

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: July 20, 2010

[x] Consent [] Regular
[] Workshop [] Public Hearing

Department:

Submitted By: Department of Airports

Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: an Airport Baggage Cart Concession Agreement (Agreement) with Smarte Carte, Inc., for an initial term of five years and concession fee of 5% of gross revenues from baggage cart rentals.

Summary: Smarte Carte will be required to provide self-service baggage carts for use by passengers at the Palm Beach International Airport (PBIA). Smarte Carte is headquartered out of St. Paul, MN, with its closest local office in Miami/Dade County. No minimum annual guarantee will be paid for the first contract year. The minimum annual guarantee will be established in the second contract year based on 85% of the concession fee paid to the County for the first contract year. The Agreement will commence on October 1, 2010 and will expire on September 30, 2015, with two additional one-year options to renew. Countywide (AH)

Background and Justification: On January 4, 2010, the Department of Airports issued Request for Proposals No. PB-10-4 for baggage cart services at PBIA. A Selection Committee meeting was held on April 28, 2010. There were two respondents to the RFP, Flight Services & Systems, Inc. (FSS) and Smarte Carte. Although FSS was ranked first by the Selection Committee, FSS was unable to secure financing to purchase the necessary equipment and declined to sign the Agreement. The Department recommends the award of the Agreement to Smarte Carte as the second ranked respondent. The Agreement provides for an initial five-year term with no termination for convenience by either party. The Agreement also provides for a 5% goal for participation by Disadvantaged Business Enterprises.

Attachments:

1. Agreement (3)

Recommended By:  7/7/10
Department Director Date

Approved By:  7/7/10
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	<u>(\$0)</u>	<u>(\$5,000)</u>	<u>(\$5,000)</u>	<u>(\$5,000)</u>	<u>(\$5,000)</u>
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u><u>(\$0)</u></u>	<u><u>(\$5,000)</u></u>	<u><u>(\$5,000)</u></u>	<u><u>(\$5,000)</u></u>	<u><u>(\$5,000)</u></u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Proposed Budget? Yes X No _____

Budget Account No: Fund 4100 Department 120 Unit 8430 RSource 4469

Reporting Category _____

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

Smarte Carte will be obligated to pay 5% of gross revenues on baggage cart rentals. The Agreement does not require a minimum annual guarantee in the first contract year. Revenues are estimated based on historical sales information.

C. Departmental Fiscal Review: CM Scum

III. REVIEW COMMENTS

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

[Signature] 6/30/10
OFMB 6/30/10
24/10

[Signature] 6/30/10
Contract Dev. and Control
E. Jones 6/30/10

B. Legal Sufficiency:

This Contract complies with our
contract review requirements.

Anne Delmont 7/6/10
Assistant County Attorney

C. Other Department Review:

Department Director

**AIRPORT BAGGAGE CART CONCESSION AGREEMENT
PALM BEACH INTERNATIONAL AIRPORT**

THIS AIRPORT BAGGAGE CART CONCESSION AGREEMENT is made and entered into this _____, 20____, by and between Palm Beach County, a political subdivision of the State of Florida ("County"), and Smarte Carte, Inc., a Minnesota Corporation, having its office and principal place of business at 4455 White Bear Parkway, St. Paul, Minnesota 55110-7641 ("Concessionaire").

WITNESSETH:

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

WHEREAS, Concessionaire submitted a response to County's Request for Proposals No. PB-10-4 issued on January 4, 2010; and

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

NOW, THEREFORE, in consideration of the promises and 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

The following terms, when used in this Agreement, shall have the meanings set forth below:

- 2.01 "Additional Insured" has the meaning ascribed to it in Section 10.04.
- 2.02 "Agreement" means this Agreement and all exhibits hereto, which are incorporated herein by this reference. Words such as "herein," "hereafter," "hereof," "hereto," "hereby" and "hereunder," when used with reference to this Agreement, refer to this Agreement as a whole, unless the context otherwise requires.

- 2.03 "Airport" means the Palm Beach International Airport.
- 2.04 "Annual Privilege Fee" means Five percent (5%) of annual Gross Revenues.
- 2.05 "Assigned Premises" has the meaning ascribed to it in Section 4.01.
- 2.06 "Baggage Cart System" means the equipment to be provided by Concessionaire to perform the baggage cart concession services required hereunder, which consists of baggage carts and self-service Dispensing Units.
- 2.07 "Bond" has the meaning ascribed to it in Section 5.11.
- 2.08 "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.
- 2.09 "Commencement Date" has the meaning ascribed to it in Section 3.02.
- 2.10 "Concession" means the concession operated by Concessionaire pursuant to the terms and conditions of this Agreement.
- 2.11 "Concession Fee" has the meaning ascribed to it in Section 5.02.
- 2.12 "Contract Year" means a twelve (12) month period, commencing on October 1, 2010 and ending on September 30, 2011 and each twelve (12) month period thereafter throughout the Term of this Agreement.
- 2.13 "Department" means the Palm Beach County Department of Airports.
- 2.14 "Dispensing Unit" means the equipment to be provided by Concessionaire to dispense baggage carts for use by its customers.
- 2.15 "Disadvantaged Business Enterprise" or "DBE" has the meaning ascribed to it in Title 49, Part 23 of the Code of Federal Regulations, as now or hereafter amended or any successor regulation.
- 2.16 "Effective Date" has the meaning ascribed to it in Section 3.01.
- 2.17 "Equipment" means the equipment installed by Concessionaire at the Airport, including Dispensing Units.

- 2.18 "FAA" means the Federal Aviation Administration or any successor agency.
- 2.19 "Gross Revenues" means all monies paid or payable for all baggage cart services in, on, from or about the Airport pursuant to this Agreement and any other monies collected or received on account of or derived from the business conducted by Concessionaire, its agents and contractors at the Airport pursuant to this Agreement, whether for cash or credit. Gross Revenues shall not include: (a) federal, state or local sales taxes or other similar excise taxes, now or hereafter levied or imposed, which are separately stated to County and collected from customers and directly payable by Concessionaire to the taxing authority; (b) monies refunded to customers or other persons in exchange for the return of baggage carts to the Dispensing Units; or (c) monies refunded to Concessionaire's customers. In the event Concessionaire fails for any reason to charge for or collect the value of any product or service provided hereunder, the amount customarily charged by Concessionaire for such product or service shall be included in the calculation of Gross Revenues. Further, no deduction shall be made from Gross Revenues by reason of any credit loss, charge, or deduction that may be incurred by reason of the acceptance or use of credit cards or other credit or charge arrangements.
- 2.20 "Letter of Credit" has the meaning ascribed to it in Section 5.11.
- 2.21 "Monthly Privilege Fee" means Five percent (5%) of monthly Gross Revenues.
- 2.22 "Public Areas" means the public corridors, restrooms and other areas within the Terminal that the general public has the right to access, which are not leased, assigned or under the contractual control of a third party.
- 2.23 "Security Deposit" has the meaning ascribed to it in Section 5.11.
- 2.24 "Statement of Gross Revenues" has the meaning ascribed to it in Section 5.07.
- 2.25 "Term" has the meaning ascribed to it in Section 3.02.
- 2.26 "Terminal" means the passenger terminal building located at the Airport, including any renovations or expansions.
- 2.27 "TSA" means the Transportation Security Administration or any successor agency thereto.

ARTICLE 3
EFFECTIVE DATE AND TERM

- 3.01 Effective Date. This Agreement shall become effective when signed by all parties and approved by the Palm Beach County Board of County Commissioners (the "Effective Date").
- 3.02 Term. The term of this Agreement shall commence on October 1, 2010 (the "Commencement Date") and terminate on September 30, 2015, unless sooner terminated as provided herein. Upon the expiration of the initial term, County shall have the option to renew this Agreement for two (2) additional terms of one (1) year each, which shall be upon the same terms and conditions as set forth herein, subject to consent of Concessionaire. In the event County desires to renew this Agreement, County shall provide written notice to Concessionaire of its desire to renew this Agreement at least thirty (30) days prior to the expiration of the initial term. County shall have the absolute right, in its sole discretion, to elect not to renew this Agreement. In the event County elects not to renew this Agreement at the end of the initial term, this Agreement shall terminate at the end of the initial term and Concessionaire shall have no further rights hereunder. For purposes of this Agreement, "Term" shall mean the initial term and any renewal term.

ARTICLE 4
PRIVILEGES AND PREMISES

- 4.01 Description of Specific Privileges, Uses and Rights. Concessionaire shall have the nonexclusive right, privilege and obligation to install, operate and maintain, at its sole cost and expense, a Baggage Cart System within the Terminal locations identified in the attached Exhibit "A", as may be modified from time to time as hereinafter provided ("Assigned Premises"). Prior to installing, adding, removing, relocating or otherwise altering any Equipment on the Airport, Concessionaire shall provide the Department with a map identifying the proposed locations of the Equipment for prior written approval by the Department. Concessionaire shall not install Equipment at any Airport location that has not been approved in writing by the Department in advance.
- 4.02 Description of General Privileges, Uses and Rights. In addition to the specific privileges granted pursuant to Section 4.01, County hereby grants to Concessionaire:
- A. The nonexclusive use of the Public Areas within the Terminal for Concessionaire and its employees, contractors, customers, suppliers of service and agents in connection with its operations hereunder. Public Areas shall at all times be subject to the

exclusive control and management of County. County shall have the full right and authority to make all rules and regulations as County may in its sole discretion deem proper, pertaining to the appropriate 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 and its employees, contractors, customers, suppliers of service and agents, in connection with its operations hereunder.

Nothing contained in this Agreement shall be construed as granting Concessionaire or its employees, contractors, customers, suppliers of service and agents, if any, the right to use or occupy any space or area at the Airport improved or unimproved that: (a) is leased to, assigned to, or under the contractual control of a third party; or (b) has not been assigned for use by Concessionaire pursuant to this Agreement. The general privileges, uses and rights granted in this Section 4.02 shall be subject to the terms, conditions and covenants set forth herein.

- 4.03 License. County hereby grants Concessionaire a revocable license to use the Assigned Premises for the sole purpose of providing the concession services required by this Agreement. The parties agree that this Agreement is an agreement for services and nothing in this Agreement shall be construed as granting Concessionaire any title, interest or estate in the Assigned Premises. Concessionaire acknowledges and agrees that the Department may require Concessionaire to relocate any Equipment from time to time. In the event the Department determines that it is necessary or desirable for Concessionaire to relocate its Equipment, the Department shall provide thirty (30) days prior written notice to Concessionaire of the required relocation. Concessionaire shall relocate to location(s) on the Airport designated by the Department for its Equipment upon the date set forth in the Department's written notice; provided, however, County shall be responsible for providing any necessary electrical or telephone connections necessary for such relocation.
- 4.04 Restrictions of Privileges, Uses and Rights. Concessionaire covenants and agrees that the Assigned Premises shall be used solely for the uses permitted in Sections 4.01 and 4.02 and for no other purpose whatsoever.
- 4.05 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.

- 4.06 Inspector General. County has established the Office of the Inspector General in Ordinance 2009-049, as may be amended, which is authorized and empowered to review past, present and proposed County contracts, transactions, accounts and records. The Inspector General has the power to subpoena witnesses, administer oaths and require the production of records, and audit, investigate, monitor, and inspect the activities of Concessionaire and its officers, agents, employees and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interference or impeding any investigation shall be in violation of Ordinance 2009-049, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

ARTICLE 5

PRIVILEGE FEES, FACILITY RENTAL AND ACCOUNTABILITY

- 5.01 Concession Fee during First Contract Year. During the first Contract Year, Concessionaire shall pay to County the Monthly Privilege Fee, which shall be delivered with the Statement of Gross Revenues required by Section 5.07 on or before the twentieth (20th) day of each and every month, without demand, deduction or setoff, throughout the Term of this Agreement.
- 5.02 Concession Fee after First Contract Year. Commencing October 1, 2011, Concessionaire shall pay to County a concession fee equal to the greater of the Minimum Annual Guarantee or Annual Privilege Fee ("Concession Fee"). The Concession Fee shall be payable on a monthly basis as provided for herein and shall be reconciled on an annual basis in accordance with the provisions of Section 5.09 below.
- A. Minimum Annual Guarantee. The Minimum Annual Guarantee for each Contract Year shall be as follows:

<u>Contract Year</u>	<u>Minimum Annual Guarantee</u>
First Contract Year	No Minimum Annual Guarantee shall be payable.
Second Contract Year and each Contract Year	Eighty five percent (85%) of the Annual Privilege Fee for the

thereafter through the preceding Contract Year.
remainder of the Term

- B. Commencing October 1, 2011 and on the first (1st) day of each and every month thereafter, Concessionaire shall pay to the County one-twelfth (1/12) of the Minimum Annual Guarantee for the applicable Contract Year, without demand, deduction, holdback or setoff. In the event the Monthly Privilege Fee is greater than (1/12) of the then current Minimum Annual Guarantee, Concessionaire shall pay the difference to the County with the Statement of Gross Revenues required by Section 5.07 on or before the twentieth (20th) day of each and every month, without demand, deduction or setoff, throughout the Term of this Agreement.
- C. The Minimum Annual Guarantee adjustment shall be effective each October 1st throughout the Term of this Agreement based upon the information submitted in the monthly Statement of Gross Revenues. In the event the audit required by Section 5.09 reveals a discrepancy in the Concession Fees reported, then the Department may adjust the Minimum Annual Guarantee based upon the information contained in the audit report.
- 5.03 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, Concessionaire shall pay interest at the rate of one and one half percent (1.5%) per month on late payments from the date due until the date payment is received by the Department.
- 5.04 Form of Payment. All payments due under this Agreement shall be paid in lawful money of the United States of America, without offset or deduction or prior notice or demand. No payment by Concessionaire or receipt by County of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed to establish an accord and satisfaction, and County may accept such check or payment without prejudice to County's right to recover the balance of said amount due or pursue any other remedy available under this Agreement.
- 5.05 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 fees, use or occupancy of the Airport 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.

- 5.06 Place of Payments. All payments required to be made by 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 designated by the Department.
- 5.07 Statement of Gross Revenues. On or before the twentieth (20th) day of each and every month, Concessionaire shall submit to the Department, in a form and detail satisfactory to the Department, a monthly report that: (a) details the total number of transactions for each Dispensing Unit for the preceding month; (b) details the Gross Revenues for the preceding month attributable to each Dispensing Unit; (c) details the total Gross Revenues for the preceding month; (d) identifies the Privilege Fee payable to County for the preceding calendar month; and (e) separately identifies any exclusions from Gross Revenues ("Statement of Gross Revenues"). The Department may require the monthly report to be submitted electronically.
- 5.08 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. Failure to maintain books of accounts and records as required under this Section 5.08 shall be deemed to be a material breach of this Agreement. The obligations arising under this Section 5.08 shall survive the expiration or earlier termination of this Agreement.
- 5.09 Audit Requirements. On or before October 1st of each year, Concessionaire shall provide to the Department an audit report on all payments required hereunder in accordance with the requirements of this Section 5.09. The first audit report shall cover the period of October 1, 2010 through June 30, 2011. The second audit report and each audit report thereafter through the remainder of the Term shall cover the preceding July 1 through June 30, with the exception of the final audit report, which shall cover the period of July 1 through September 30 of the

final Contract Year. The audit report may be prepared by Concessionaire's chief financial officer when Gross Revenues are less than Twenty-Five Thousand Dollars (\$25,000) for the preceding Contract Year and shall be certified under oath as being true and correct. When Gross Revenues for the preceding Contract Year are equal to or exceed Twenty-Five Thousand Dollars (\$25,000), the audit report 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 be in a form acceptable to the Department. The audit report shall include the following:

- A. Schedule of Gross Revenues by Dispensing Unit location and month.
- B. Schedule of payments to County by month.
- C. Calculation of total Concession Fee payable to County for the preceding Contract Year.
- D. The audit report shall include an opinion on the schedule of Gross Revenues by month, the schedule of payments to County by month, and the calculation of total Concession Fee payable to County for the preceding Contract Year.

Failure to deliver an audit report containing a qualified opinion, an adverse opinion, or a disclaimer of opinion, as defined by the American Institute of Certified Public Accountants or any successor agency thereto, shall be deemed to be a material breach of this Agreement. If the audit report indicates that the Concession Fee (together with any sales taxes thereon) due and owing for any Contract Year is greater than the amount paid by Concessionaire to County during such Contract Year, Concessionaire shall pay the difference to County with the audit report.

- 5.10 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 shall make suitable arrangements with Concessionaire's chief financial officer or the Certified Public Accountant, who was responsible for preparing the audit report on behalf of Concessionaire pursuant to Section 5.09 above, and to make available to County's representative(s) any and all working papers relevant to the audit performed by Concessionaire's chief financial officer or 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 Section 5.10 shall constitute acceptance of the audit report as issued.

- 5.11 Security for Payment. Concessionaire shall post a security deposit ("Security Deposit") with County in an amount equal to fifty percent (50%) of the Minimum Annual Guarantee. For the first Contract Year, the Security Deposit shall be in the amount of Two Thousand Four Hundred Eighty Dollars (\$2,480.00), which represents the Department's estimate of six (6) month's Concession Fees. 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 fees, sums 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. A 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 Section 5.11 shall: (a) entitle County to draw down the full amount of such Security Deposit; and (b) 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 Section 5.11. The obligations arising under this Section 5.11 shall survive the expiration or earlier termination of this Agreement.

ARTICLE 6
OBLIGATIONS OF CONCESSIONAIRE

6.01 Concession Service Standards.

- A. Concessionaire shall operate and maintain the Equipment for the use and benefit of the traveling public and shall conform in all respects to all applicable federal, state and local laws.
- B. Concessionaire shall provide and maintain a high standard of service, quality and value. Concessionaire shall at all times maintain the Equipment at the highest standard of cleanliness, safety and orderliness and shall keep the area around the Equipment free from any waste or debris which may detract from the appearance of or accessibility to the Equipment.
- C. Concessionaire recognizes that from time to time the Department may cause quality assurance reviews of Concessionaire's operations hereunder. Concessionaire agrees to cooperate fully in these reviews and to immediately take whatever steps are necessary to correct any deficiencies discovered as a result of the reviews.

6.02 Operational Standards and Equipment Requirements.

- A. All Equipment installed by Concessionaire at the Airport shall meet all applicable federal, state and local laws, including, but not limited to, ADA regulations.
- B. All Equipment shall be available for use twenty-four (24) hours a day, seven (7) days a week.
- C. Equipment shall be in good and fit condition with the latest technology and features. Equipment shall be capable of withstanding moderate levels of vandalism and abuse.
- D. Concessionaire agrees to furnish its service on a fair, equal, and non-discriminatory basis to all customers and to charge fair, reasonable and non-discriminatory rates.
- E. Concessionaire agrees that all Equipment shall be maintained in good operational order and available for use at all times.
- F. Concessionaire agrees that any modifications to the fees charged to its customers at the Airport for the concession services provided pursuant to this Agreement shall be subject to prior written approval

of the Department. As of the Commencement Date, the parties acknowledge that the approved baggage cart rental fee is Four Dollars (\$4.00).

- G. Concessionaire shall not relocate or remove from service any Dispensing Units or increase or decrease the number of baggage carts in service without the prior written approval of the Department.
- H. Concessionaire shall remove from service any Equipment determined by the Department to be unacceptable in its reasonable discretion.
- I. Concessionaire shall cause its employees to conduct themselves at all times in a courteous manner toward the public. Concessionaire's employees are to be neat, clean and appropriately dressed. Concessionaire shall provide its employees with identifiable shirts which are to include Concessionaire's name and/or logo and shall require that such shirts be worn by all employees while on duty.
- J. Concessionaire agrees to employ a sufficient number of employees to:
 - 1. maintain, collect and return baggage carts to the Dispensing Units;
 - 2. properly maintain and keep all Equipment in good operating condition; and
 - 3. provide the administrative and supervisory support necessary to properly operate and maintain the Concession.
- K. Concessionaire shall at all times observe prudent cash-handling procedures, and upon receipt of written notice from the Department, Concessionaire shall immediately implement any new procedures or revise any existing procedures in such a manner as the Department may in its sole discretion require from time-to-time.
- L. Concessionaire, its agents, employees, or 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 or employees, or any Airport tenant.
- 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 three (3) days of the change and shall include any change of address or telephone number.

- N. Concessionaire shall provide Dispensing Units in each location approved by the Department in accordance with this Agreement. Concessionaire shall maintain an adequate number of baggage carts in each Dispensing Unit to meet customer demand. The total number of Dispensing Units may be increased or decreased depending on the availability of space and upon the mutual consent of Concessionaire and the Department. The Department may also require Concessionaire to relocate existing Dispensing Units from time to time in accordance with the procedures set forth in Section 4.03.
- O. Concessionaire agrees that the baggage carts to be provided for use at the Airport shall be equipped with non-marring wheels and bumpers or other such devices which will provide maximum protection against damage to the wall surfaces within the Terminal, which shall be incorporated into the baggage carts' overall design in an aesthetically pleasing manner.
- P. Baggage carts shall be durable and not easily removed from the Airport. Baggage carts must be lightweight in design, easily maneuvered, stable when in use and free from sharp edges and any features which may be considered an unreasonable exposure to injury and liability.
- Q. All Dispensing Units shall be equipped with non-resetable counters, which are clearly visible and readable.
- R. Dispensing Units shall accept a minimum of three major credit cards, including MasterCard and Visa. Dispensing Units must also accept One Dollar (\$1.00) and Five (\$5.00) Dollar denominations of U.S. currency and have the capability to provide change as appropriate. Requirements of this Section may be waived on a per unit basis depending on sales and traffic at the individual Dispensing Unit location. Any such waiver must be approved in writing by the Department.
- S. Dispensing Units shall prominently display all written directions necessary to instruct customers in the operation of the Dispensing Units and clearly identify all fees charged.

- T. Dispensing Units shall provide instructions in the English language.
- U. In the event that it is determined by the Department, in its sole discretion, that the Equipment does not satisfy the requirements of this Agreement, the Department shall notify Concessionaire of the deficiency and Concessionaire shall immediately take such action as necessary to correct the deficiency to the satisfaction of the Department. If Concessionaire fails to undertake such corrective action within thirty (30) days of the Department's notice thereof or fail to pursue same in a manner satisfactory to the Department, in its sole discretion, then this Agreement may immediately be cancelled by County and Concessionaire shall have no further rights hereunder. Concessionaire further waives any claim against County for damages or compensation should this Agreement be terminated for failure to undertake corrective action.

ARTICLE 7

CONSTRUCTION OF IMPROVEMENTS

- 7.01 Alterations, Improvements or Additions. Concessionaire shall make no alterations, additions or improvements to the Assigned Premises, without the prior written approval of the Department.
- 7.02 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. All improvements shall be completed in accordance with construction standards established by the Department and the plans and specifications approved by the Department.
- 7.03 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 professionals, are paid in full for such services and materials. Prior to the commencement of any improvements to the Airport, the estimated cost of which exceeds Fifty Thousand Dollars (\$50,000), Concessionaire, at its sole cost and expense, shall cause to be made, executed and delivered to County, a bond, drawn in a form and issued by a company approved by County, guaranteeing compliance by Concessionaire of its obligations arising under this paragraph. Concessionaire may not subdivide improvements or phase projects for the

purpose of avoiding the foregoing bond requirement. County shall be named as the obligee on the bonds.

- 7.04 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 reasonably determines to be necessary.
- 7.05 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 Official 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. In the event that Concessionaire fails to satisfy or transfer such claim within the ten (10) day period, 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, attorneys' fees.

ARTICLE 8

TITLE TO IMPROVEMENTS

All fixtures and improvements that are constructed or placed upon the Assigned Premises, excluding furnishings, trade fixtures and Equipment, 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 and other encumbrances. Notwithstanding the foregoing, County may require Concessionaire, at Concessionaire's sole cost and expense, to remove all, or a portion of, the improvements installed pursuant to this Agreement

and to restore the Assigned Premises to its original condition, reasonable wear and tear excepted. County acknowledges that title to all trade fixtures and Equipment installed hereunder, such as baggage carts and Dispensing Units shall remain with Concessionaire.

ARTICLE 9
MAINTENANCE AND REPAIR/UTILITIES/SECURITY

- 9.01 Maintenance and Repair of Equipment. Concessionaire shall, at its sole cost and expense, be responsible for the installation, servicing and maintenance of the Equipment and shall furnish all manpower, parts and supplies necessary for the care, servicing and maintenance of the Equipment. Installation of the Equipment shall be subject to supervision by the County. The Equipment shall at all times be maintained in a safe and presentable condition consistent with good business practices, industry standards, and in accordance with all applicable federal, state and local laws, regulations and rules. Concessionaire shall maintain and repair all Equipment in service at the Airport and County shall not be liable to Concessionaire for any maintenance, repair or damage to same. Concessionaire shall refurbish the Equipment or any portion thereof as may be deemed necessary in the reasonable discretion of the Department. Concessionaire hereby agrees that it shall abide by the decision of Department with respect to any and all such maintenance, repair or refurbishing. The Department shall reasonably judge Concessionaire's performance under this paragraph as to the quality of maintenance, repair and refurbishing. Upon written notice by the Department to Concessionaire, Concessionaire shall perform the required maintenance, repair or refurbishing 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 required maintenance, repair or refurbishing within ten (10) days after receipt of the Department's written notice and to diligently pursue the same to completion, Concessionaire shall be in material default of this Agreement.
- 9.02 Maintenance of Assigned Premises. 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 practices, 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. 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 paragraph 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%) for administrative overhead. Such maintenance or repair cost, plus the administrative cost, shall be due and payable within thirty (30) days of the date of the Department's billing.

- 9.03 Utilities. Except as otherwise provided for herein, Concessionaire shall be responsible for connecting into all utilities necessary for the operation of the Equipment located on the Airport, including electricity, at its sole cost and expense, in accordance with the Department's utility standards. Concessionaire shall be responsible for payment of all utilities used or consumed by the Equipment installed by Concessionaire at the Airport and shall pay County Forty Dollars (\$40.00) per month for the electricity used or consumed by the Equipment installed by Concessionaire at the Airport. Concessionaire shall remit the payment for electricity monthly with the Privilege Fee, without demand, deduction or setoff throughout the Term of this Agreement.
- 9.04 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, dust, dirt and other offensive or unclean materials. Concessionaire shall remove or cause to be removed, at its sole cost and expense, all waste, garbage, rubbish, and/or refuse within the Assigned Premises. 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 be due and payable within thirty (30) days from the date of the Department's billing.

- 9.05 Security. Concessionaire acknowledges and accepts full responsibility for the security and protection of the Assigned Premises and any and all Equipment and other personal property now existing or hereafter placed on or installed within the Assigned Premises. Concessionaire 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.
- 9.06 Airport Security Program. Concessionaire shall observe all federal, state and local laws, rules and security requirements applicable to Concessionaire's operations, as now or hereafter promulgated or amended, including, but not limited to, Title 14, Part 139 of the Code of Federal Regulations, and Title 49, Part 1542 of the Code of Federal Regulations, and the Palm Beach County Criminal History Record Check Ordinance (R-2003-030). 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 or the Department, and to take such steps as may be necessary or directed by County or the Department to insure that subtenants, employees, invitees and guests observe these requirements. If required by the Department, Concessionaire shall conduct background checks of its employees in accordance with applicable federal, state or local laws. 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 or its 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 any administrative proceedings, court costs, and attorneys' fees and 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 10 **INSURANCE**

Concessionaire shall, at its sole expense, maintain in full force and effect at all times during the Term, the insurance limits, coverages and endorsements required herein. Neither the requirements contained in this Article 10 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.

- 10.01 Commercial General Liability Insurance. Concessionaire shall maintain Commercial General Liability Insurance with limits of liability of not less than Five Million Dollars (\$5,000,000) each occurrence including, but not limited to, coverage for Premises/Operations, Products/Completed Operations, Contractual Liability, Personal/Advertising Injury and Gross Liability; Fire Legal Liability coverage with a limit of not less than One Hundred Thousand Dollars (\$100,000); and Medical Payments (when available) with a limit of not less than Five Thousand Dollars (\$5,000). Concessionaire agrees this coverage shall be provided on a primary basis.
- 10.02 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 be required to maintain only Hired & Non-Owned Auto Liability instead. Coverage may be satisfied by way of endorsement to the Commercial General Liability or a separate Business Auto Liability. Concessionaire agrees this coverage shall be provided on a primary basis.
- 10.03 Worker's Compensation & Employer's Liability. Concessionaire shall maintain Worker's Compensation & Employer's Liability in accordance with Chapter 440 Florida Statutes and applicable federal laws. Concessionaire agrees 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 & Employer's Liability, or Concessionaire shall provide coverage under its own Worker's Compensation & Employer's Liability policy on behalf of the subcontractor.

- 10.04 Additional Insured Endorsement. Concessionaire shall endorse the 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. 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. Concessionaire agrees that the Additional Insured endorsements shall provide coverage on a primary basis. Additional Insured endorsements 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."
- 10.05 Certificate of Insurance. Prior to the Effective Date, Concessionaire shall provide to County a certificate of insurance or certificates of insurance evidencing limits, coverages and endorsements required herein. The certificate(s) 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, Concessionaire shall furnish County with a new certificate of insurance evidencing replacement coverage at least thirty (30) days prior to, but in no case later than, the expiration of such insurance.
- 10.06 Waiver of Subrogation. By entering into this Agreement, Concessionaire agrees to a Waiver of Subrogation for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, Concessionaire shall notify the 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, a condition to which the policy specifically prohibits such an endorsement, or voids coverage should Concessionaire enter into such an agreement on a pre-loss basis.
- 10.07 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 the policy.

- 10.08 Right to Review or Reject Insurance. The 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 from time to time throughout the term and any extension hereof. 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.
- 10.09 No Representation of Coverage Adequacy. Concessionaire acknowledges the limits, coverages and endorsements required by this Article are intended to minimize liability for County. Concessionaire agrees that it will not rely upon the requirements of this Article 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 11

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 for the acts or omissions of Concessionaire.

ARTICLE 12

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 shall survive the expiration or termination of this Agreement.

ARTICLE 13
DAMAGE OR DESTRUCTION OF PREMISES/IMPROVEMENTS

- 13.01 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, 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 to the Assigned Premises, and Concessionaire hereby expressly agrees that it shall fully assume and be liable to County for payment of the costs incurred by County, plus twenty-five percent (25%) for administrative overhead. Such restoration cost, plus the administrative cost, shall be due and payable within thirty (30) days from date of the Department's billing.

- 13.02 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.
- 13.03 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 14
TERMINATION OF AGREEMENT, DEFAULT, AND REMEDIES

- 14.01 Termination. This Agreement shall automatically terminate at the end of the initial term unless renewed in accordance with Section 3.02.
- 14.02 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 Privilege Fees 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 where such failure shall continue for a period of thirty (30) days after written notice from County to Concessionaire (except in those instances where a different cure period is expressly provided for herein for such failure); 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, (a) the making by Concessionaire or any guarantor hereof of any general assignment, or general arrangement for the benefit of creditors; (b) 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]; (c) 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 (d) 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.

14.03 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 under this Agreement, at law or in equity, including the right, at County's 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 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.

14.04 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 (90) consecutive 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, 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.

14.05 Surrender of Assigned Premises. 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 Equipment and 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 Equipment or 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 15
ASSIGNMENT AND TRANSFER

Concessionaire shall not, in any manner, assign, transfer or otherwise convey an interest in any of its rights under this Agreement. Concessionaire acknowledges and agrees that this Agreement is an agreement for services and does not constitute a lease of the Assigned Premises, and Concessionaire shall have no right whatsoever to lease, assign or sublease the Assigned Premises or any portion thereof.

ARTICLE 16
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. 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 17
LAWS, REGULATIONS, PERMITS AND TAXES

17.01 General.

- A. Concessionaire agrees that throughout the Term, 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.

17.02 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 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.

- 17.03 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.

- 17.04 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 18
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 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 19
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 delivery service, telecopied or faxed (provided in each case a receipt is obtained), 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 delivery service, or on the date of transmission with confirmed answer back if by telecopier or fax if transmitted before 5:00 p.m. on a business day and on the

next business day if transmitted after 5:00 p.m. or on a non-business day, or if mailed, upon the date on 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 designate 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:

If to County:

Palm Beach County Department of Airports
846 Palm Beach International Airport
West Palm Beach, FL 33406-1470
ATTN: Deputy Director, Airports Business Affairs
Fax: 561-471-7427

With copies to:

Palm Beach County Attorney's Office
301 North Olive Avenue, Suite 601
West Palm Beach, Florida 33401
ATTN: Airport Attorney
Fax: 561-355-4398

If to Concessionaire:

Mr. Michael J. Multer
Senior Director of Business Development
Smarte Carte, Inc.
4455 White Bear Parkway
St. Paul, MN 55110-7641
Fax: (651) 426-0927

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

ARTICLE 20 **GOVERNMENTAL RESTRICTIONS**

- 20.01 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 Assigned 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 Section 20.01 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.

- 20.02 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.
- 20.03 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 the 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.
- 20.04 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.
- 20.05 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.
- 20.06 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 21
NON-DISCRIMINATION

- 21.01 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, gender identity or expression, familial status, or handicap shall be excluded from participation in or denied the use of the Assigned Premises; (b) that in the construction of any improvements on, over, or under the Assigned Premises and the furnishing of services, no person on the grounds of race, creed, color, national origin, sex, age, gender identity or expression, familial status, or handicap 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 Regulations, 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 the Assigned Premises and the facilities hereon, and hold the same as if this 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.
- 21.02 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 Section 21.03. 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 Section 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.

- 21.03 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 five percent (5%) 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 accounts 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 five percent (5%) DBE participation goal for the previous twelve (12) month period, Concessionaire shall also furnish a detailed report as to the 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 approving or disapproving Concessionaire's corrective action plan.

ARTICLE 22

MISCELLANEOUS

- 22.01 County Not Liable. County shall not be responsible or liable to Concessionaire for: (a) any claims for compensation or any losses, damages or injury sustained by Concessionaire resulting from cessation for any reason of air carrier operations at the Airport Terminal or diversion of passenger traffic to any other facility; (b) 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; or (c) any losses or expenses incurred resulting from lost funds, theft, vandalism, or from the repair or replacement of defective or damaged baggage carts, Dispensing Units, Equipment, fixtures or appurtenances. Security of currency as well as associated supplies shall be at the sole responsibility of Concessionaire. Such losses and expenses will not affect the fees to be paid by Concessionaire to County.

- 22.02 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.
- 22.03 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.
- 22.04 Subordination to Bond Resolution. This Agreement and all rights granted to Concessionaire hereunder are expressly subordinate 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 the Bond Resolution.
- 22.05 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.

- 22.06 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. County's obligations under this Agreement are made in a proprietary capacity, rather than in a governmental capacity and such agreements shall not be construed as limiting, prohibiting or eliminating the obligation of the parties to comply with all applicable rules, regulations, ordinances, statutes and laws, nor alter or impair County's governmental functions, including, without limitation, County's right to lawfully exercise its regulatory authority over the development of the Assigned Premises, nor as enabling, permitting, or creating any cause of action or claim arising out of the lawful exercise of County's governmental authority.
- 22.07 Consent or Action. In the event this Agreement is silent as to the standard for any consent, approval, determination, or similar discretionary action, the standard shall be at the sole, absolute and unfettered discretion of the County or Department, rather than any implied standard of good faith, fairness or reasonableness. 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 Airport Director. If Concessionaire requests the County or Department's consent or approval pursuant to any provision of the Agreement and County or Department fails or refuses to give such consent, Concessionaire shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable.
- 22.08 Rights Reserved to County. All rights not specifically granted to Concessionaire by this Agreement are reserved to County.
- 22.09 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.
- 22.10 Venue. To the extent allowed by law, the venue for any action arising from this Agreement shall be in Palm Beach County, Florida.
- 22.11 Governing Law. This Agreement shall be governed by and in accordance with the laws of the State of Florida.
- 22.12 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.

- 22.13 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.
- 22.14 Paragraph Headings. The headings of the various articles and sections of this Agreement 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.
- 22.15 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 and assigns. This provision shall not constitute a waiver of any conditions against assignment.
- 22.16 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.
- 22.17 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.
- 22.18 Incorporation by References. All exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Agreement by reference.
- 22.19 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.
- 22.20 No recording. Neither this Agreement, nor any memorandum or short form hereof, shall be recorded in the Public Records of Palm Beach County, Florida.

- 22.21 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.
- 22.22 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.
- 22.23 Survival. Notwithstanding any early termination of this Agreement, Concessionaire shall remain obligated hereunder to perform any duty, covenant or obligation imposed upon Concessionaire hereunder arising prior to the date of such termination.

(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.

ATTEST:

SHARON R. BOCK, Clerk
& Comptroller

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

By: _____
Deputy Clerk

By: _____
Burt Aaronson, Chair

(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
County Attorney

APPROVED AS TO TERMS
AND CONDITIONS

By: _____
Director, Department of Airports

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

Signature

Print Name

Signature

Print Name

CONCESSIONAIRE:
SMARTE CARTE, INC.

By: _____
Signature

Print Name

Title

(Seal)

EXHIBIT "A"
Layout Plan for Airport Baggage Cart Concession Program

PALM BEACH INTERNATIONAL AIRPORT
Terminal First Level – Baggage Claim

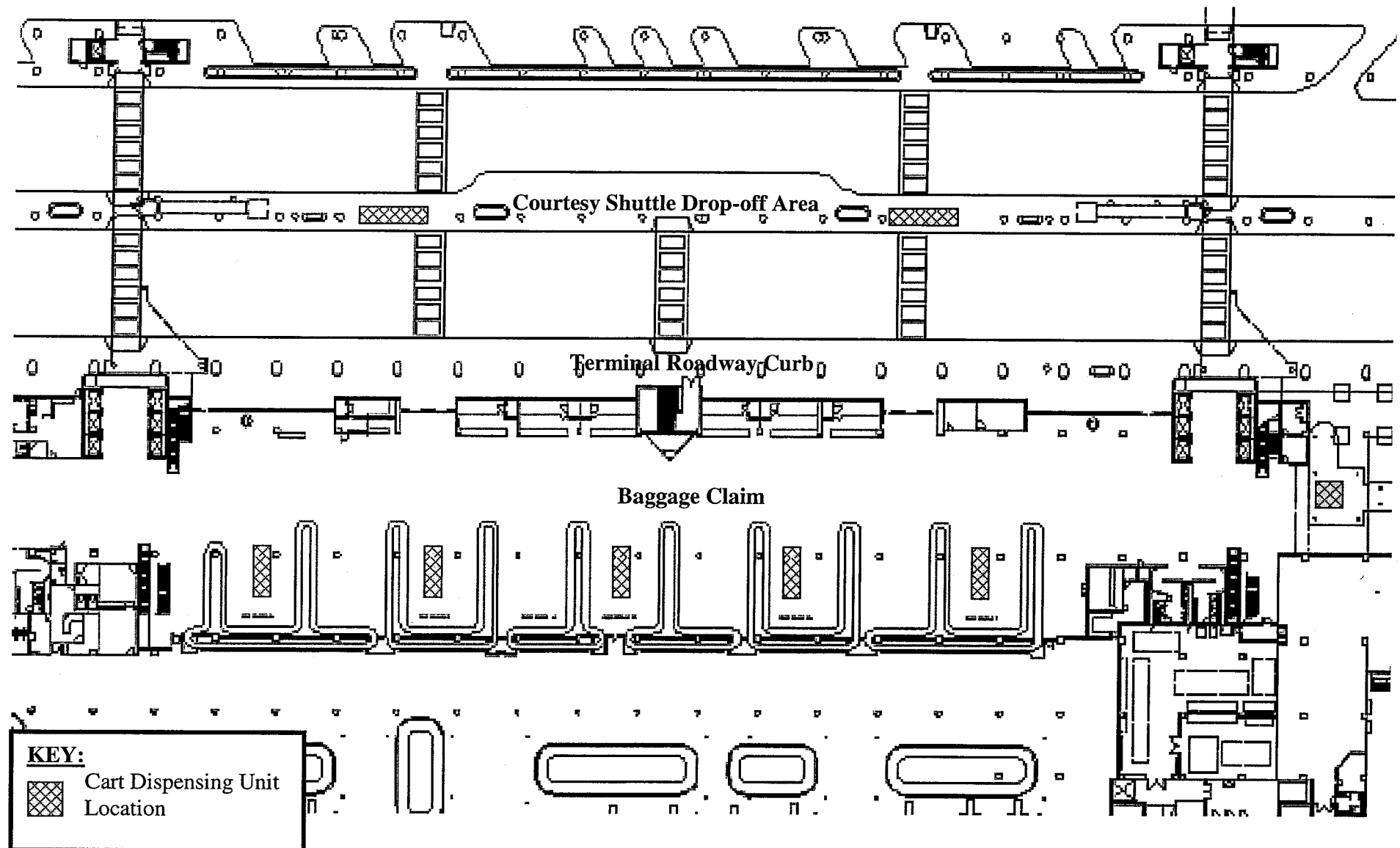


EXHIBIT "A"
Layout Plan for Airport Baggage Cart Concession Program

PALM BEACH INTERNATIONAL AIRPORT
Terminal Third Level – Arrivals

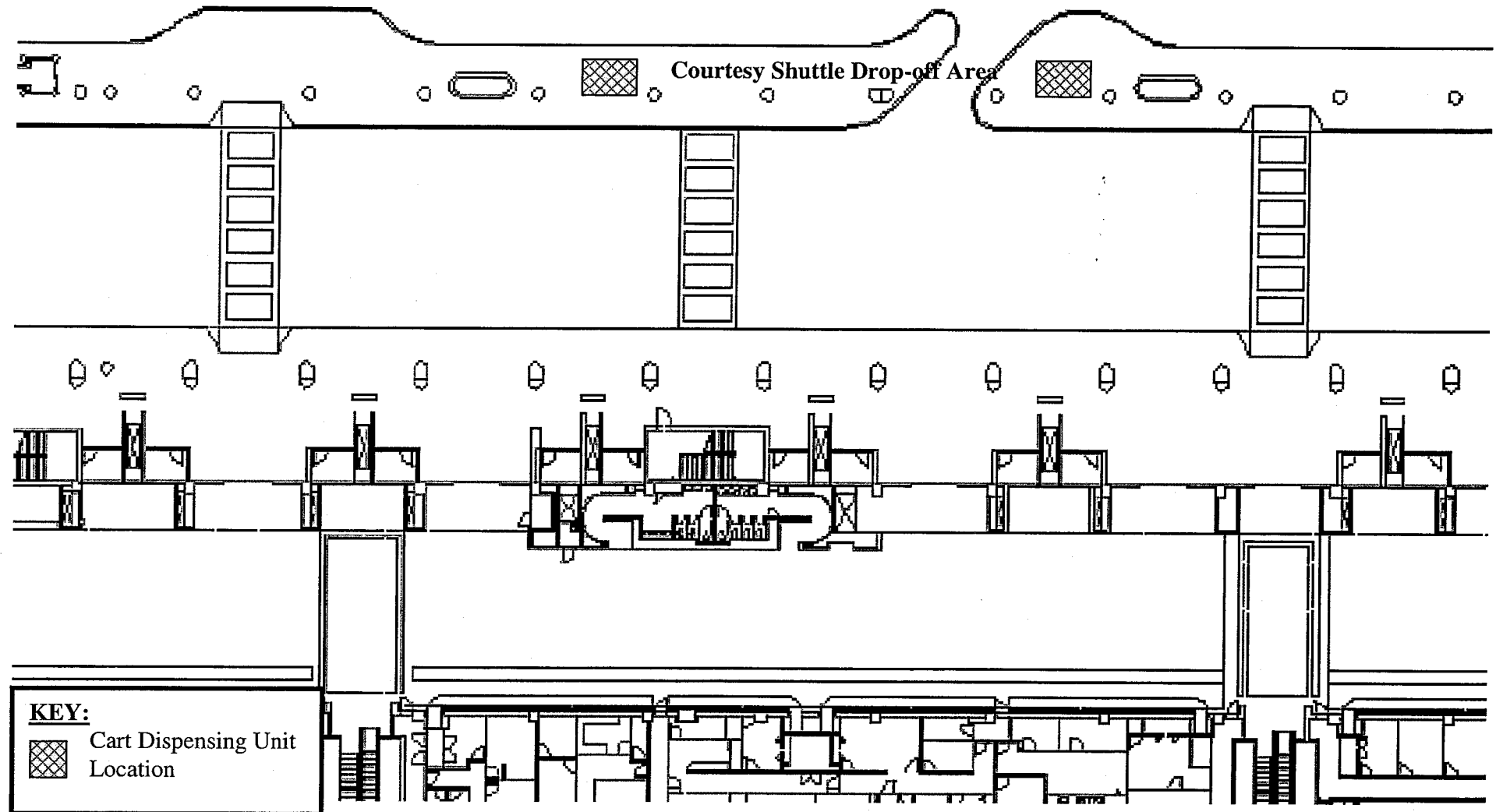


EXHIBIT "A"
Layout Plan for Airport Baggage Cart Concession Program

PALM BEACH INTERNATIONAL AIRPORT
Short Term Parking Garage
Fourth Level

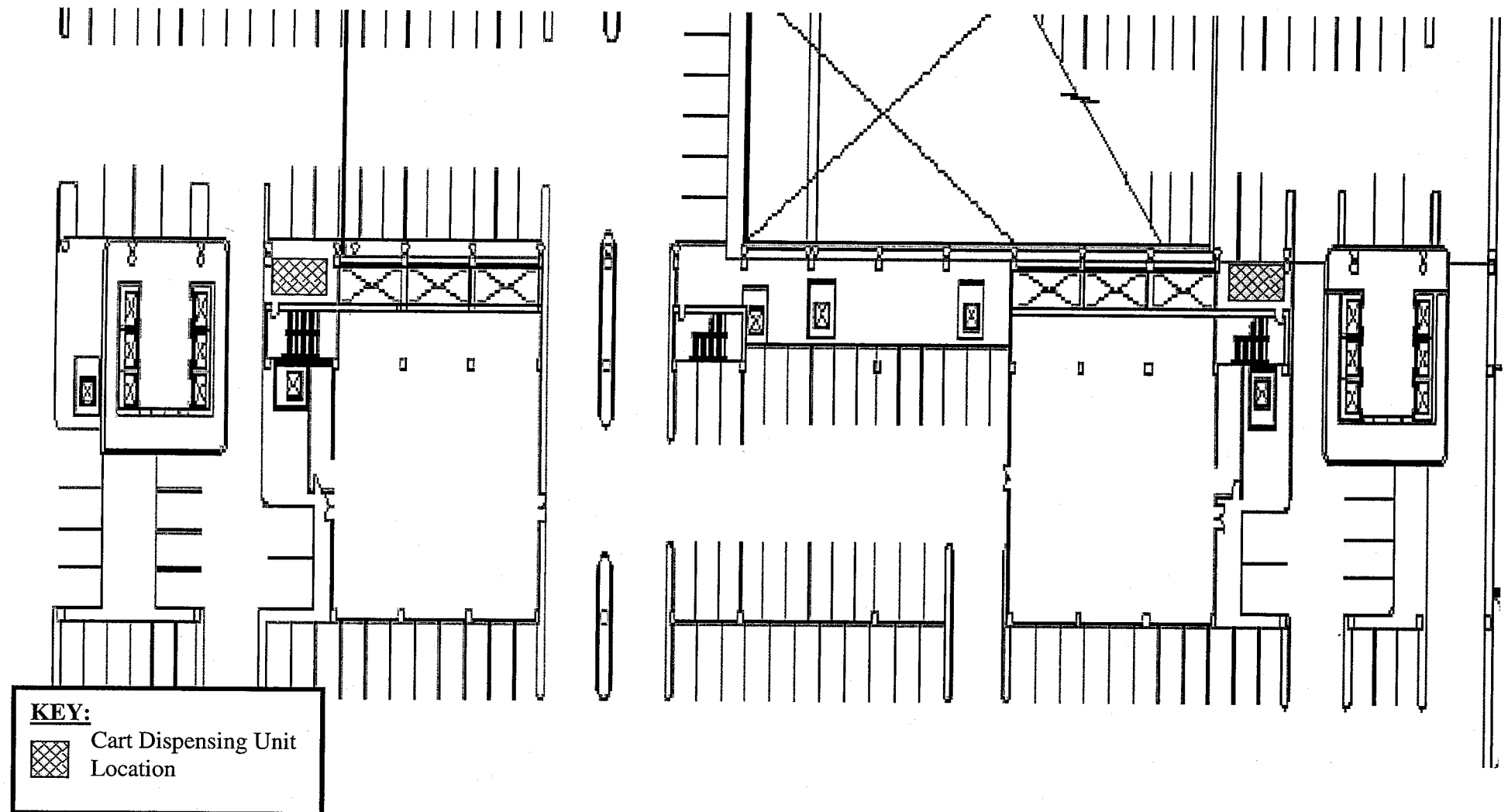


EXHIBIT "A"
Layout Plan for Airport Baggage Cart Concession Program

PALM BEACH INTERNATIONAL AIRPORT
Short Term Parking Garage
Fifth Level

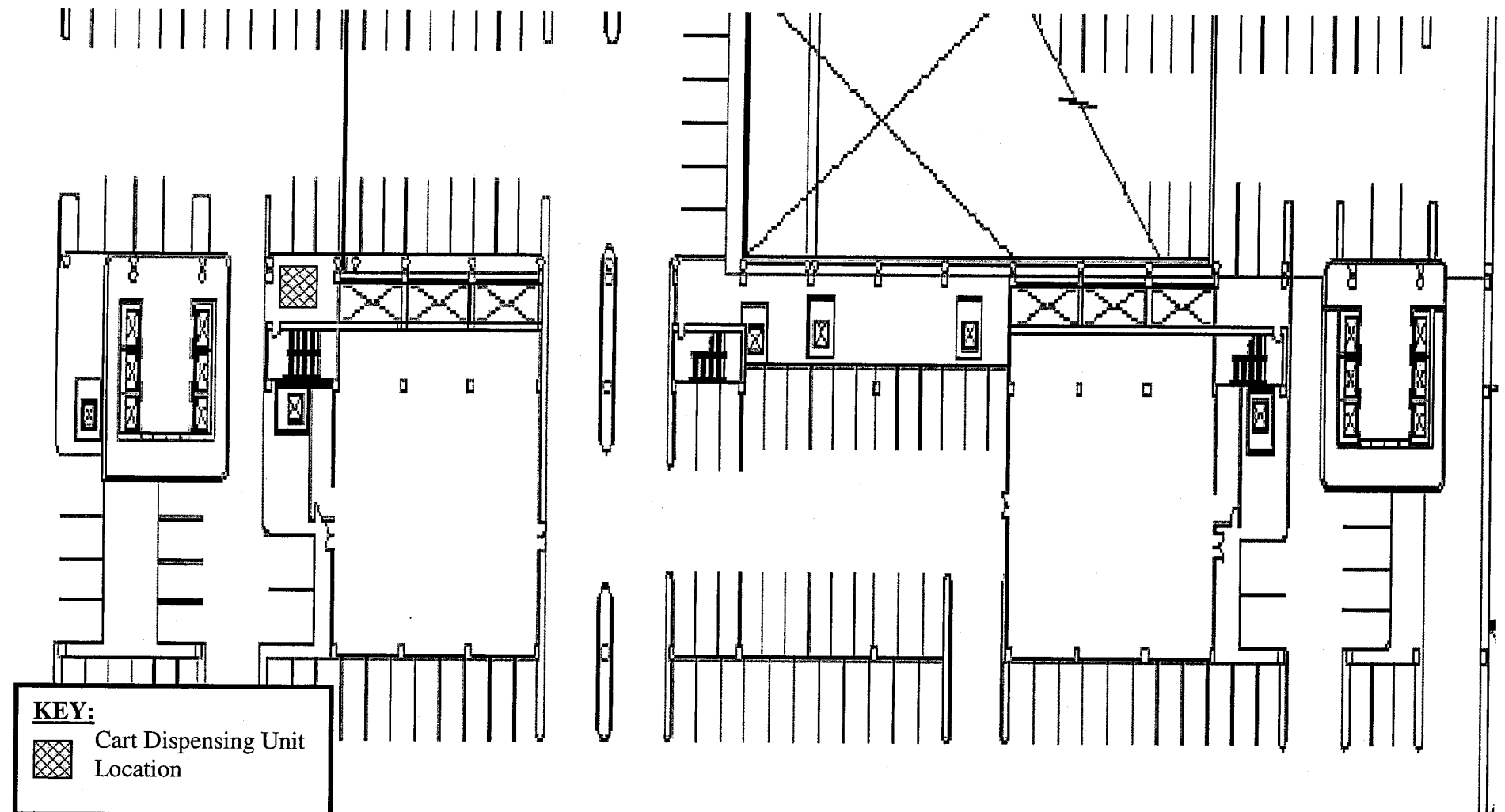


EXHIBIT "A"
Layout Plan for Airport Baggage Cart Concession Program

PALM BEACH INTERNATIONAL AIRPORT
Long Term Parking Garage
Ground Floor

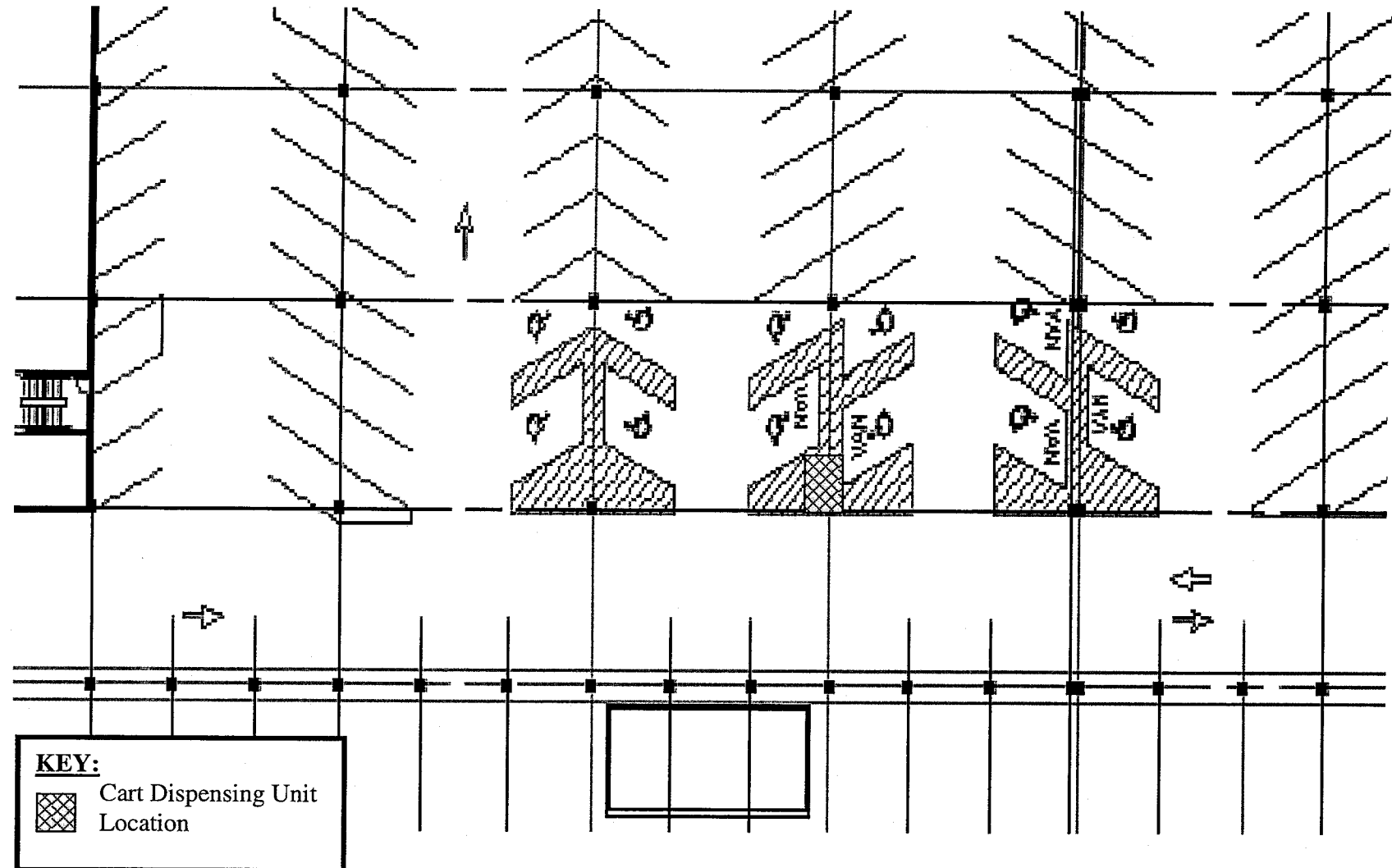


EXHIBIT "A"
Layout Plan for Airport Baggage Cart Concession Program

PALM BEACH INTERNATIONAL AIRPORT
Long Term Parking Garage
Second Floor

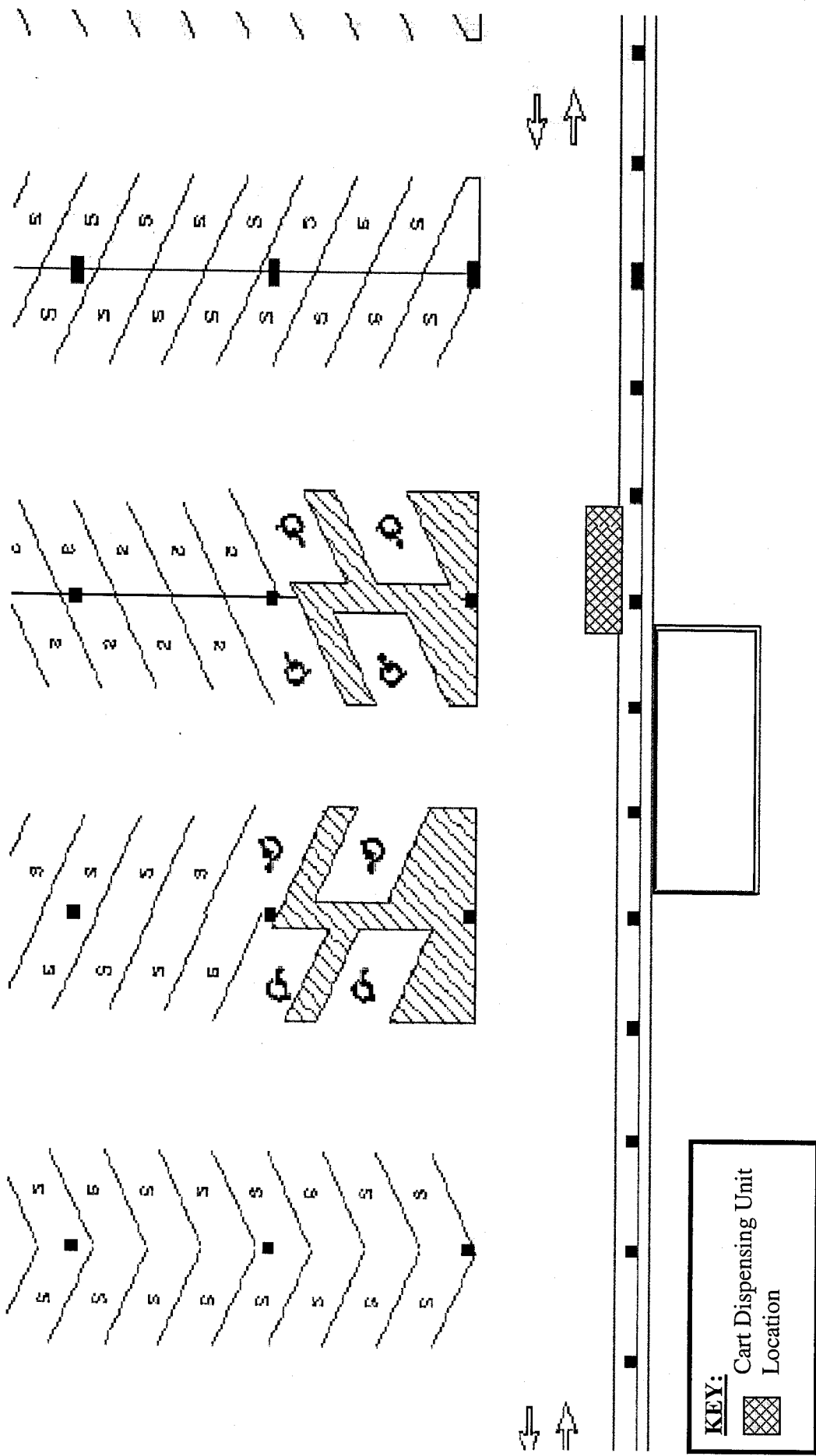


EXHIBIT "A"
Layout Plan for Airport Baggage Cart Concession Program

PALM BEACH INTERNATIONAL AIRPORT
Long Term Parking Garage
Third Floor

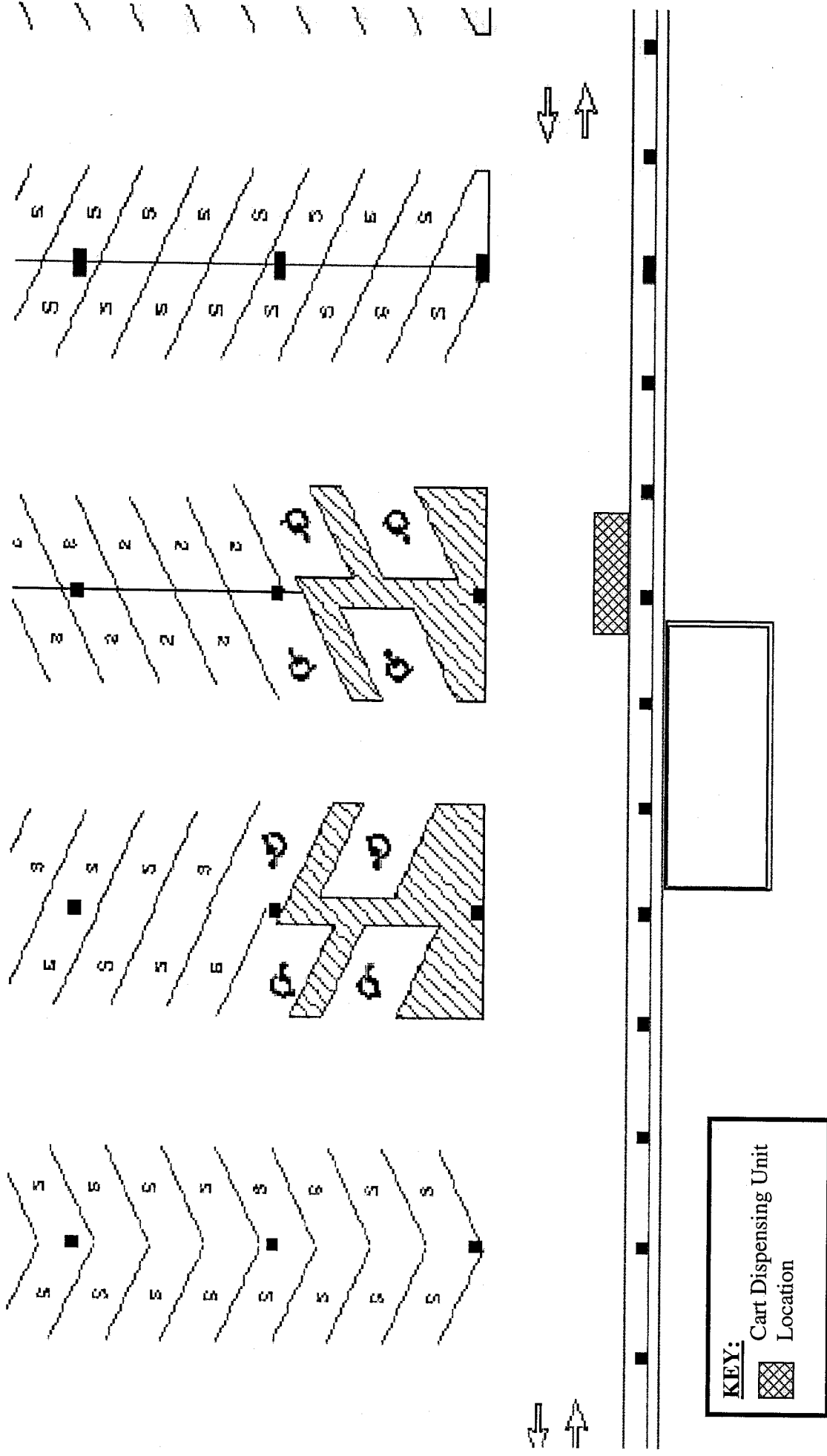
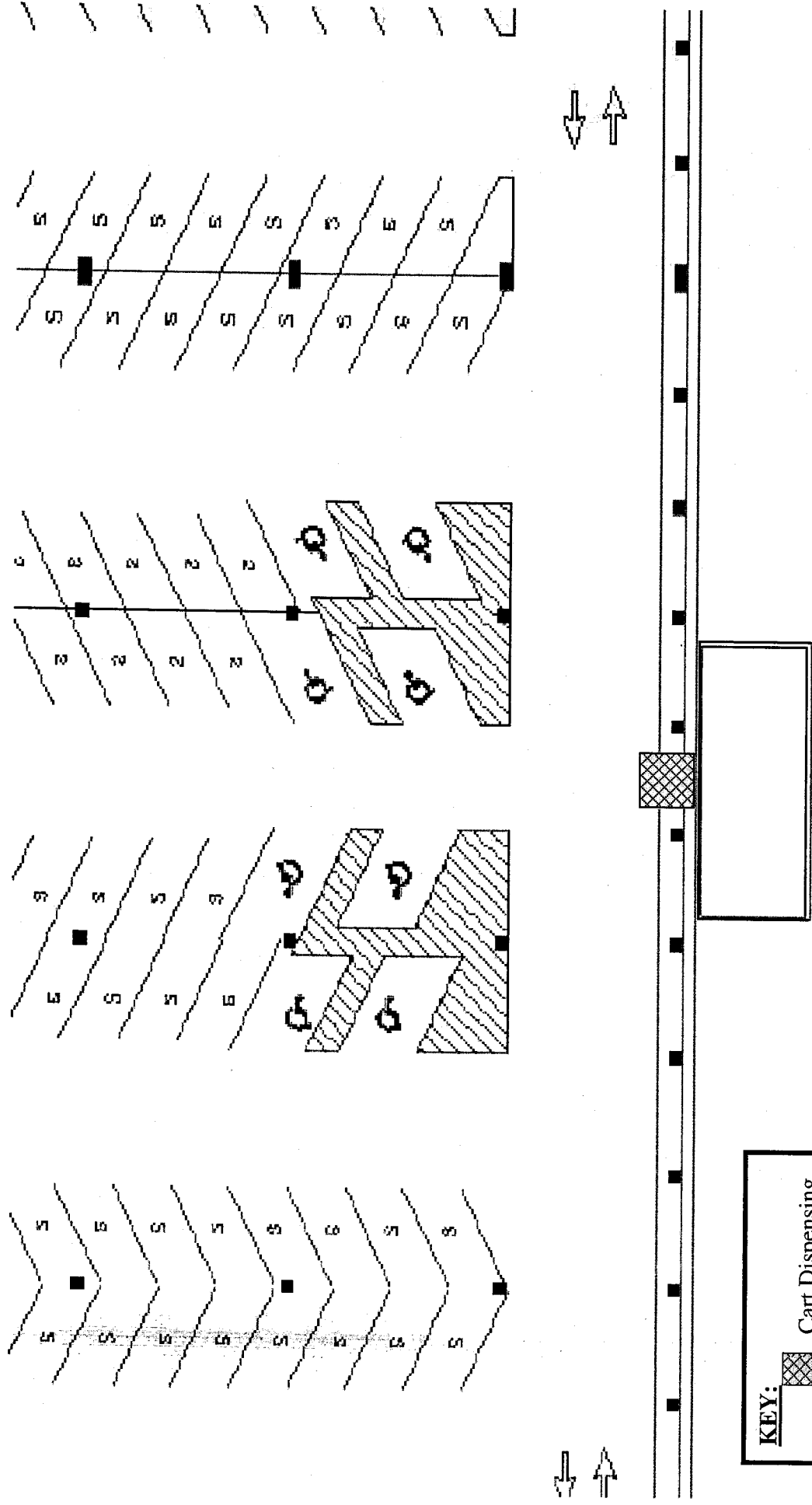


EXHIBIT "A"
Layout Plan for Airport Baggage Cart Concession Program

PALM BEACH INTERNATIONAL AIRPORT
 Long Term Parking Garage
 Fourth Floor




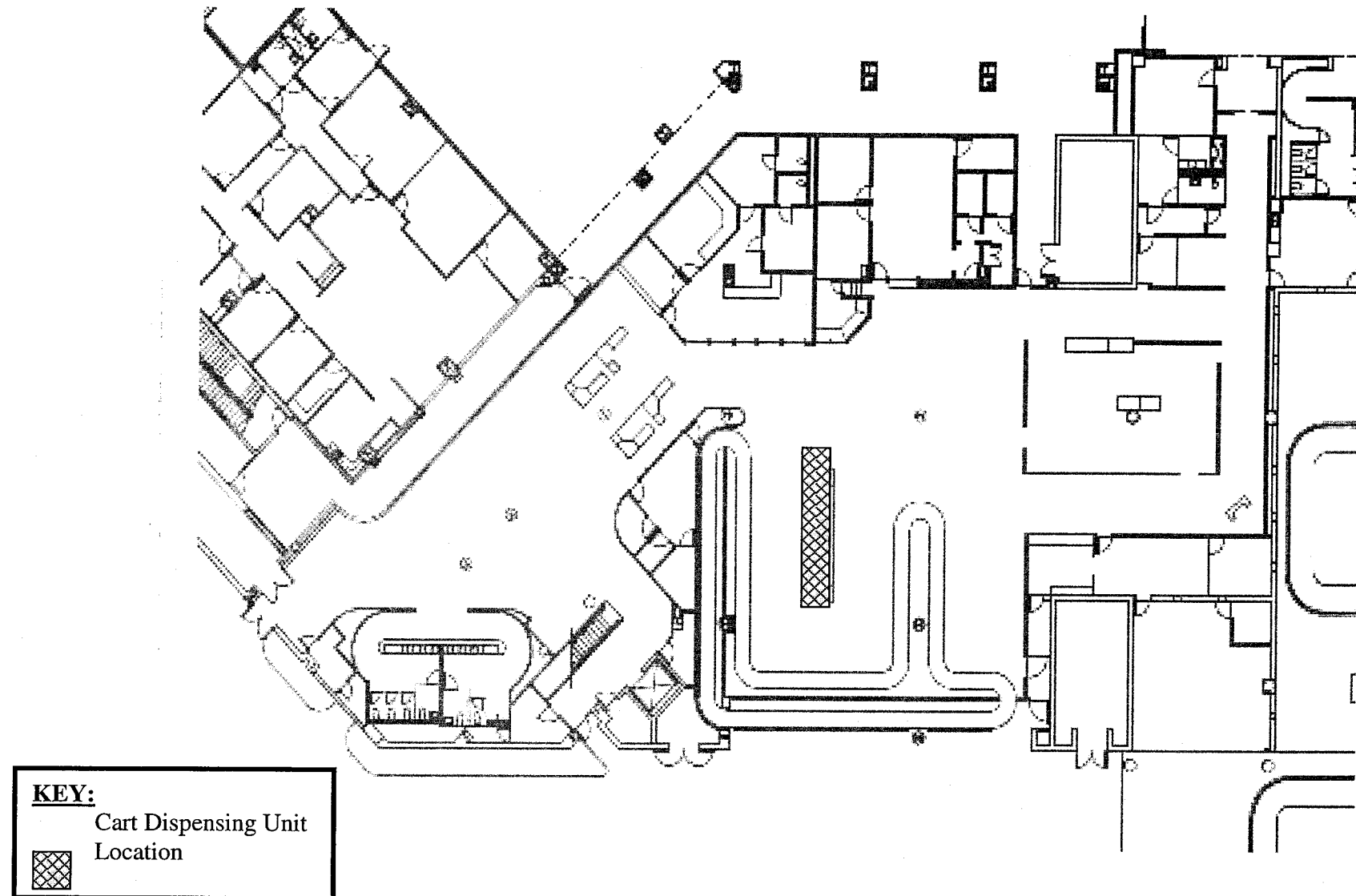

KEY:  Cart Dispensing Unit Location

EXHIBIT "A"
Layout Plan for Airport Baggage Cart Concession Program

PALM BEACH INTERNATIONAL AIRPORT
Customs/FIS Area



 CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 12/10/2009
PRODUCER Marsh USA Inc. 333 South 7th Street, Suite 1600 Minneapolis, MN 55402-2400		THIS CERTIFICATION IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
402974-STND-GAWUP-09-10 CNA		
INSURED SMARTE CARTE INC. 4455 WHITE BEAR PARKWAY WHITE BEAR LAKE, MN 55110		INSURERS AFFORDING COVERAGE
		INSURER A: Zurich American Insurance Co
		INSURER B: American Guarantee & Liability Ins Co
		INSURER C: National Union Fire Ins Co Pittsburgh PA
		INSURER D:
		INSURER E:

COVERAGES						
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A		GENERAL LIABILITY	GLO-3792674-03	12/31/2009	12/31/2010	EACH OCCURRENCE \$ 1,000,000
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES(Ea occurrence) \$ 1,000,000
		<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person) \$ 10,000
						PERSONAL & ADV INJURY \$ 1,000,000
						GENERAL AGGREGATE \$ 5,000,000
		GENERAL AGGREGATE LIMIT APPLIES PER				PRODUCTS - COMP/OP AGG \$ 2,000,000
		<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC				
A		AUTOMOBILE LIABILITY	BAP 30-36-781-03	12/31/2009	12/31/2010	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000
		<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$
		<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
		<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
		<input checked="" type="checkbox"/> HIRED AUTOS				
		<input checked="" type="checkbox"/> NON-OWNED AUTOS				
		<input checked="" type="checkbox"/> COMP/COLL DED \$500				
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
		<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC AGG \$
B		EXCESS / UMBRELLA LIABILITY	AUC-5944852-01	12/31/2009	12/31/2010	EACH OCCURRENCE \$ 5,000,000
		<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$ 5,000,000
		<input type="checkbox"/> DEDUCTIBLE				\$
		<input type="checkbox"/> RETENTION \$				\$
						\$
A A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	WC-3036779-03 (AOS) WC- 3036780-03 (MA,MT,OR,WI)	12/31/2009 12/31/2009	12/31/2010 12/31/2010	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER \$
		ANY PROPRIETOR/PARTNER/EXECUTIVE Y/N OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> N				E.L. EACH ACCIDENT \$ 1,000,000
		(Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
						E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C C		OTHER	753-2409	12/31/2009	12/31/2010	
		PROPERTY "ALL RISK"				LOSS LIMIT 10,000,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

THE CERTIFICATE HOLDER IS INCLUDED AS ADDITIONAL INSURED FOR GENERAL LIABILITY, AUTOMOBILE LIABILITY AND ALL RISK PROPERTY COVERAGE AS RESPECTS THE AIRPORT BAGGAGE CART CONCESSION AGREEMENT AND THE AIRPORT BUILDING LEASE AGREEMENT, BOTH FOR OPERATIONS AT PALM BEACH INTERNATIONAL AIRPORT AND BOTH WITH THE NAMED INSURED. TEN DAYS CANCELLATION NOTICE APPLIES IN THE EVENT OF NON-PAYMENT.

CERTIFICATE HOLDER CHI-002676672-14	CANCELLATION
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, FL 33406-1470	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
	AUTHORIZED REPRESENTATIVE of Marsh USA Inc. <i>Mary Radaszewski</i> Mary Radaszewski