

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**AGENDA ITEM SUMMARY**

=====

**Meeting Date:** September 1, 2009  Consent  Regular  
 Workshop  Public Hearing

**Department:**

**Submitted By:** Department of Airports

**Submitted For:**

=====

**I. EXECUTIVE BRIEF**

**Motion and Title:** Staff recommends motion to approve:

- (A) Third Amendment to Airport Ground Lease Agreement with Avis Rent A Car System, LLC, (Avis), extending the term to September 30, 2011 with two renewal options for five years each, for an initial annual rental in the amount of \$385,628.75; and
- (B) Third Amendment to Airport Ground Lease Agreement with DTG Operations, Inc. (DTG), extending the term to September 30, 2011 with two renewal options for five years each, for an initial annual rental in the amount of \$339,021.50.

**Summary:** The Airport Ground Lease Agreements with Avis (R-88-314) and DTG (R-93-1267D) for on-airport rental car facilities at the Palm Beach International Airport (PBI) expire on December 31, 2009. The facilities are used by Avis and DTG in support of their rental car concession operations at PBI. The amendments extend the term of each lease through September 30, 2011, plus two additional renewal options of five years each. Rental is at the appraised value and will be adjusted October 1, 2010. Countywide (HJF)

**Background and Justification:** There are three on-airport rental car facilities on PBI. The lease for one of the facilities recently expired and the facility was returned to the County by DTG. On October 21, 2008, the Board approved extensions to Airport Ground Lease Agreements with Avis (R-2008-1840) and DTG (R-2008-1841) for on-airport rental car facilities at PBI, extending the term of each lease to December 31, 2009. The Department recently issued a competitive solicitation for the facility returned to the County by DTG, which resulted in no responses. Approval of these amendments will ensure that the County continues to receive an uninterrupted revenue stream from the lease of the facilities.

**Attachments:**

- Third Amendment with Avis Rent A Car System, LLC (3)
- Third Amendment with DTG Operations, Inc. (3)

=====

PB
**Recommended By:** *[Signature]* 7/30/09  
**Department Director** **Date**

**Approved By:** *[Signature]* 8/17/09  
**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>(\$543,488)</u>	<u>(\$724,650)</u>	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	_____	<u>(\$543,488)</u>	<u>(\$724,650)</u>	_____	_____
# ADDITIONAL FTE	_____	_____	_____	_____	_____
POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes X No \_\_\_\_\_  
 Budget Account No: Fund 4100 Department 120 Unit 8340 RSRC 4416  
 Reporting Category \_\_\_\_\_

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

Approval of the agenda items will result in revenues totaling \$543,488 for 9 months in Fiscal Year 2010 and \$724,650 in Fiscal Year 2011. Rentals may be adjusted upward based on appraised value effective 10/1/2010. Option periods may be executed extending the leases for an additional ten years (not shown above).

C. Departmental Fiscal Review: CM Summer

**III. REVIEW COMMENTS**

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

MO SLL 8/10/09  
 OFMB <sub>en 8/17/09</sub>

A. J. Jacobs 8/12/09  
 Contract Dev. and Control  
 8/12/09

**B. Legal Sufficiency:**

A. Jal 8/13/09  
 Assistant County Attorney

These Amendments  
 comply with our  
 review requirements

**C. Other Department Review:**

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

**THIRD AMENDMENT TO AIRPORT GROUND LEASE AGREEMENT  
BETWEEN PALM BEACH COUNTY AND  
AVIS RENT A CAR SYSTEM, LLC**

This Third Amendment to Airport Ground Lease Agreement (this "Third Amendment") is made and entered into \_\_\_\_\_, 20\_\_\_\_ by and between Palm Beach County, a political subdivision of the State of Florida (the "COUNTY"), and Avis Rent A Car System, LLC, whose address is 6 Sylvan Way, Parsippany, NJ 07054 ("LESSEE") (hereinafter collectively referred to as the "Parties").

**WITNESSETH:**

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

**WHEREAS**, the Parties entered into that certain Airport Ground Lease Agreement dated March 1, 1988 (R-88-314), as amended by that certain First Amendment to Airport Ground Lease Agreement dated July 31, 1990 (R-90-1160-D) and that certain Second Amendment to Airport Ground Lease Agreement dated October 21, 2008 (R-2008-1840) (collectively referred to as the "Lease"), which provides for the lease of ground area to LESSEE for the purpose of constructing auto storage and service facilities in connection with LESSEE'S operation as an airport rental car concessionaire at the Airport; and

**WHEREAS**, COUNTY and LESSEE desire to extend the term of the Lease; and

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

**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:

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

2. For purposes of the Lease, the term "Rental Car Concession Agreement" shall mean a concession agreement entered into by the Parties providing LESSEE with the non-exclusive right to operate a rental car concession at the Airport. As of the effective date of this Third Amendment, LESSEE has the right to operate a rental car concession at the Airport pursuant to that certain Airport Rental Car Lease and Concession Agreement dated September 9, 2003 (R-2003-1339), as amended.

3. Article 1.01 of the Lease is hereby deleted in its entirety and replaced with the following:

*1.01. Term and Option to Renew. This Lease shall commence and be effective on March 1, 1988 and shall expire on September 30, 2011, unless terminated earlier as provided for herein. Provided LESSEE is not in default of any of the terms and conditions of this Lease, LESSEE shall have the option to renew this Lease for two (2) additional periods of five (5) years each, by notifying COUNTY in writing of LESSEE's intent to exercise its option to renew not later than one hundred twenty (120) days prior to the expiration of the then current term, with time being of the essence. Any renewal of the term shall be effective only upon an amendment pursuant to this paragraph, which may be executed by the Director on behalf of COUNTY. All terms and conditions of this Lease shall be applicable during each renewal of the term except the LESSEE shall have one less renewal option.*

4. Article 2.01 of the Lease is hereby deleted in its entirety and replaced with the following:

**2.01 Description of Premises Leased.** *The premises hereby leased consist of that certain parcel of land containing a total of 348,760 square feet, being situated on the Airport in Section 32, Township 43 South, Range 43 East, Palm Beach County, Florida, described in Exhibit "A" attached hereto and made a part hereof, and as further described in Palm Beach County Engineering Services Drawing No. S-3-08-2827, Lease Parcel N-9, dated 6/3/08 and revised 2/4/09.*

5. The Lease is hereby amended to add the following Article 2.05:

**2.05 Prohibited Uses, Products and Services.** *LESSEE agrees that the leased premises shall be utilized solely for the uses permitted herein and for no other purpose whatsoever. LESSEE shall not provide any products or services that are not specifically authorized by this Lease or the Department, including, but not limited to, the following products and services:*

- (1) Use of the leased premises for paid public parking facilities.*
- (2) Restaurant, coffee shop, lounge or cafeteria.*
- (3) Any use prohibited by law.*

6. Article 3.01 of the Lease is hereby deleted in its entirety and replaced with the following:

**3.01. Rental.**

- A. Ground Rental. For the 348,760 square feet of ground area as described in Exhibit "A", rental shall be paid to COUNTY by LESSEE at the rate of \$0.65 per square foot, for a total of \$226,694.00 per annum, plus sales tax, if applicable.*
- B. Improvement Rental. For the improvements leased hereby, rental shall be paid to COUNTY by LESSEE at the rate of \$158,934.75 per annum, plus sales tax, if applicable.*

7. Article 3.03 of the Lease is hereby deleted in its entirety and replaced with the following:

**3.03 Adjustment of Rentals.**

- (A) On October 1, 2010, and each three (3) year anniversary thereof (the "Adjustment Date"), the then current rental rates for ground rental and for building/improvement rental shall be adjusted in accordance with the provisions of this paragraph. The new rental rates shall be determined by an appraisal obtained by COUNTY, which shall set forth the fair market rental rates for ground rental and for building/improvement rental. The appraisal shall be performed, at COUNTY's sole cost and expense, by a qualified appraiser selected by COUNTY. COUNTY shall notify LESSEE in writing of the fair market rental of the leased premises as established by the appraisal, which shall become the new rental rates for the leased premises. LESSEE shall commence paying the new rental rates on the Adjustment Date. The new rental rates shall not be less than the rental rates for the prior period. This Lease shall automatically be considered as amended to reflect the new rental rates, without formal amendment hereto, upon COUNTY's written notification of the establishment of the new rental rates applicable to the leased premises.*

- (B) *Notwithstanding the foregoing, the rentals payable hereunder shall not exceed an amount that would be obtained by multiplying the rental rates established as of November 1, 2008 by a fraction, the numerator of which shall be the "Consumer Price Index" (as hereinafter defined) figure for May of the calendar year in which such adjustment is to become effective and the denominator of which shall be the Consumer Price Index figure for April, 2008.*
- (C) *For the purposes hereof, the Consumer Price Index shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers, United States city average, all items (1982 - 1984 = 100) or any successor thereto as promulgated by the Bureau of Labor Statistics of the United States Department of Labor. In the event that the Consumer Price Index ceases to use the 1982 - 1984 average of one hundred (100) as the basis of calculation, or if a substantial change is made in terms of particular items contained in the Consumer Price Index, then the Consumer Price Index shall be adjusted to the figure that would have been arrived at had the change in the manner of computing the Consumer Price Index in effect at the commencement of the term of this Lease not been affected. In the event such Consumer Price Index (or successor or substitute Consumer Price Index) is not available, a reliable governmental or other nonpartisan publication evaluating information theretofore used in determining the Consumer Price Index shall be used.*
- (D) *Notwithstanding any provision of this Lease to the contrary, LESSEE acknowledges and agrees that COUNTY shall have the right to establish and maintain the rental rates hereunder to ensure compliance with the provisions of Section 710 (rate covenant) of the Bond Resolution.*

8. Exhibit "A" to the Lease is deleted in its entirety and replaced with Exhibit "A" attached hereto.

9. Except as specifically amended herein, all of the terms and conditions of the Lease shall remain unmodified and in full force and effect and are hereby ratified and confirmed by the Parties hereto.

10. This Third Amendment shall become effective when executed by the Parties hereto and approved by the Palm Beach County Board of County Commissioners.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, COUNTY and LESSEE have executed this Third Amendment as of the date first written above.

ATTEST:  
SHARON R. BOCK,  
CLERK AND COMPTROLLER

PALM BEACH COUNTY, A POLITICAL  
SUBDIVISION OF THE STATE OF  
FLORIDA, BY ITS BOARD OF COUNTY  
COMMISSIONERS

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

By: \_\_\_\_\_  
John F. Koons, Chairman

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS  
AND CONDITIONS

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

By: *James Kelly*  
Director, Department of Airports

Signed, sealed and delivered in  
the presence of two witnesses

LESSEE:

AVIS RENT A CAR SYSTEM, LLC

*Cynthia M. Hermes*  
Signature

By: *Robert Bouta*

Cynthia M. Hermes  
Print Name

Robert Bouta, Senior Vice President  
For Properties & Facilities for Avis Budget Car Rental, LLC  
an authorized representative of Avis Rent A Car System, LLC

*Kathy Drep*  
Signature

\_\_\_\_\_  
Title

Kathy Drep  
Print Name

(Seal)

Exhibit "A"

PROPERTY DESCRIPTION  
PBIA LEASE PARCEL N-9  
(RENTAL CAR READY - RETURN FACILITY)

A PARCEL OF LAND LOCATED WITHIN PALM BEACH INTERNATIONAL AIRPORT PROPERTY, SITUATED IN SECTION 32, TOWNSHIP 43 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 32; THENCE SOUTH  $03^{\circ}56'36''$  EAST, A DISTANCE OF 898.64 FEET TO THE POINT OF BEGINNING; THENCE SOUTH  $38^{\circ}15'31''$  WEST, A DISTANCE OF 638.65 FEET TO A NON-TANGENT CURVE CONCAVE TO THE NORTH, HAVING A RADIUS OF 366.00 FEET (A RADIAL LINE FROM SAID POINT BEARS NORTH  $10^{\circ}14'11''$  EAST); THENCE WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF  $19^{\circ}21'07''$ , AN ARC DISTANCE OF 123.62 FEET TO THE POINT OF TANGENCY; THENCE NORTH  $60^{\circ}24'42''$  WEST, A DISTANCE OF 378.85 FEET; THENCE NORTH  $38^{\circ}15'26''$  EAST, A DISTANCE OF 697.42 FEET TO A POINT ON THE ARC OF A NON-TANGENT CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 566.00 FEET (A RADIAL LINE FROM SAID POINT BEARS SOUTH  $09^{\circ}32'08''$  WEST); THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF  $40^{\circ}00'18''$ , AN ARC DISTANCE OF 395.19 FEET; THENCE SOUTH  $40^{\circ}27'34''$  EAST, A DISTANCE OF 110.72 FEET TO THE POINT OF BEGINNING.

**THIRD AMENDMENT TO AIRPORT GROUND LEASE AGREEMENT  
BETWEEN PALM BEACH COUNTY AND  
DTG OPERATIONS, INC.**

This Third Amendment to Airport Ground Lease Agreement (this "Third Amendment") is made and entered into \_\_\_\_\_, 20\_\_\_\_ by and between Palm Beach County, a political subdivision of the State of Florida (the "COUNTY"), and DTG Operations, Inc., whose address is 5330 East 31<sup>st</sup> Street, Tulsa, OK 74135 ("LESSEE")(hereinafter collectively referred to as the "Parties").

**WITNESSETH:**

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

**WHEREAS**, COUNTY and Value Rent-A-Car, Inc. ("Value") entered into that certain Airport Ground Lease Agreement dated October 5, 1993 (R-93-1267D), as amended and assigned, (the "Lease") which provided for the lease of ground area to Value for the purpose of constructing auto storage and service facilities in connection with Value's operation as an airport rental car concessionaire at the Airport; and

**WHEREAS**, by that certain Assignment of Airport Ground Lease Agreement dated October 5, 1993, between Value and National Car Rental System, Inc., a Delaware corporation ("National") dated December 4, 1997, and consented to by COUNTY on December 16, 1997 (R-97-2118D), Value assigned and transferred to National, its successors and assigns, and National assumed from Value, all of Value's rights, interests, privileges and obligations in, to and under the Lease; and

**WHEREAS**, by that certain Assignment and Assumption of Airport Ground Lease Agreement between National and South Florida Transport, Inc., a Florida corporation, d/b/a Thrifty Car Rental ("South Florida"), and consented to by COUNTY on August 27, 2002 (R-2002-1492), National assigned and transferred to South Florida, its successors and assigns, and South Florida assumed from National, all of National's rights, interests, privileges and obligations in, to and under the Lease; and

**WHEREAS**, COUNTY and South Florida amended the Lease by that certain First Amendment to Airport Ground Lease Agreement between COUNTY and South Florida dated August 27, 2002 (R-2002-1497); and

**WHEREAS**, by that certain Assignment and Assumption Agreement between South Florida and DTG Operations, Inc., effective October 1, 2003, and consented to by COUNTY on September 23, 2003 (R-2003-1535), South Florida assigned and transferred to DTG Operations, Inc., its successors and assigns, and DTG Operations, Inc., assumed from South Florida, all of South Florida's rights, interests, privileges and obligations in, to and under the Rental Car Concession Agreement; and

**WHEREAS**, by that certain Assignment and Assumption Agreement between South Florida and DTG Operations, Inc., effective October 1, 2003, and consented to by COUNTY on September 23, 2003 (R-2003-1536), South Florida assigned and transferred to DTG Operations, Inc., its successors and assigns, and DTG Operations, Inc., assumed from South Florida, all of South Florida's rights, interests, privileges and obligations in, to and under the Lease; and

**WHEREAS**, COUNTY and LESSEE amended the Lease by that certain Second Amendment to Airport Ground Lease Agreement between COUNTY and LESSEE October 21, 2008 (R-2008-1841); and

**WHEREAS**, COUNTY and LESSEE desire to extend the term of the Lease; and

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



**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:

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

2. For purposes of the Lease, the term "Rental Car Concession Agreement" shall mean a concession agreement entered into by the Parties providing LESSEE with the non-exclusive right to operate a rental car concession at the Airport. As of the effective date of this Third Amendment, LESSEE has the right to operate a rental car concession at the Airport pursuant to that certain Airport Rental Car Lease and Concession Agreement dated September 9, 2003 (R-2003-1343), as amended.

3. Article 1.01 of the Lease is hereby deleted in its entirety and replaced with the following:

*1.01. Term and Option to Renew. This Lease shall commence and be effective on October 24, 1993 and shall expire on September 30, 2011, unless terminated earlier as provided for herein. Provided LESSEE is not in default of any of the terms and conditions of this Lease, LESSEE shall have the option to renew this Lease for two (2) additional periods of five (5) years each, by notifying COUNTY in writing of LESSEE's intent to exercise its option to renew not later than one hundred twenty (120) days prior to the expiration of the then current term, with time being of the essence. Any renewal of the term shall be effective only upon an amendment pursuant to this paragraph, which may be executed by the Director on behalf of COUNTY. All terms and conditions of this Lease shall be applicable during each renewal of the term except the LESSEE shall have one less renewal option.*

4. The Lease is hereby amended to add the following Article 2.05:

*2.05 Prohibited Uses, Products and Services. LESSEE agrees that the leased premises shall be utilized solely for the uses permitted herein and for no other purpose whatsoever. LESSEE shall not provide any products or services that are not specifically authorized by this Lease or the Department, including, but not limited to, the following products and services:*

- (1) Use of the leased premises for paid public parking facilities.*
- (2) Restaurant, coffee shop, lounge or cafeteria.*
- (3) Any use prohibited by law.*

5. Article 3.03 of the Lease is hereby deleted in its entirety and replaced with the following:

*3.03 Adjustment of Rentals.*

- (A) On October 1, 2010, and each three (3) year anniversary thereof (the "Adjustment Date"), the then current rental rates for ground rental and for building/improvement rental shall be adjusted in accordance with the provisions of this paragraph. The new rental rates shall be determined by an appraisal obtained by COUNTY, which shall set forth the fair market rental rates for ground rental and for*

*building/improvement rental. The appraisal shall be performed, at COUNTY's sole cost and expense, by a qualified appraiser selected by COUNTY. COUNTY shall notify LESSEE in writing of the fair market rental of the leased premises as established by the appraisal, which shall become the new rental rates for the leased premises. LESSEE shall commence paying the new rental rates on the Adjustment Date. The new rental rates shall not be less than the rental rates for the prior period. This Lease shall automatically be considered as amended to reflect the new rental rates, without formal amendment hereto, upon COUNTY's written notification of the establishment of the new rental rates applicable to the leased premises.*

- (B) *Notwithstanding the foregoing, the rentals payable hereunder shall not exceed an amount that would be obtained by multiplying the rental rates established as of November 1, 2008 by a fraction, the numerator of which shall be the "Consumer Price Index" (as hereinafter defined) figure for May of the calendar year in which such adjustment is to become effective and the denominator of which shall be the Consumer Price Index figure for April, 2008.*
- (C) *For the purposes hereof, the Consumer Price Index shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers, United States city average, all items (1982 - 1984 = 100) or any successor thereto as promulgated by the Bureau of Labor Statistics of the United States Department of Labor. In the event that the Consumer Price Index ceases to use the 1982 - 1984 average of one hundred (100) as the basis of calculation, or if a substantial change is made in terms of particular items contained in the Consumer Price Index, then the Consumer Price Index shall be adjusted to the figure that would have been arrived at had the change in the manner of computing the Consumer Price Index in effect at the commencement of the term of this Lease not been affected. In the event such Consumer Price Index (or successor or substitute Consumer Price Index) is not available, a reliable governmental or other nonpartisan publication evaluating information theretofore used in determining the Consumer Price Index shall be used.*
- (D) *Notwithstanding any provision of this Lease to the contrary, LESSEE acknowledges and agrees that COUNTY shall have the right to establish and maintain the rental rates hereunder to ensure compliance with the provisions of Section 710 (rate covenant) of the Bond Resolution.*

6. Except as specifically amended herein, all of the terms and conditions of the Lease shall remain unmodified and in full force and effect and are hereby ratified and confirmed by the Parties hereto.

7. This Third Amendment shall become effective when executed by the Parties hereto and approved by the Palm Beach County Board of County Commissioners.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, COUNTY and LESSEE have executed this Third Amendment as of the date first written above.

ATTEST:  
SHARON R. BOCK,  
CLERK AND COMPTROLLER

PALM BEACH COUNTY, A POLITICAL  
SUBDIVISION OF THE STATE OF  
FLORIDA, BY ITS BOARD OF COUNTY  
COMMISSIONERS

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

By: \_\_\_\_\_  
John F. Koons, Chairman

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS  
AND CONDITIONS

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

By: *Juan Kelly*  
Director, Department of Airports

Signed, sealed and delivered in  
the presence of two witnesses

LESSEE:  
DTG Operations, Inc.

*Michael E. Holdgrater*  
Signature

By: *Vicki J. Vaniman*  
Signature

Michael E. Holdgrater  
Print Name

Vicki J. Vaniman  
Print Name Executive Vice President

*Tammy Branham*  
Signature

\_\_\_\_\_  
Title

Tammy Branham  
Print Name

(Seal)