

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

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Meeting Date: June 16, 2009	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
	<input type="checkbox"/> Workshop	<input type="checkbox"/> Public Hearing

Department:

Submitted By: Department of Airports

Submitted For:

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I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Second Amendment to Retail Concession Agreement (Amendment) with Paradies-Palm Beach, LLC (Paradies), providing for the lease of additional storage space for approximately \$19,826 per year and authorizing chewing gum sales within the Palm Beach International Airport's (PBIA) passenger terminal.

Summary: On November 6, 2007, the Board approved a Retail Concession Agreement (R-2007-2052) (Agreement) with Paradies for retail concession services at PBIA. The Agreement required Paradies to make an initial capital investment of \$4,558,500 on the design and construction of new concession units at PBIA. Paradies is anticipated to complete construction by November 1, 2010. The Amendment provides for the lease of additional storage space and a license to use certain concession space during construction of the new concession units. Paradies has requested an opportunity to sell chewing gum at PBIA and to replace the Tech Showcase concept, which was an electronics store, with another concept acceptable to the County. The Amendment authorizes chewing gum sales at PBIA and requires Paradies to provide a replacement for the Tech Showcase concept. **Countywide (JMB)**

Background and Justification: The Agreement currently prohibits chewing gum sales. Paradies has estimated that it would earn an additional \$225,000 if it were permitted to sell chewing gum at PBIA, which would result in approximately \$50,000 in additional revenue to the County. Due to the current state of the economy, Paradies has also indicated that the company operating Tech Showcase is no longer viable and has requested the right to provide an alternative concept.

Attachments:

1. Second Amendment (3)

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Recommended By: 	
	5/18/09
Department Director	Date
<hr/>	
Approved By: 	
	6/2/09
County Administrator	Date

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	<u>(\$14,190)</u>	<u>(\$19,826)</u>	<u>(\$19,826)</u>	<u>(\$19,826)</u>	<u>(\$19,826)</u>
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>(\$14,190)</u>	<u>(\$19,826)</u>	<u>(\$19,826)</u>	<u>(\$19,826)</u>	<u>(\$19,826)</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes X No _____
 Budget Account No: Fund 4100 Department 120 Unit 8430 RSRC 4462
 Reporting Category _____

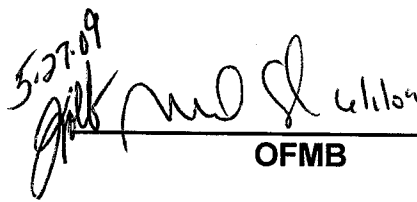
B. Recommended Sources of Funds/Summary of Fiscal Impact:


Approval of this item will result in additional annual revenue for the lease of storage space. Rental for storage space will be adjusted on October 1, 2010. The Amendment also provides for a lump sum payment of \$5,930. Additional revenue to the County from chewing gum sales will be based on gross revenues.

C. Departmental Fiscal Review: CM Smith

III. REVIEW COMMENTS

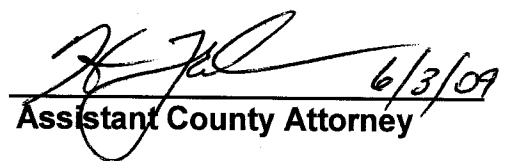
A. OFMB Fiscal and/or Contract Development and Control Comments:

5.27.09

 OFMB 5/27/09


 Contract Dev and Control 6/2/09

B. Legal Sufficiency:

This amendment complies with our review requirements.


 Assistant County Attorney 6/3/09

C. Other Department Review:

 Department Director

**SECOND AMENDMENT
TO RETAIL CONCESSION AGREEMENT**

THIS SECOND AMENDMENT TO RETAIL CONCESSION AGREEMENT (this "Amendment") is made and entered into this _____ day of _____, 2009, by and between Palm Beach County, a political subdivision of the State of Florida ("County"), and Paradies-Palm Beach, LLC ("Company"), a Florida limited liability company, having its office and principal place of business at 5950 Fulton Industrial Blvd., Atlanta, Georgia 30336.

WITNESSETH:

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

WHEREAS, the parties entered into that certain Retail Concession Agreement dated November 6, 2007 (R-2007-2052), as amended by that certain First Amendment dated September 9, 2008 (R-2008-1456) (the "Agreement"); and

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

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

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

2. Concept Changes. Company shall pay County the amount of Five Thousand Nine Hundred Thirty Dollars and 00/100 (\$5,930.00) for all sales from Unit MT-3 from October 1, 2008 through the date of closing of the Baby Boomers location. The parties acknowledge and agree that Company shall provide one (1) or more alternative concepts for Unit MT-3 to replace the Tech Showcase concept for approval by the Airport Director on or before January 1, 2011. Upon approval of the alternative concept by Airport Director, the parties shall enter into an amendment to this Agreement to provide for the provision of the alternative concept by Company. The fees payable to the County hereunder for any alternative concept shall be in accordance with the percentages established in the Agreement for similar concepts. The Airport Director may execute an amendment entered into by the parties pursuant to this paragraph 2 on behalf of the Board of County Commissioners. Company may utilize Unit MT-3 as storage space or as a temporary concession unit prior to build out of the alternative concept, as approved by the Airport Director. In addition to any other fees, charges and rentals payable under the Agreement, Company shall commence payment of rental for use of Unit MT-3 as storage space on May 1, 2009 at the rate established for Type 5 space and rental shall be payable in accordance with the requirements of Section 6.17 of the Agreement. In the event Company ceases to utilize Unit MT-3 as storage space and commences utilizing Unit MT-3 as a temporary concession unit, Company shall pay the privilege fees applicable temporary concession units in accordance with the requirements of the Agreement.

3. Revocable License. County hereby grants Company a revocable license to use Unit B-4 (Worth Avenue Bookstore), as more particularly identified in Exhibit "1" to this Amendment, for the purposes set forth in Article 4.01 of the Agreement, which may be revoked by County upon thirty (30) days prior written notice to Company. Except as otherwise provided for herein, use of Unit B-4 by Company shall be subject to the same terms and conditions as the Leased Premises. Company shall pay County a privilege fee of twenty percent (20%) of monthly gross revenues for all sales derived from Unit B-4 in accordance with the requirements of Article 6.

4. Chewing Gum. Notwithstanding any provision of the Agreement to the contrary, Company shall be permitted to sell chewing gum from the Leased Premises; provided, however, County may elect to prohibit the sale of chewing gum in its sole and absolute discretion upon thirty (30) days prior written notice to Company. Concessionaire shall separately report the monthly Gross Receipts attributable chewing gum sales in the Statement of Gross Receipts provided to the Department in accordance with Section 6.04 of the Agreement.

5. Completion of Construction. Company shall complete construction on all Units located in Concourse C and Unit MT-5 (Oceanfront News) on or before November 1, 2009, and shall complete construction on all Units located in Concourse B and the remaining concession units located in the Main Terminal on or before November 1, 2010, unless otherwise approved in writing by the Department.

6. Incorporation by Reference. Exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Amendment by such reference.

7. Paragraph Headings. The heading of the various sections of this Amendment 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 Amendment or any part or parts of this Amendment.

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

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

{Remainder of page intentionally left blank.}

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

ATTEST:

Sharon R. Bock, Clerk & Comptroller

By: _____
Deputy Clerk

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

By: _____
John F. Koons, Chairman

(SEAL)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: _____
County Attorney

APPROVED AS TO TERMS AND CONDITIONS

By: _____
Director, Department of Airports

ATTEST:

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

Signature
Kathy Dmahue
Name (type or print)

Signature
JAN MCCARTER
Name (type or print)

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

By: _____
LOU BOTTINO
Name (type or print)
SUP/COO
Title

(Seal)

Exhibit "1"
Second Amendment to Retail Concession Agreement
Paradies - Palm Beach, LLC

