at Concessionaire's sole cost and expense. In such event, County shall provide timely notification to Concessionaire of its election to require removal of improvements and, to the extent possible, County shall notify Concessionaire at least sixty (60) days prior to the expiration or termination of this Agreement. Concessionaire shall have sixty (60) days from date of notice within which to remove the Improvements. If Concessionaire fails to remove the Improvements, County may remove the Improvements. Concessionaire agrees that

Concessionaire shall fully assume and be liable to County for payment of all costs of removal of the Improvements (whether direct or indirect) incurred by County, plus a twenty-five percent (25%) administrative overhead fee, which costs and administrative overhead fee shall be due and payable County within thirty (30) days from the date of the written notice provided by the Department. The obligations arising under this Article 7 shall survive the expiration or termination of this Agreement.

ARTICLE 8
OBLIGATIONS OF CONCESSIONAIRE

8.01 Maintenance and Repair. Concessionaire shall, at its sole cost and expense, maintain the Assigned Premises and improvements and appurtenances thereto, in a safe and presentable condition consistent with good business practice, industry standards and in accordance with all applicable Federal, State and local laws, regulations and rules. Concessionaire shall repair all damages to the Assigned Premises caused by its employees, patrons, invitees, suppliers of service, or furnishers of material, or any other person whomsoever, and all damages caused by or resulting from or in any way arising out of Concessionaire's operations thereon or Concessionaire's use of the Assigned Premises. Concessionaire shall maintain and repair all equipment thereon. Concessionaire shall repaint and refurbish its facilities as may be deemed necessary in the reasonable discretion of the Department. The Department may inspect the Assigned Premises to identify items in need of maintenance or repair and report in writing to the Concessionaire those items in need of maintenance and repair. Concessionaire agrees that it shall abide by the decision of the Department with respect to any and all such maintenance or repair. The Department shall reasonably judge Concessionaire's performance under this Article 8.01 as to the quality of maintenance and repair. Upon written notice by the Department to Concessionaire, Concessionaire shall perform the required maintenance or repair in accordance with the Department's decision. If Concessionaire has not made a good faith effort, as determined by the Department, to begin to perform the maintenance or repair within ten (10) days after receipt of the Department's written notice and to diligently pursue the same to completion, County shall have the right to enter the Assigned Premises and perform the necessary maintenance or repair, and Concessionaire hereby expressly agrees that it shall fully assume and be liable to County for payment of the costs thereof, plus twenty-five percent (25%) administrative overhead. Such maintenance or repair cost, plus the administrative cost, shall be due and payable within thirty (30) calendar days of the Department's billing therefor.

8.02 Concession Service Standards.

- A. Subject to the terms and conditions of this Agreement, Concessionaire shall operate and manage the Concession for the purpose of providing rental car services to the traveling public and shall conform in all respects to all applicable Federal, State and local laws, regulations and rules.

- B. The Assigned Premises shall be staffed and operated seven (7) day per week, commencing not less than thirty (30) minutes prior to the first scheduled flight and ending not less than thirty (30) minutes after the last scheduled flight, except as otherwise approved in writing by the Department.
- C. Concessionaire shall cause its employees to conduct themselves at all times in a courteous manner towards the public and to provide prompt, efficient and safe service.
- D. Concessionaire shall provide and maintain a high standard of service, quality and value.
- E. For the convenience of Concessionaire's customers, Concessionaire shall provide, at its sole cost and expense, courtesy shuttle service between the Terminal and Concessionaire's ready-return/auto storage and service area. At no time shall Concessionaire utilize any Terminal area location for the parking of rental cars to be picked-up or returned by Concessionaire's customers.
- F. Concessionaire recognizes that from time-to-time the Department may cause quality assurance reviews of the Concession to be conducted. Such reviews may include inspection of Concessionaire's courtesy shuttle vehicles and the rental cars used in the operation of the Concession. Concessionaire agrees to fully cooperate in such quality assurance reviews and to immediately take whatever action is necessary to correct any deficiencies. In the event that it is reasonably determined that a courtesy shuttle vehicle or rental car is unsafe, unsightly or in need of repair, the Department reserves the right to disapprove Concessionaire's continued use of such vehicle. Upon written notice to Concessionaire, the subject vehicle shall be immediately removed from service until such time all deficiencies are corrected.

8.03 Concession Operational Standards.

- A. Concessionaire shall furnish its services and sales on a fair, equal, and non-discriminatory basis to all customers, and charge fair, reasonable, and non-discriminatory prices for all sales and services.
- B. Concessionaire shall make all reasonable efforts, in a proper and ethical business manner, to maintain and develop the Concession and shall not divert or cause to be diverted and rental car business from the Airport.
- C. Concessionaire shall not permit its employees or any other person under its control to engage in open or public disputes or conflicts.
- D. The Assigned Premises shall be operated and maintained in a safe, clean, orderly and inviting condition at all times.

- E. Concessionaire shall be strictly prohibited from installing or posting any signage, promotional materials, displays and/or advertisements within its Assigned Premises or at the Airport with the exception of: (1) advertisements promoting the services or products offered by Concessionaire within its Assigned Premises; (2) advertising and promotional items purchased from the Airport's advertising concessionaire; or (3) permanent identifying, directional or informational signage approved by the Department for installation within the Assigned Premises. Notwithstanding the foregoing, Concessionaire acknowledges and agrees that all advertising, promotional materials and signage to displayed within the Assigned Premises shall be subject to approval of the Department. The Department shall have the right, in its sole and absolute discretion, to require Concessionaire to remove any advertising, displays or promotional materials determined by the Department to be in conflict with its advertising concession or any other Airport concession. All signage, advertisements, displays and promotional materials installed or posted within the Assigned Premises shall be made of high quality materials and professionally manufactured and installed. Concessionaire shall not post handwritten signage, fabric or plastic banners or other similar signage within the Assigned Premises.
- F. Concessionaire shall not, in any manner, solicit customers from the Assigned Premises or elsewhere within the Terminal or its vicinity. This restriction shall include the approaching of any person by an employee or any other representative of Concessionaire for the purpose of offering information regarding Concessionaire or conducting surveys. This restriction shall apply at all times and at all Terminal locations.
- G. Though the public access area located in front of Concessionaire's reservation counter may be cordoned-off, at the option of Concessionaire, for the purpose of customer queuing, the area is not included in the Assigned Premises and therefore is not considered in the calculation of Facility Rental. The public access area extends the length of Concessionaire's reservation counter and ten feet (10") from the front of the counter. Such use of the public access area requires that Concessionaire utilize only such barrier stanchions as specifically designated by the Department and that the placement and condition of such stanchions be maintained in a neat and orderly manner and in good repair at all times.
- H. Concessionaire's courtesy shuttle vehicles shall only utilize those certain Airport locations which are designated by the Department for the picking-up or dropping-off of customers. In addition, the time such vehicles are within these areas shall be strictly limited to that which is necessary to safely drop-off or pick-up customers.

- I. Concessionaire shall not represent itself as a provider of for-hire transportation services nor render services which are customarily provided by the operators of such transportation services.
- J. Nothing contained herein shall require Concessionaire to own, unconditionally or otherwise, vehicles used in the operation of the Concession; provided, however, all vehicles used in the operation of the Concession shall be owned, leased, or rented by Concessionaire or an affiliate. Concessionaire may obtain such vehicles from any supplier.
- K. All contracts, advertising, solicitation and publicity regarding Concessionaire shall be made in Concessionaire's lawful name and shall not in any manner misrepresent the relationship between County and Concessionaire or County's interest herein.
- L. The day-to-day operation and management of the Concession shall be under the direct supervision of an active, qualified and competent manager who shall at all times be subject to the direction and control of Concessionaire.
- M. Prior to the Commencement Date, Concessionaire shall designate in writing to the Department the name, address and telephone number of the manager who at all times shall be the authorized representative of Concessionaire for all matters relating to the Concession. Concessionaire shall provide written notice to the Department of any change in its manager within seven (7) days of the change and shall include any change of address or telephone number.
- N. Concessionaire, its agents, employees and suppliers shall not block any areas used for ingress and egress by Airport traffic and shall not interfere with the activities of County, its agents, employees, any other Airport Concessionaires or tenants, or any other authorized person.
- O. The services provided by Concessionaire shall be strictly limited to those permitted herein. Concessionaire shall not engage in any other business activity from the Assigned Premises or any other location on the Airport without benefit of a validly executed agreement entered into with County for the provision and conduct of such other business activity.
- P. Concessionaire shall provide and install, at its sole cost and expense, within the Assigned Premise, office furnishings, fixtures and communication systems and equipment as may be necessary for the effective and efficient operation of the Concession.

- 8.04 Utilities. County shall provide electricity and water used or consumed in or on the Assigned Premises. Concessionaire will connect into all utilities, at its own cost, in accordance with the utility's standards. Notwithstanding the foregoing, Concessionaire acknowledges and agrees that County may pro-rate utility charges to Terminal tenants, including to Concessionaire. In such event, Concessionaire hereby expressly agrees that Concessionaire shall assume and be liable to County for payment of all such utility costs. Such utility costs shall be due and payable within thirty (30) consecutive days from Department's billing therefor.
- 8.05 Cleanliness of Premises. The Assigned Premises and all equipment and materials used by Concessionaire shall at all times be clean, sanitary and free from rubbish, refuse, food scraps, garbage, just, dirt, rodents, insects, and other offensive or unclean materials. Concessionaire, at its sole cost and expense, shall be responsible for the provision of all janitorial services in its Assigned Premises. Concessionaire shall remove or cause to be removed, at its sole cost and expense, all waste, garbage, rubbish, and/or refuse and agrees to deposit same in the area of the Airport designated by Department for such purpose at the end of each shift and as often as necessary to maintain compliance with the provisions of this Article 8.05. The Department shall reasonably determine whether Concessionaire is in compliance with the obligations as provided for herein and shall provide Concessionaire with written notice of any violations of Concessionaire's obligations. Immediately upon Concessionaire's receipt of Department's written notice of violation, Concessionaire shall commence such corrective action as required by Department or as may be necessary to remedy such non-compliance to satisfaction of receipt of Department. If corrective action is not initiated within ten (10) days of receipt of Department's written notice and pursued to completion in a diligent manner, the Department may cause the same to be accomplished and Concessionaire hereby expressly agrees that Concessionaire shall assume and be liable to County for payment of all such costs, plus twenty-five percent (25%) for administrative overhead. Such costs, plus the administrative cost, shall constitute additional rent and shall be due and payable within thirty (30) consecutive days from Department's billing therefor.
- 8.06 Security. Concessionaire acknowledges and accepts full responsibility for the security and protection of the Assigned Premises and any and all inventory and equipment now existing or hereafter placed on or installed at the Airport, and for the prevention of unauthorized access to its facilities and expressly agrees to comply with all rules and regulations of County and of any and all other governmental entities that now or may hereafter have jurisdiction over such security. Concessionaire fully understands that the police security protection provided by County is limited to that provided by the Palm Beach County Sheriff's Office to any other business situated at the Airport, and expressly acknowledges that any special security measures deemed necessary or desirable for additional protection of the Assigned Premises shall be the sole responsibility of Concessionaire and shall involve no cost to County.

8.07 Airport Security Program. Concessionaire agrees to observe all security regulations and other requirements of any agency of the Federal government, including, but not limited to, the FAA and TSA, applicable to Concessionaire, as such regulations or requirements have been or may be amended, including without limitation, Title 14, Part 139 of the Code of Federal Regulations and Title 49, Part 1500 of the Code of Federal Regulations. Concessionaire agrees to comply with the Airport Security Program and the Air Operations Area (AOA) Vehicle Access Program, and amendments thereto, and to comply with such other rules and regulations as may be reasonably prescribed by County, and to take such steps as may be necessary or directed by County to insure that sublessees, employees, invitees and guests observe these requirements. Concessionaire shall conduct background checks of its employees to the extent required by any Federal, State or local law or if, to the extent permitted by law, required by the Department. The Department shall have the right to require the removal or replacement of any employee of Concessionaire at the Airport that the Department has reasonably determined may present a risk to public safety or the security of the Airport. If as a result of the acts or omissions of Concessionaire, its sublessees, employees, invitees or guests, County incurs any fines and/or penalties imposed by the FAA or TSA; any expense in enforcing the regulations of the FAA or TSA or the rules or regulations of County; or any expense in enforcing the Airport Security Program, then Concessionaire agrees to pay to County all such costs and expenses, including all costs of administrative proceeding, court costs, and attorneys 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 by County, the FAA or TSA. In the event Concessionaire fails to remedy any such deficiency, County may do so at the cost and expense of Concessionaire. Concessionaire acknowledges and agrees that County may take whatever action is necessary to rectify any security deficiency or any other deficiency identified by County, the FAA or TSA.

ARTICLE 9 INSURANCE

Concessionaire shall, at its sole expense, maintain in full force and effect at all times during the Term of this Agreement, the insurance limits, coverages and endorsements required herein. Neither the requirements contained in this Article 9 nor County's review or acceptance of insurance shall in any manner limit or qualify the liabilities and obligations assumed by Concessionaire under this Agreement.

9.01 Commercial General Liability. Concessionaire shall maintain Commercial General Liability insurance with limits of liability of not less than One Million Dollars (\$1,000,000) Each Occurrence including coverage for, but not limited to, Premises/Operations, Products/Completed Operations, Contractual Liability, Personal/Advertising Injury and Cross Liability. Fire Legal Liability insurance with a limit of not less than One Hundred Thousand Dollars (\$100,000). Medical Payments insurance (when available) with a limit of not less than Five Thousand Dollars (\$5,000). Coverage shall be provided on a primary basis.

- 9.02 Business Auto Liability. Concessionaire shall maintain Business Automobile Liability insurance with limits of liability of not less than One Million Dollars (\$1,000,000) Each Occurrence for owned, non-owned and hired automobiles. In the event Concessionaire has no owned automobiles, Concessionaire shall only be required to maintain Hired & Non-Owned Auto Liability insurance. This amended coverage may be satisfied by way of endorsement to the Commercial General Liability insurance or separate Business Auto Liability insurance. Coverage shall be provided on a primary basis.
- 9.03 Workers' Compensation & Employers Liability. Concessionaire shall maintain Workers' Compensation & Employers Liability insurance in accordance with applicable law. This coverage shall be provided on a primary basis. In the event Concessionaire subcontracts any portion of the work or services required or permitted by this Agreement to another party, Concessionaire shall be responsible for ensuring the subcontractor maintains Worker's Compensation & Employers Liability insurance, or Concessionaire shall provide coverage under its own Worker's Compensation & Employers Liability policy on behalf of the subcontractor.
- 9.04 Additional Insured Endorsement. Concessionaire shall endorse County as an Additional Insured on each liability insurance policy required to be maintained by Concessionaire, except for Worker's Compensation and Business Auto Liability insurance policies. The CG 2011 Additional Insured - Managers or Lessors of Premises or CG 2026 Additional Insured - Designated Person or Organization endorsements, or their equivalent, shall be endorsed to the Commercial General Liability policy. Other policies, when required, shall provide a standard Additional Insured endorsement offered by the insurer. The Additional Insured endorsements shall provide coverage on a primary basis. The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents, c/o Department of Airports, 846 Palm Beach International Airport, West Palm Beach, Florida 33406."
- 9.05 Certificate of Insurance. Concessionaire shall provide County with a certificate of insurance evidencing limits, coverages and endorsements required herein. The certificate of insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. In the event coverage cancels or non-renews during the Term of this Agreement, Concessionaire shall furnish a new certificate of insurance evidencing replacement coverage thirty (30) days prior to the expiration of such insurance.
- 9.06 Waiver of Subrogation. Concessionaire agrees by way of entering this Agreement in writing to a Waiver of Subrogation for each required policy providing coverage during the Term of this Agreement. When required by the insurer or should a policy condition not allow a pre-loss agreement to waive subrogation without an endorsement, Concessionaire shall notify its insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery

Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition prohibiting such an endorsement, or voiding coverage should Concessionaire enter into such an agreement on a pre-loss basis.

- 9.07 Deductibles, Coinsurance, & Self-Insured Retention. Concessionaire shall be fully and solely responsible for any deductible, coinsurance penalty or self-insured retention, including any losses, damages or expenses not covered due to an exhaustion of limits or failure to comply with a policy.
- 9.08 Right to Review or Reject Insurance. County's Risk Management Department may review, modify, reject or accept any required policies of insurance, including, but not limited to, limits, coverages or endorsements, required by this Article 9 from time to time throughout the Term of this Agreement. County may also reject any insurer or self-insurance plan providing coverage because of poor financial condition or failure to operate legally. In such event, County shall provide Concessionaire a written notice of rejection, and Concessionaire shall comply within thirty (30) days of receipt of the notice.
- 9.09 No Representation of Coverage Adequacy. Concessionaire acknowledges the limits, coverages and endorsements required by this Article 9 are intended to minimize liability for County. Concessionaire agrees that it will not rely upon the requirements of this Article 9 when assessing the extent or determining appropriate types or limits of insurance coverage to protect Concessionaire against any loss exposures, whether as a result of this Agreement or otherwise.

ARTICLE 10 **RELATIONSHIP OF THE PARTIES**

Concessionaire, or any successor in interest to this Agreement, is and shall be deemed to be an independent contractor and operator and shall be solely responsible to all parties for its respective acts or omissions, and County shall in no way be responsible therefor.

ARTICLE 11 **INDEMNIFICATION**

Concessionaire agrees to protect, defend, reimburse, indemnify and hold County, its agents, employees and elected officers and each of them, free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages (including attorney fees at trial and appellate levels) and causes of action of every kind and character against, or in which County is named or joined, arising out of this Agreement or Concessionaire's use or occupancy of the Assigned Premises, including, without limitation those arising by reason of any damage to property or the environment, or bodily injury (including death) incurred or sustained by any party hereto, or of any party acquiring any interest hereunder, and any third or other party whomsoever, or any governmental agency, arising out of or incident to or in connection with Concessionaire's acts, omissions or operations hereunder, or the performance,

non-performance or purported performance of Concessionaire or any breach of the terms of this Agreement: provided, however, Concessionaire shall not be responsible to County for damages resulting out of bodily injury (including death) or damages to property which are judicially determined to be solely attributable to the negligence of County its respective agents, servants, employees and officers. Concessionaire further agrees to hold harmless and indemnify County for any fines, citations, court judgments, insurance claims, restoration costs or other liability resulting from or in any way arising out of or due to Concessionaire's activities or operations or use of the Assigned Premises whether or not Concessionaire was negligent or even knowledgeable of any events precipitating a claim or judgment arising as a result of any situation involving the activities. This indemnification shall be extended to include all deliverers, suppliers, furnishers of material, or anyone acting for, on behalf of or at the request of Concessionaire. Concessionaire recognizes the broad nature of this indemnification and hold-harmless provision, and acknowledges that County would not enter into this Agreement without the inclusion of such clause, and voluntarily makes this covenant and expressly acknowledges the receipt of Ten Dollars (\$10.00) and such other good and valuable consideration provided by County in support of this indemnification in accordance with laws of the State of Florida. The obligations arising under this Article 11 shall survive the expiration or termination of this Agreement.

ARTICLE 12
DAMAGE OR DESTRUCTION OF PREMISES/IMPROVEMENTS

12.01 Concessionaire's Obligations. Concessionaire hereby assumes full responsibility for the condition of the Assigned Premises and character, acts and conduct of all persons admitted to the Assigned Premises by or with the actual or constructive consent of Concessionaire or by or with the consent of any person acting for or on behalf of Concessionaire. If the Assigned Premises, improvements, or any part thereof, are damaged in any way whatsoever, whether by act of God, by the act, default or negligence of Concessionaire, or of Concessionaire's members, agents, employees, officers, representatives, guests, invitees, contractors, patrons, or any person admitted to the Assigned Premises by Concessionaire or otherwise, Concessionaire shall, at its sole cost and expense, restore the Assigned Premises to the condition existing prior to such damage. Concessionaire shall commence such restoration within thirty (30) days and shall diligently pursue such restoration to completion. Such repairs, replacements or rebuilding shall be made by Concessionaire in accordance with the construction requirements contained herein and as established by the Department. If Concessionaire fails to restore the Assigned Premises as required above, County shall have the right to enter the Assigned Premises and perform the necessary restoration, and Assigned Premises hereby expressly agrees that it shall fully assume and be liable to County for payment of the costs therefor, plus twenty-five percent (25%) administrative overhead. Such restoration cost, plus the administrative cost, shall be due and payable within thirty (30) days from date of written notice therefor.

- 12.02 Right to Cancel. If any of the improvements on the Assigned Premises are damaged or destroyed in whole or in part by fire or other casualty, Concessionaire may, subject to approval of County, be relieved of the obligation to repair, replace or rebuild the same and have the right to cancel this Agreement. In such event, Concessionaire shall provide County written notice within thirty (30) days after the date of any such damage or destruction and, upon approval by County, this Agreement shall terminate and the insurance proceeds received or receivable under any policy of insurance shall be paid to and retained by County. All fees and other sums due hereunder payable under this Agreement shall be prorated and paid to the date of such termination. The receipt and acceptance of insurance proceeds by County under this Article 12 will relieve Concessionaire from any responsibility to restore the Assigned Premises to its former condition; provided, however, that Concessionaire expressly agrees, covenants and warrants that nothing herein shall serve to relieve Concessionaire of its liability for penalties or expenses associated with, arising out of, or in any way resulting from any impairment of or damage to the environment of the Assigned Premises, and Concessionaire further waives any claim against County for damages or compensation, should this Agreement be so terminated.
- 12.03 Insurance Proceeds. Upon receipt by Concessionaire of the proceeds of the insurance policy or policies, the proceeds shall be deposited in an escrow account approved by the Department so as to be available to pay for the cost of such repair, replacement or rebuilding. Such proceeds shall be disbursed during construction to pay the cost of such work. If the amount of such insurance proceeds is insufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged improvements, Concessionaire shall pay any additional sums required into the escrow account. If the amount of such insurance proceeds is in excess of the costs thereof, the amount of such excess shall be remitted to Concessionaire.
- 12.04 Termination Upon Destruction or Other Casualty. In the event the Assigned Premises, or any part thereof, shall be destroyed or damaged in whole or in part by fire, water or any other cause, or if unforeseen occurrence shall likewise render the fulfillment of this Agreement by County impossible, then County, at its sole option, may terminate this Agreement. Concessionaire shall pay all fees, rental and costs and satisfy all of its obligations hereunder arising prior to the time of such termination, whereupon this Agreement shall terminate and the parties shall be relieved of all further obligations hereunder other than those which expressly survive expiration or termination of this Agreement. Concessionaire hereby waives any claim for damages or compensation should this Agreement be so terminated.

ARTICLE 13
TERMINATION OF AGREEMENT, DEFAULT, AND REMEDIES

13.01 Termination. This Agreement shall automatically terminate and expire at the end of the Term.

13.02 Default. The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by Concessionaire:

- A. The vacating or abandonment of the Assigned Premises by Concessionaire.
- B. The failure by Concessionaire to make payment of Concession Fees, Facility Rental or any other payment required to be made by Concessionaire hereunder, as and when due, where such failure continues for a period of three (3) days after written notice thereof from County to Concessionaire.
- C. The failure by Concessionaire to observe or perform any of the covenants, conditions or provisions of this Agreement to be observed or performed by Concessionaire, other than those described in paragraph B above, where such failure shall continue for a period of thirty (30) days after written notice from County to Concessionaire; provided, however, that if the nature of Concessionaire's default is such that more than thirty (30) days are reasonably required for its cure, then Concessionaire shall not be deemed to be in default if Concessionaire commenced such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion.
- D. To the extent permitted by law, (i) the making by Concessionaire or any guarantor hereof of any general assignment, or general arrangement for the benefit of creditors; (ii) the filing by or against Concessionaire of a petition to have Concessionaire adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy [unless, in the case of a petition filed against Concessionaire, the same is dismissed within sixty (60) days]; (iii) the appointment of a trustee or receiver to take possession of substantially all of Concessionaire's assets located at the Assigned Premises or of Concessionaire's interest in this Agreement, where possession is not restored to Concessionaire within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Concessionaire's assets located at the Assigned Premises or of Concessionaire's interest in this Agreement, where such seizure is not discharged within thirty (30) days.

- E. The discovery by County that any information given to County by Concessionaire relating to this Agreement was materially false.

13.03 Remedies. In the event of any such material default or breach by Concessionaire, 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, by giving written notice to that effect. Upon such termination, Concessionaire shall immediately surrender the Assigned Premises to County and shall cease its operations at the Airport. Such termination shall be without prejudice to County to any remedy for arrearages or payments due hereunder or breach of covenant or damages for the balance of the Concession Fees 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, County shall have the right to engage another Concessionaire to provide the services required hereunder for such period or periods at such fees and upon other terms and conditions as County may, in good faith, deem advisable.

13.04 Termination by Concessionaire. Concessionaire may terminate this Agreement, if Concessionaire is not in default of this Agreement (including, but not limited to, its payments to County hereunder), by giving County sixty (60) days advance written notice to be served as hereinafter provided, upon or after the happening of any one of the following events:

- A. Issuance by any court of competent jurisdiction of an injunction in any way preventing the use of the Airport for Airport purposes and the remaining in force of such injunction for a period of at least ninety consecutive (90) days.
- B. The default by County in the performance of any covenant or agreement herein required to be performed by County and the failure of County to remedy such default for a period of sixty (60) consecutive days after receipt from Concessionaire of written notice to remedy same provided, however, that if the nature of County's obligations is such that more than sixty (60) days are required for performance then County shall not be in default if County commences performance within such sixty (60) day period and thereafter diligently prosecutes the same to completion. Notwithstanding the foregoing, a notice of cancellation shall not be of any force or effect if County has remedied the default prior to receipt of Concessionaire's notice of cancellation.
- C. The lawful assumption by the United States Government or any authorized agency thereof, of the operation, control, or use of the Airport and facilities, or any substantial part or parts thereof, in such a manner as to substantially restrict the operation of Concessionaire, for a period of at least ninety (90) consecutive days.

13.05 Surrender of Assigned Premises. Notwithstanding the obligations of Concessionaire and rights of County provided for herein, Concessionaire expressly agrees that upon termination or cancellation of this Agreement it shall immediately surrender the Assigned Premises to County free and clear of all personal property of Concessionaire. All repairs and obligations for which Concessionaire is responsible shall be completed by the earliest practical date prior to surrender. Any personal property of Concessionaire not removed in accordance with this provision may be removed and placed in storage by the Department at the sole cost of Concessionaire. Failure on the part of Concessionaire to reclaim same, as provided by law, shall constitute a gratuitous transfer of title to County for whatever disposition is deemed to be in the best interest of County.

ARTICLE 14 **ASSIGNMENT AND TRANSFER**

Concessionaire shall not, in any manner, assign, transfer or otherwise convey an interest in this Agreement, or sublet the Assigned Premises or any portion thereof ("Assignment"), without the prior written consent of the County, which consent may be granted or withheld by the County in its sole discretion. Any such attempted Assignment without County approval shall be null and void. In the event the County consents in writing to an Assignment, Concessionaire shall have the right to the extent permitted by the County's consent to such Assignment, provided that the use of the Assigned Premises shall be limited to the same uses as are permitted under this Agreement. Any permitted Assignment shall be subject to the same conditions, obligations and terms as set forth herein and Concessionaire shall be fully responsible for the observance by its assignees of the terms and covenants contained in this Agreement. Notwithstanding any provision of this Agreement to the contrary, in the event of an approved Assignment, Concessionaire shall remain primarily liable to County for fulfilling all obligations, terms, and conditions of this Agreement, throughout the Term of this Agreement. County may freely assign this Agreement at any time without the consent of Concessionaire, and upon assumption by such assignee of County's obligations hereunder, County shall be released from all liability and obligation arising hereunder after such assignment.

ARTICLE 15 **SIGNS**

No signs, posters, or similar devices shall be erected, displayed, or maintained by Concessionaire in view of the general public in, on, or about the Assigned Premises or elsewhere on the Airport, without the prior written approval of the Department, which approval may be granted or withheld by the Department in its sole discretion. Any signs that are not approved by the Department shall be immediately removed at the sole cost and expense of Concessionaire. All signs approved for Concessionaire's operations at the Airport shall be at the cost of the Concessionaire.

ARTICLE 16
LAWS, REGULATIONS, PERMITS AND TAXES

16.01 General.

- A. Concessionaire agrees that throughout the Term of this Agreement, Concessionaire shall at all times be and shall remain in full and complete compliance with all applicable Federal, State and local laws, statutes, regulations, rules, rulings, orders, ordinances and directives of any kind or nature without limitation, as now or hereafter amended, including, but not limited to FAA Advisory Circulars and Airport Rules and Regulations.
- B. Concessionaire agrees that it shall require its appropriate managers, supervisors, and employees to attend such training and instructional programs as the Department may, from time to time require, in connection with the Airport Rules and Regulations and policies and procedures related to certification of the Airport under Title 14, Part 139 of the Code of Federal Regulations, as now or hereafter amended.

16.02 Permits and Licenses Generally. Concessionaire agrees that it shall, at its sole cost and expense, be strictly liable and responsible for obtaining, paying for, and maintaining current, and fully complying with, any and all permits, licenses and other governmental authorizations, however designated, as may be required at any time throughout the Term of this Agreement by any Federal, State or local governmental entity or any court of law having jurisdiction over Concessionaire or Concessionaire's operations and activities, for any activity of Concessionaire's conducted on the Assigned Premises and for any and all operations conducted by Concessionaire including ensuring that all legal requirements, permits, and licenses necessary for or resulting, directly or indirectly, from Concessionaire's operations and activities on the Assigned Premises have been obtained and are in full legal compliance. Upon the written request of the Department, Concessionaire shall provide to Department certified copies of any and all permits and licenses which Department may request.

16.03 Air and Safety Regulation. Concessionaire agrees that it shall conduct its operations and activities under this Agreement in a safe manner, shall comply with all safety regulations of the Department and with safety standards imposed by applicable Federal, State and local laws and regulations and shall require the observance thereof by all employees, contractors, business invitees and all other persons transacting business with or for Concessionaire resulting from, or in any way related to, the conduct of Concessionaire's business on the Assigned Premises. Concessionaire shall procure and maintain such fire prevention and extinguishing devices as required by County and by law and shall at all times be familiar and comply with the fire regulations and orders of County and the fire control agency with jurisdiction at the Airport, as same may now exist or hereafter come into being. Concessionaire hereby agrees that neither Concessionaire, nor employee or contractor or any person working for or on behalf of Concessionaire, shall require any personnel engaged in the

performance of Concessionaire's operations to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health or safety, as determined by standards adopted pursuant to the Occupational Safety and Health Act of 1970, as same may be amended from time to time, as well as all State and local laws, regulations, and orders relative to occupational safety and health.

16.04 Payment of Taxes. Concessionaire shall pay any and all taxes and other costs lawfully assessed against its interest in the Assigned Premises, its improvements and its operations under this Agreement. Concessionaire shall have the right to contest the amount or validity of any tax or assessment payable by it by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying, or extending Concessionaire's covenants to pay any such tax or assessment, unless the legal proceedings shall operate to prevent the collection of the tax or assessment. Upon termination of such legal proceedings, the Concessionaire shall pay the amount of any such tax or assessment, or part thereof, as finally determined in such proceedings, the payment of which may have been deferred during the prosecution thereof, together with any costs, fees, interest, penalties, or other liabilities in connection therewith.

ARTICLE 17
DISCLAIMER OF LIABILITY

COUNTY HEREBY DISCLAIMS, AND CONCESSIONAIRE HEREBY RELEASES COUNTY, FROM ANY AND ALL LIABILITY, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE AND NUISANCE), FOR ANY LOSS, DAMAGE, OR INJURY OF ANY NATURE WHATSOEVER SUSTAINED BY CONCESSIONAIRE, ITS EMPLOYEES, AGENTS, OR INVITEES DURING THE TERM OF THIS AGREEMENT INCLUDING, BUT NOT LIMITED TO, LOSS, DAMAGE, OR INJURY TO THE IMPROVEMENTS OR PERSONAL PROPERTY OF CONCESSIONAIRE OR CONCESSIONAIRE'S BUSINESS INVITEES THAT MIGHT BE LOCATED OR STORED ON THE ASSIGNED PREMISES, UNLESS SUCH LOSS, DAMAGE, OR INJURY IS CAUSED SOLELY BY COUNTY'S SOLE NEGLIGENCE. THE PARTIES EXPRESSLY AGREE THAT UNDER NO CIRCUMSTANCES SHALL COUNTY BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE, AND NUISANCE), SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR ANY OTHER DAMAGE RELATED TO THE ASSIGNMENT OF THE ASSIGNED PREMISES TO CONCESSIONAIRE PURSUANT TO THIS AGREEMENT. CONCESSIONAIRE ACKNOWLEDGES AND AGREES THAT COUNTY SHALL HAVE NO LIABILITY WHATSOEVER AND CONCESSIONAIRE COVENANTS AND AGREES TO HOLD HARMLESS COUNTY FROM ANY AND ALL LIABILITY RELATING TO ANY INFORMATION PROVIDED BY COUNTY RELATING TO THIS AGREEMENT. FURTHERMORE, CONCESSIONAIRE ACKNOWLEDGES AND AGREES THAT ITS USE OF ANY SUCH INFORMATION, WHETHER PREPARED OR PROVIDED BY COUNTY OR OTHERWISE, IN DETERMINING WHETHER TO ENTER INTO THIS AGREEMENT, WAS AT ITS SOLE RISK.

ARTICLE 18
NOTICES

All notices and elections (collectively, "notices") to be given or delivered by or to any party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service or overnight mail, or alternatively shall be sent by United States Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services or overnight mail, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designated the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

County:

Palm Beach County Department of Airports
ATTN: Deputy Director Airports Business Affairs
846 Palm Beach International Airport
West Palm Beach, FL 33406-1470

With copy to:

Palm Beach County Attorneys' Office
ATTN: Airport Real Estate Attorney
301 North Olive Avenue, Suite 601
West Palm Beach, Florida 33401

Concessionaire:

Either party may change the address to which notices under this Agreement shall be given, upon three (3) days prior written notice to the other party.

ARTICLE 19
GOVERNMENTAL RESTRICTIONS

- 19.01 Federal Right to Reclaim. In the event a United States governmental agency shall demand and take over the entire facilities of the Airport or the portion thereof wherein the Premises are located, for public purposes for a period in excess of ninety (90) days, either party may terminate this Agreement by providing written notice of such termination to the other party and the parties shall thereupon be released and fully discharged from any and all liability hereunder arising after such termination or as a result thereof. This Article 19.01 shall not act or be construed as a waiver of any rights Concessionaire may have against the United States as a result of such taking.
- 19.02 Federal Review. Concessionaire acknowledges this Agreement may be subject to review or inspection by the FAA to determine satisfactory compliance with Federal law or grant assurances and agrees that this Agreement shall be in full force and effect and binding upon both parties pending such review or inspection by the FAA, if applicable; provided, however, that upon such review or inspection all parties hereto agree to modify any of the terms of this Agreement which shall be determined by the FAA to be in violation of existing laws, regulations, grant assurances or other requirements.
- 19.03 County Tax Assessment Right. None of the terms, covenants and conditions of this Agreement shall in any way be construed as a release or waiver on the part of County, as a political subdivision of the State of Florida, or any of the public officials of County of Palm Beach, of the right to assess, levy, and collect any ad valorem, non ad valorem, license, personal, intangible, occupation, or other tax which shall be lawfully imposed on the Assigned Premises, the business or property of Concessionaire.
- 19.04 Right of Flight. County reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Assigned Premises together with the right to cause in said airspace such noise as may be inherent in the operations of aircraft now known or hereafter used, for navigation of or flight in the said airspace for landing on, taking off from, or operating on the Airport.
- 19.05 Operation of Airport. Concessionaire expressly agrees for itself, its subleases, successors and assigns, to prevent any use of the Assigned Premises which would interfere with or adversely affect the operation, maintenance or development of the Airport, or otherwise constitute an Airport hazard.
- 19.06 Release. Concessionaire acknowledges that noise and vibration are inherent to the operation of Airport and hereby releases County from any and all liability relating to the same.

ARTICLE 20
NON-DISCRIMINATION

20.01 Non-discrimination. Concessionaire for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree (a) that no person on the grounds of race, creed, color, national origin, sex, age, handicap, religion, marital status, familial status, or gender expression or identity shall be excluded from participation in or denied the use of said Assigned Premises, (b) that in the construction of any improvements on, over, or under such Assigned Premises and the furnishing of services, no person on the grounds of race, creed, color, national origin, sex, age, handicap, religion, marital status, familial status, or gender expression or identity shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (c) that Concessionaire shall use the Assigned Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulation, Department of Transportation, Subtitle A, Office of Secretary, Part 21, Non-Discrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations have been or may be amended. In the event of the breach of any of the foregoing non-discrimination covenants, County shall have the right to terminate this Agreement and to reenter and repossess said Assigned Premises and the facilities hereon, and hold the same as if said Agreement had never been made or issued. This cancellation provision shall not be effective until the procedures of Title 49, Code of Federal Regulation, Part 21, are followed and completed including exercise or expiration of appeal rights.

20.02 Disadvantaged Business Enterprises/Affirmative Action. Concessionaire acknowledges that the provisions of Title 49, Part 23, Subpart F of the Code of Federal Regulations, Disadvantaged Business Enterprises (DBE), and Title 14, Part 152 of the Code of Federal Regulations, Affirmative Action Employment Programs, are applicable to the activities of Concessionaire under the terms of this Agreement, unless exempted by said regulations, and hereby agrees to comply with said regulations, as now or hereafter amended or any successor regulations, and all requirements of the Department, the FAA and the U.S. Department of Transportation, in reference thereto. These requirements include, but are not limited to, the compliance with DBE and/or Employment Affirmative Action participation goals, the keeping of certain records of good faith compliance efforts, which would be subject to review by the various agencies, the submission of various reports, and including, if directed by Department, the contracting of specified percentages of goods and services contracts to Disadvantaged Business Enterprises in accordance with the goals established in Article 20.03. Failure to comply with these requirements shall be grounds for default and termination of this Agreement. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award of performance of any concession agreement covered by Title 49, Part 23, Subpart F of the Code of Federal Regulations, as now or hereafter amended or any successor regulation. Concessionaire agrees to include the preceding statement in any subsequent

concession agreements that it enters and cause those businesses to similarly include the statement in further agreements. Any termination pursuant to this Article 20.02 shall not be effective until the procedures specified in said federal regulations or established by County are completed, including exercise or expiration of any appeal rights.

20.03 Disadvantaged Business Enterprise Participation Goals. Notwithstanding the foregoing, Concessionaire hereby agrees that for each twelve (12) month period throughout the Term of this Agreement, the total amount expended for the purchase of products, goods and services used in the operation of the Concession and supplied by Department certified DBE's shall be at least equal to fifteen percent (15%) of Concessionaire's gross receipts for the same period. For the purpose of verifying Concessionaire's good faith efforts, Concessionaire shall keep and maintain such books of account and records as necessary for compliance with Title 49, Part 23, Subpart F of the Code of Federal Regulations, as now or hereafter amended or any successor regulation, County's and Concessionaire's commitment to such DBE participation. Concessionaire shall provide annual reports to the Department as to the percentage of purchases made from Department certified DBE's during the previous year. In the event that Concessionaire's annual report reveals that Concessionaire did not meet the established fifteen percent (15%) DBE participation goal for the previous twelve (12) month period, Concessionaire shall also furnish a detailed report as to reason(s) that the participation goal was not met together with documentation of Concessionaire's good faith efforts and a corrective action plan for meeting the DBE goal. Within thirty (30) days following the Department's receipt of Concessionaire's reports, the Department shall prepare and submit to Concessionaire a statement with approving or disapproving Concessionaire's corrective action plan.

ARTICLE 21 **MISCELLANEOUS**

21.01 County Not Liable. County shall not be responsible or liable to Concessionaire for any claims for compensation or any losses, damages or injury sustained by Concessionaire resulting from (a) cessation for any reason of air carrier operations at the Airport Terminal or (b) diversion of passenger traffic to any other facility. County shall not be responsible or liable to Concessionaire for any claims for compensation or any losses, damages or injury whatsoever sustained by Concessionaire including, but not limited to, those resulting from failure of any water supply, heat, air conditioning or electrical current or from an act of God, state of war, terrorism, civilian commotion or riot or any cause beyond the control of County. All personal property placed on or moved on to the Assigned Premises shall be at the sole risk of Concessionaire. County shall not be liable for any damage or loss of any personal property placed or moved on to the Assigned Premises.

- 21.02 Authorized Uses Only. Notwithstanding anything to the contrary herein, Concessionaire shall not use or permit the use of the Assigned Premises or the Airport for any illegal or improper purpose or for any purpose which would invalidate any policies of insurance, now existing or hereafter written on the Airport for County or Concessionaire.
- 21.03 Waivers. The failure of County to insist on a strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that County may have for any subsequent breach, default, or non-performance, and County's right to insist on strict performance of this Agreement shall not be affected by any previous waiver or course of dealing.
- 21.04 Subordination to Bond Resolution. This Agreement and all rights granted to Concessionaire hereunder are expressly subordinated and subject to the lien and provisions of the pledge, transfer, hypothecation or assignment made by County in the Bond Resolution, and County and Concessionaire agree that to the extent permitted by authorizing legislation, the holders of the Bonds or their designated representatives shall exercise any and all rights of County hereunder to the extent such possession, enjoyment and exercise are necessary to insure compliance by Concessionaire and County with the terms and provisions of this Agreement and Bond Resolution.
- 21.05 Subordination to Federal Agreements. This Agreement shall be subject and subordinate to all the terms and conditions of any instrument and documents under which County acquired the land or improvements thereon and shall be given only such effect as will not conflict with nor be inconsistent with such terms and conditions. Concessionaire understands and agrees that this Agreement shall be subordinate to the provisions of any existing or future agreement between County and the United States of America, or any of its agencies, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.
- 21.06 County's Governmental Authority. Nothing in this Agreement shall be construed to waive or limit County's governmental authority as a political subdivision of the State of Florida to regulate Concessionaire or its operations.
- 21.07 Rights Reserved to County. All rights not specifically granted Concessionaire by this Agreement are reserved to County.
- 21.08 Invalidity of Clauses. The invalidity of any portion, article, paragraph, provision clause, or any portion thereof of this Agreement shall have no affect upon the validity of any other part or portion hereof.
- 21.09 Venue. To the extent allowed by law, the venue for any action arising from this Agreement shall be in Palm Beach County, Florida.

- 21.10 Governing Law. This Agreement shall be governed by and in accordance with the laws of the State of Florida.
- 21.11 Inspections. The authorized employees and representatives of County and any applicable federal, state, and local governmental entity having jurisdiction hereof shall have the right of access to the Assigned Premises at all reasonable times for the purposes of inspection for compliance with the provisions of this Agreement and/or applicable laws.
- 21.12 Remedies Cumulative. The rights and remedies of the parties with respect to any of the terms and conditions of this Agreement shall be cumulative and not exclusive and shall be in addition to all other rights and remedies of the parties.
- 21.13 Paragraph Headings. The headings of the various articles and sections of this Agreement, and its Table of Contents, are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.
- 21.14 Binding Effect. The terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors, assigns and sublessees, if any. This provision shall not constitute a waiver of any conditions against assignment or subletting.
- 21.15 Performance. The parties expressly agree that time is of the essence in this Agreement and the failure by Concessionaire to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall, at the option of County without liability, in addition to any other rights or remedies, relieve County of any obligation to accept such performance.
- 21.16 Public Entity Crimes. As provided in Section 287.132-133, Florida Statutes by entering into this Agreement or performing any work in furtherance hereof, Concessionaire certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the Effective Date. This notice is required by Section 287-133(3)(a), Florida Statutes.
- 21.19 Excusable Delay. Any party in performing under this Agreement shall use reasonable efforts to remedy the cause or causes of an excusable delay. Excusable delays are those delays due to force majeure, acts of God, fire, flood, earthquake, explosion, riot, sabotage, windstorm, or labor dispute, and shall toll the time to perform under this Agreement.
- 21.20 Consent or Approval. Wherever this Agreement requires the County or Department's consent or approval or permits the County or Department to act, such consent, approval or action may be given or performed by the Director of the Department.

- 21.21 Entirety of Agreement. The parties agree that this Agreement sets forth the entire agreement between the parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered except by written instrument executed by the parties hereto.
- 21.22 No recording. Neither this Agreement, nor any memorandum or short form hereof, shall be recorded in the Public Records of Palm Beach County, Florida.
- 21.23 Construction. Neither party shall be considered the author of this Agreement. The terms of this Agreement shall not be strictly construed against one party as opposed to the other based upon who drafted it.
- 21.24 Radon. 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 County's public health unit.

{Remainder of page intentionally left blank}

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

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

PALM BEACH COUNTY, a political subdivision of the State of Florida

Signature

By: _____
Director, Department of Airports

Print Name

Signature

Print Name

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: _____
County Attorney

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

CONCESSIONAIRE

Signature

By: _____
Signature

Print Name

Print Name

Signature

Title

Print Name

(Seal)

EXHIBIT "A"
ASSIGNED PREMISES