

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: **September 18, 2018**

[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: Common Use Airport Lounge Concession Agreement (Agreement) with Gideon Toal Management Services, LLC, a Texas Limited Liability Company (GTMS), for the construction and operation of a common use lounge at the Palm Beach International Airport (PBI) for a term of 5 years and payment of concession fees equal to the greater of an initial minimum annual guarantee (MAG) of \$65,000 or privilege fees based on a percentage of gross revenues.

Summary: The Agreement provides for the construction and operation of a common use lounge on Concourse B at the PBI terminal. The lounge will operate similar to an airline VIP club; however, it will not be affiliated with a particular airline. Passengers will be able to access the lounge by being a member of a lounge network or purchasing a day pass. Amenities will include food and beverages, work stations/spaces, newspapers, televisions and internet access. Food and beverages will be included in the cost of entry, excluding premium alcohol and menu items cooked to order. The term of the Agreement will commence on the earlier of substantial completion of the leasehold improvements or 12 months from the effective date of the Agreement, whichever occurs first. GTMS will pay the greater of the MAG or privilege fees based on a percentage of gross revenues. The privilege fees will begin at 10% of gross revenues from the operation of the lounge, excluding revenues from premium alcohol sales, and 16% of gross revenues from premium alcohol sales. The percentages will increase 1% annually. The initial MAG is \$65,000 and will be adjusted annually to 85% of the privilege fee for the preceding contract year. The Airport Concession Disadvantaged Business Enterprise (ACDBE) goal was established at 15%. GTMS has committed to 26% ACDBE participation. **Countywide (AH)**

Background and Justification: Request for Proposal No. PB 18-5 was issued on February 21, 2018. Two proposals were received. The selection committee unanimously recommended awarding the Agreement to GTMS. GTMS will partner with TAV Operations Services in the operation at PBI. GTMS operates airport lounges at multiple airport locations, including Miami International Airport, Dallas-Fort Worth International Airport and George Bush Intercontinental Airport.

Attachments:

- 1. Agreement (3)

JB

Recommended By:  8/16/18
Department Director Date

Approved By:  8/31/18
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	<u>0</u>	<u>(\$32,500)</u>	<u>(\$65,000)</u>	<u>(\$65,000)</u>	<u>(\$65,000)</u>
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>0</u>	<u>(\$32,500)</u>	<u>(\$65,000)</u>	<u>(\$65,000)</u>	<u>(\$65,000)</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes ___ No X
 Does this item include the use of federal funds? Yes ___ No X

Budget Account No: Fund 4100 Department 120 Unit 8430 Rsource 4469
 Reporting Category _____

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

The fiscal impact will be the payment by GTMS of concession fees in the greater amount of a minimum annual guarantee (MAG) or privilege fees which are based on a percentage of gross sales. The initial MAG is \$65,000, and is subject to annual adjustment. For purposes of illustration, concession fees above are shown at the initial MAG payment. Concession fees will commence on the date of beneficial occupancy, which is estimated above to occur approximately April 1, 2019.

C. Departmental Fiscal Review: *cm Scim*

III. REVIEW COMMENTS

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

Lisa Ponn 8/22/18
 ASB OFMB *PK* 8/22/18 8/22/18
 8/21

Jan J. Jurkovic
 Contract Dev. and Control
 8/27/18 *JK* 8/27/18

B. Legal Sufficiency:

Anne Delgard 8/28/18
 Assistant County Attorney

C. Other Department Review:

 Department Director

REVISED 9/03
 ADM FORM 01
 (THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

Summary of Certificates

This report displays detailed Certificate of Insurance information for a selected Insured. Any items shown in red are deficient.

Tuesday, August 14, 2018

Simple View

Certificate Images

Documents

Insured: Gideon Toal Management Services Insured ID: PBI-GT-18-01

Status: Compliant (with overrides)

ITS Account Number: PLC3301

Project(s): Palm Beach County - Airport Properties - (Active)

Insurance Policy	Required	Provided	Override
<u>General Liability</u>			
Expiration: 6/19/2019			
General Aggregate:	\$1,000,000	\$2,000,000	
Products - Completed Operations Aggregate:	\$1,000,000	\$2,000,000	
Personal And Advertising Injury:	\$1,000,000	\$1,000,000	
Each Occurrence:	\$1,000,000	\$1,000,000	
Fire Damage:	\$0	\$0	
Medical Expense:	\$0	\$0	
<u>Automobile Liability</u>	All Owned Autos	not provided	X
Expiration: 6/19/2019	Hired Autos	Hired Autos	
	Non-Owned Autos	Non-Owned Autos	
Combined Single Limit:	\$1,000,000	\$1,000,000	
<u>Workers Compensation/Employers Liability</u>	WC Stat. Limits	WC Stat. Limits	
Expiration: 9/30/2018			
<u>Liquor Liability</u>			
Expiration: 6/18/2019			
Each Occurrence:	\$1,000,000	\$1,000,000	
Aggregate Limit:	\$1,000,000	\$1,000,000	
<u>Business Interruption Coverage</u>	Rent Insurance	not provided	X
<u>Property, Wind and Flood Insurance</u>	All Risk and Replacement Cost	not provided	X
	Ordinance and Law Coverage	not provided	X

Missing Policy Information

Override

The original Certificate of Insurance received did not include policies for the following coverages:

- Business Interruption Coverage X
- Property, Wind and Flood Insurance X

Notifications

<https://its.insurancetrackingservices.com/clientreports/ProblemsSpecificRpt.asp>

8/14/2018

AFFIDAVIT OF LIMITED LIABILITY COMPANY

STATE OF TEXAS

COUNTY OF TARRANT

BEFORE ME, the undersigned authority, personally appeared, the undersigned who by me being first duly sworn, depose(s) and say(s) that:

1. The undersigned is the Manager of Gideon Toal Management, LLC, a limited liability company organized and existing under the laws of the State of Texas ("Company").

2. Articles of Organization of the Company have been filed, and are on-file with, the Florida Department of State and such articles are incorporated herein by reference.

3. The Company is in good standing and is authorized to transact business in the State of Florida as of the date hereof.

4. The company is a manager managed limited liability company.

5. The undersigned is the sole managing member of the Company or has been authorized by majority vote of the managing members to act on behalf of the Company and legally bind the Company and execute contracts and other instruments relating to the transaction of business of the Company.

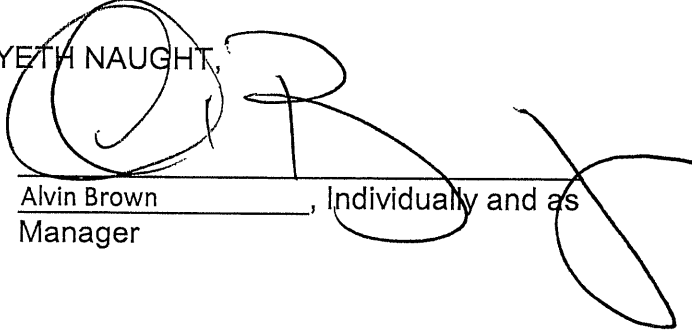
6. The undersigned has the right and authority to enter into that certain Common Use Airport Lounge Concession Agreement between Palm Beach County, a political subdivision of the State of Florida and the Company (the "Agreement"), which is incorporated herein by reference and made a part hereof, and such other instruments as may be necessary and appropriate for the Company to fulfill its obligations under such Agreement, including amendment(s) and termination of such Agreement.

7. Upon execution and delivery of such Agreement and documents by the undersigned, all of the aforesaid shall be valid agreements of and be binding upon the Company.

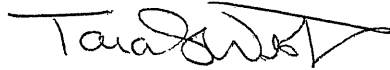
8. The transactions contemplated herein will not violate any of the terms and conditions of the Company's member agreement, operating agreement certificate of organization or of any other agreement and amendments thereto of whatever kind between the Company and any third person.

9. The undersigned acknowledges that affiant is familiar with the nature of an oath and the penalties provided by the laws of the State of Florida and that this Affidavit is being given to induce Palm Beach County to enter into the Agreement.

FURTHER AFFIANT SAYETH NAUGHT,


_____, Individually and as
Manager

SWORN TO AND SUBSCRIBED before me on this 2 day of August,
2018, by Alvin Brown, Manager of Gideon Toal
Management Services, LLC on behalf of the Company who is personally known
to me OR who produced Texas Driver's License, as
identification and who did take an oath.



Notary Signature

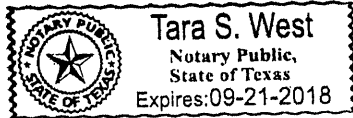
Tara S. West

Print Notary Name

NOTARY PUBLIC

State of Texas at large

My Commission Expires: September 21, 2018



COMMON USE AIRPORT LOUNGE CONCESSION AGREEMENT

Department of Airports

**Palm Beach County,
a political subdivision of the State of Florida,**

and

Gideon Toal Management Services, LLC

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COMMON USE AIRPORT LOUNGE CONCESSION AGREEMENT

THIS COMMON USE AIRPORT LOUNGE CONCESSION AGREEMENT (this "Agreement") is made and entered into _____ by and between Palm Beach County, a political subdivision of the State of Florida ("County"), and Gideon Toal Management Services, LLC, a limited liability company organized under the laws of the State of Texas, having its office and principal place of business at 500 West Seventh Street, Suite 534, Unit 21, Fort Worth, Texas 76102 ("Concessionaire").

WITNESSETH:

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

WHEREAS, Concessionaire submitted a proposal in response to County's Request for Proposals No. PB 18-5, which opened on April 4, 2018; and

WHEREAS, Concessionaire has indicated a willingness and demonstrated the ability to properly develop, finance, operate, and manage a first-class common use airport lounge in accordance with the terms of this Agreement.

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

ARTICLE 1 - RECITALS

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

ARTICLE 2 - DEFINITIONS

The following words, terms, and phrases wherever used in this Agreement shall have the meanings set forth in this Article and the meanings shall apply to both singular and plural forms of such words, terms and phrases.

- 2.01 "Agreement" means this Common Use Airport Lounge Concession Agreement and all exhibits hereto. 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.
- 2.02 "Airport" means the Palm Beach International Airport located in Palm Beach County, Florida.
- 2.03 "Airport Concession Disadvantaged Business Enterprise" means an Airport Concession Disadvantaged Business Enterprise as defined in Title 49, Part 23 of the Code of Regulations, as now or hereafter amended or any successor regulation.

- 2.04 “Airport Director” means the Director or Acting Director of the Palm Beach County Department of Airports.
- 2.05 “Annual Report” has the meaning provided in Section 5.10.
- 2.06 “Assignment” has the meaning provided in Article 17.
- 2.07 “Bond” has the meaning provided in Section 5.12.
- 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 “Business Day” means any day other than a Saturday, Sunday or County holiday. Use of the word “day” as opposed to Business Day means a calendar day.
- 2.10 “Comparable Locations” has the meaning provided in Section 6.06.
- 2.11 “Concession” means the common use airport lounge concession operated by Concessionaire pursuant to this Agreement.
- 2.12 “Concession Fee” has the meaning provided in Section 5.01.
- 2.13 “Concessionaire Party” means Concessionaire and its subtenants, contractors, suppliers, employees, officers, licensees, agents and invitees.
- 2.14 “Contract Year” means the twelve (12) month period, beginning on the Date of Beneficial Occupancy (as herein defined) and each twelve (12) month period thereafter, until the termination or earlier expiration of this Agreement.
- 2.15 “County” has the meaning provided in the preamble to this Agreement.
- 2.16 “County Party” means the County and its elected officers, employees and agents.
- 2.17 “Damages” has the meaning provided in Article 15.
- 2.18 “Date of Beneficial Occupancy” has the meaning provided in Section 3.02.
- 2.19 “Day” means a calendar day of twenty four (24) hours measured from midnight to the next midnight.
- 2.20 “Department” means the Palm Beach County Department of Airports.
- 2.21 “Effective Date” has the meaning provided in Section 3.01.
- 2.22 “FAA” means the Federal Aviation Administration.

2.23 "Gross Revenues" means all revenues of the business conducted by Concessionaire upon the Premises regardless of where, how (cash or credit), or by whom payment is made, including, without limitation, all revenues from: (a) fees or charges imposed for access to the Premises for use by Concessionaire's customers; (b) the sale of food and beverages, including alcoholic beverages; (c) the sale of any goods or services; (d) advertising; and (e) fees, rentals or other amounts paid or payable to Concessionaire for the use or occupancy of any portion of the Premises. For purposes of this Agreement, the term "Gross Revenues" as to alcohol sales shall mean all amounts paid to Concessionaire for alcohol that is not provided on a complimentary basis to the customer as a part of the fee paid to Concessionaire to access the Premises. Unless revenues are expressly and specifically excluded from Gross Revenues, all revenues payable to Concessionaire that are derived from, or that arise out of or become payable on account of the business conducted by Concessionaire upon the Premises shall be included in Gross Revenues. In the event Concessionaire fails or elects not to charge or collect any fees, amounts for goods or services or any other amount which would otherwise be included in Gross Revenues, the amount customarily charged by Concessionaire shall be included in the calculation of Gross Revenues, unless such amount is expressly and specifically excluded from Gross Revenues pursuant to this definition. 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. Gross Revenues shall not include:

- A. Federal, state, county/city, and municipal sales taxes or other taxes separately stated and collected from customers and directly paid by Concessionaire to the governmental entity;
- B. Any gratuities collected for the benefit of, and paid to, Concessionaire's personnel;
- C. Rebates, discounts, or credits of a similar nature (not including charge or credit card discounts);
- D. Casualty, liability or other insurance proceeds; and
- E. Cash or credit refunds made for any returned merchandise accepted by Concessionaire and previously included in Gross Revenues.

2.24 "Initial Leasehold Improvements" has the meaning provided in Section 7.02.

2.25 "Investment Report" has the meaning provided in Section 7.03(C).

2.26 "Letter of Credit" has the meaning provided in Section 5.12.

2.27 "Minimum Annual Guarantee" has the meaning provided in Section 5.02(A).

2.28 "Minimum Investment" has the meaning provided in Section 7.02.

- 2.29 "Monthly Privilege Fee" means a percentage monthly Gross Revenues at the percentages listed in Section 5.03.
- 2.30 "Monthly Report" has the meaning provided for in Section 5.08.
- 2.31 "Net Book Value" has the meaning provided for in Section 16.05.
- 2.32 "Plans" has the meaning provided for in Section 7.03(A).
- 2.33 "Premises" means the building space more particularly identified in the attached Exhibit "A", located on the 2nd level of the Palm Beach International Airport Terminal.
- 2.34 "Price Survey" has the meaning provided in Section 6.06.
- 2.35 "Privilege Fee" means a percentage annual Gross Revenues at the percentages listed in Section 5.03.
- 2.36 "Proposal" means the proposal submitted by Concessionaire in response to the RFP.
- 2.37 "Public Areas" has the meaning provided in Section 4.02(A).
- 2.38 "Request for Proposals" or "RFP" means RFP No. PB 18-5 for Common Use Airport Lounge Concession Agreement opened on April 4, 2018.
- 2.39 "Security Deposit" has the meaning provided in Section 5.12.
- 2.40 "Term" has the meaning provided in Section 3.02.
- 2.41 "Terminal" means the Airport's commercial passenger terminal building.
- 2.42 "TSA" means the Transportation Security Administration.

ARTICLE 3 - EFFECTIVE DATE AND TERM

- 3.01 Effective Date. This Agreement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners and shall become effective when signed by all parties and approved by the Palm Beach County Board of County Commissioners ("Effective Date").
- 3.02 Term. The term of this Agreement shall commence on the earlier of: (a) substantial completion of the Initial Leasehold Improvements; (b) the date Concessionaire commences using the Premises (or any part thereof) for the conduct of its business (other than construction); or (c) twelve (12) months from the Effective Date (or such later date agreed to by County pursuant to Section 7.02) ("Date of Beneficial Occupancy") and expire five (5) years thereafter, unless sooner terminated pursuant to the terms of this Agreement ("Term").

- 3.03 Transition at End of Term. Concessionaire shall cooperate in good faith with County for the transition of the concessions to new concessionaire(s), if applicable, at the end of the Term of this Agreement to ensure quality, uninterrupted concession services remain available in the Terminal at all times. The parties shall meet one hundred twenty days (120) prior to the end of the Term to establish a plan for the orderly transition of the concession spaces to new concessionaire(s), if requested by the Department.

ARTICLE 4 - PRIVILEGES AND PREMISES

- 4.01 Description of Specific Privileges, Uses and Rights. Subject to the terms and conditions of this Agreement, Concessionaire shall have the non-exclusive right and obligation to develop, operate, manage and maintain a first-class common use airport lounge within the Premises. Concessionaire shall not engage in any business activity on the Premises other than as permitted herein. Concessionaire shall not use the Premises for any illegal trade or business, or for any other illegal purpose.
- 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 non-exclusive use of the Public Areas within the Terminal for Concessionaire, its employees, contractors, patrons, invitees, suppliers of service, agents and authorized sublessees, if any, in connection with its operations hereunder. For purposes of this Agreement, "Public Areas" means the public corridors, restrooms and other areas within the Terminal that the general public has the right to access. Public Areas shall at all times be subject to the exclusive control and management of County. County shall have the full right and authority to make all rules and regulations as County may in its sole discretion deem proper, pertaining to the proper operation and maintenance of the Public Areas; and
 - B. the nonexclusive right of ingress to and egress from the Terminal over and across public roadways and walkways serving the Airport for Concessionaire, its employees, contractors, patrons, invitees, suppliers of service, agents and authorized sublessees, if any, in connection with its operations hereunder.

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

- 4.03 Employee Parking. Parking for Concessionaire's employees shall be provided by County on a space available basis in the employee parking area in common with employees of other operators and tenants at the Airport. County shall charge Concessionaire a parking fee for the use by its employees of the employee surface parking area. The current

employee parking rate is One Hundred Six Dollars and 00/100 (\$106.00) per space per year. County may change the parking fee, from time to time, upon thirty (30) days prior written notice to Concessionaire. Parking fees shall be assessed to the Concessionaire on an annual basis and shall be paid by Concessionaire within fifteen (15) days of receipt of the parking invoice.

- 4.04 Condition of Premises. County makes no representations or warranties whatsoever as to the condition of the Premises or the Airport, including, but not limited to, any equipment, utilities or fixtures currently installed within the Premises, whether such equipment, utilities or fixtures are in compliance with applicable laws or the fitness of any such equipment or fixtures fitness for a particular purpose. The Premises is being provided for Concessionaire's use in is "AS IS CONDITION" and "WITH ALL FAULTS." Concessionaire shall not be entitled to any adjustment of any fees or charges payable hereunder on account of the condition of any improvements or any failure of any improvements to be in working order or because of any necessity of Concessionaire to repair or take corrective actions with respect to any improvements.
- 4.05 Conflicts with Other Concessions. Notwithstanding any provision of this Agreement to the contrary, Concessionaire understands and agrees that, in the event of a conflict between Concessionaire and any other lessee or concessionaire in the Terminal as to specific items to be sold or services to be provided, the Department shall make the final determination as to which product or service may be sold or provided by each lessee or concessionaire.
- 4.06 Changes to Airport. Concessionaire acknowledges and agrees that: (a) County shall have the right at all times to change, alter, expand, and contract the Airport, including the Terminal; (b) County has made no representations, warranties, or covenants to Concessionaire regarding the design, construction, pedestrian traffic, enplanements, airline locations, or views of the Airport or the Premises. Without limiting the generality of the foregoing, Concessionaire acknowledges and agrees that the Airport: (a) is currently undergoing, and may from time to time hereafter undergo, renovation, construction, and other Airport modifications; and (b) may from time to time adopt rules and regulations relating to security and other operational concerns that may affect Concessionaire's business. Although County will use reasonable efforts to minimize the effect of such changes on Concessionaire's business, Concessionaire acknowledges that such activity may have some effect on concession operations located at the Airport. Such construction and renovation programs might involve barricading, materials storage, noise, the presence of workers and equipment, rearrangement, utility interruptions, and other inconveniences normally associated with construction and renovation. Although County will use reasonable efforts to minimize the effect of the such changes on Concessionaire's business, Concessionaire acknowledges that such activity may have some effect on retail operations located at the Airport, and Concessionaire shall not be entitled to any rent credit or other compensation therefor. At any time and from time to time, County may, without the consent of Concessionaire, and without affecting Concessionaire's obligations under this Agreement, at County's sole discretion, (a) change the shape, size, location, number and extent of the improvements in any portion

of the Airport, including without limitation the concourses, piers, boarding areas, concession areas and security areas located within the Terminal, (b) build additional stories above or below the Airport buildings, including of the Terminal, and (c) eliminate or relocate public entrances to the Premises so long as there is at all times one public entrance to the Premises. Without limiting waivers set forth elsewhere in this Agreement, Concessionaire hereby waives all claims against County and releases County from all losses, liabilities, judgments, suits, claims, damages, costs and expenses (including reasonable attorneys' fees and court costs), of any kind or nature that Concessionaire suffers or incurs arising out of or in connection with any changes to the Airport or any portion of the Airport and Concessionaire further agrees that Concessionaire will not be entitled to any abatement of the Concession Fee or any other relief in connection with any changes to the Airport or any portion of the Airport.

ARTICLE 5 - CONCESSION FEE

5.01 Concession Fee. Concessionaire shall pay to County annual privilege fees equal to the greater of the Minimum Annual Guarantee or 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 5.10 below.

5.02 Minimum Annual Guarantee.

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

Time Period	Minimum Annual Guarantee
First Contract Year	Sixty-Five Thousand Dollars (\$65,000.00)
Second Contract Year and each Contract Year thereafter	Eighty five percent (85%) of the Privilege Fee for the preceding Contract Year, or the Minimum Annual Guarantee for the preceding Contract Year, whichever is higher.

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

5.03 Privilege Fee. The percentages of Gross Revenues for purposes of determining the Monthly Privilege Fee, and the Privilege Fee for each Contract Year, shall be:

Contract Year	Privilege Fee Percentage Excluding Alcohol Sales	Privilege Fee Percentage Including Alcohol Sales
One	10%	16%
Two	11%	17%
Three	12%	18%
Four	13%	19%
Five	14%	20%

In the event the Monthly Privilege Fee is greater than (1/12) of the Minimum Annual Guarantee, Concessionaire shall pay the difference to County. Such payment shall be delivered with the Monthly Transaction Report required by Section 5.08 on or before the twentieth (20th) day of each and every month, without demand, deduction or setoff, throughout the Term of this Agreement.

- 5.04 Unpaid Fees. In the event Concessionaire fails to make payment of any fees or charges when due and payable in accordance with the terms of this Agreement, the Department may require Concessionaire to 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. Notwithstanding the foregoing, County shall not be prevented from terminating this Agreement for default in payment due to County pursuant to this Agreement or from exercising any other remedies contained herein or implied by law.
- 5.05 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.
- 5.06 Sales and Use Tax. Concessionaire shall pay monthly to County any sales, use or other tax, or any imposition in lieu thereof (excluding State and/or Federal Income Tax) now or hereinafter imposed upon the 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.
- 5.07 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 delivered to the Finance Division, Department of Airports, 846 Palm Beach International Airport, West Palm Beach, Florida 33406-1470, or to such other office or address as may be substituted therefor.
- 5.08 Monthly Transaction Report. Within twenty (20) days after close of each month throughout the Term of this Agreement, Concessionaire shall submit to the Department, in a form and detail satisfactory to the Department, a monthly report that includes the following information for the preceding calendar month: (a) the total number of customers utilizing the Premises; (b) the total monthly Gross Revenues, excluding Gross Revenues from alcohol sales; (c) the total monthly Gross Revenues from alcohol sales; (d) the Minimum Monthly Privilege Fee; (e) the amount payable to County for the preceding calendar month; and (f) separately identifies any exclusions from Gross Revenues ("Monthly Report"). The Department may require the monthly report to be submitted electronically.

5.09 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 Principles prescribed by the American Institute of Certified Public Accountants or any successor agency thereto. Such books of accounts and records shall be retained and be available for three (3) years from the end of each 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 shall be deemed to be a material breach of this Agreement. The obligations arising under this Section shall survive the expiration or earlier termination of this Agreement

5.10 Annual Report. Within ninety (90) days after the end of each Contract Year, Concessionaire shall provide County with an annual audit report covering the preceding Contract Year ("Annual Report"). The Annual Report shall be in a form reasonably satisfactory to County and shall be prepared by an independent Certified Public Accountant, not a regular employee of Concessionaire, in accordance with Generally Accepted Auditing Standards prescribed by the American Institute of Certified Public Accountants or any successor agency thereto. The Annual Report shall include the following:

- A. A schedule detailing Gross Revenues, excluding Gross Revenues from alcohol sales, for the preceding Contract Year by category and month, which shall also detail any exclusion(s) from Gross Revenues;
- B. A schedule detailing Gross Revenues from alcohol sales, for the preceding Contract Year by month, which shall also detail any exclusion(s) from Gross Revenues;
- C. A schedule detailing the payments to County by Concessionaire during the preceding Contract Year by month; and
- D. A calculation of the amount owed to either party, if any.

The Annual Report shall include an opinion regarding the information contained in schedules listed above. The Annual Report shall not contain 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, regarding the information contained in the required schedules. If the Annual Report indicates that the amount (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 Annual Report. If the amount paid by Concessionaire to County during any Contract Year exceeds the amount due and owing for such Contract Year, County shall credit the overpayment in the following order: (a) against any past due amounts owed to County by Concessionaire, including interest and late fees; (b) against currently outstanding, but not yet due, payments owed to County by Concessionaire; and (c) against any other sums payable by Concessionaire to County. Notwithstanding the foregoing, in the event of an overpayment by Concessionaire during the last Contract Year, County shall credit the overpayment against any remaining amounts owed to County, including interest and late fees, and refund to Concessionaire any overpayment amount in excess of the credit. The obligations arising under this paragraph shall survive the expiration or earlier termination of this Agreement until satisfied.

5.11 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 the Certified Public Accountant, who is responsible for preparing the audit report on behalf of Concessionaire pursuant to Section 5.10 above, to make available to County's representative(s) any and all working papers relevant to the audit performed by the Certified Public Accountant. County or its representative(s) shall make available to Concessionaire a copy of the audit report prepared by or on behalf of County. Concessionaire shall have thirty (30) days from receipt of the audit report from County or its representative(s) to provide a written response to the Department regarding the audit report. Concessionaire agrees that failure of Concessionaire to submit a written response to the audit report in accordance with the requirements of this Section shall constitute acceptance of the audit report as issued.

5.12 Security for Payment. Prior to the Effective Date, Concessionaire shall post a security deposit ("Security Deposit") with County in an amount equal to fifty percent (50%) of the Minimum Annual Guarantee. The Security Deposit shall thereafter be maintained in an amount equal to fifty percent (50%) of the Minimum Annual Guarantee for the then-current Contract Year; provided, however, if the amount of a Security Deposit increase resulting from the adjustment of the Minimum Annual Guarantee would be less than fifteen percent (15%) of the amount of Security Deposit currently held, no increase in the Security Deposit shall be required. 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; provided, however, Concessionaire may provide a Security Deposit in the form of cash, through the period ending on the Date of Beneficial Occupancy. 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 shall: (1) entitle County to draw down the full amount of such Security Deposit, and (2) 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. The obligations arising under this Section shall survive the expiration or earlier termination of this Agreement.

- 5.13 Inspector General. Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Concessionaire, 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 interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

ARTICLE 6 - OPERATIONAL AND SERVICE STANDARDS

- 6.01 Hours of Operation. Concessionaire shall actively operate the Concession in the Premises in a business-like manner. The Premises shall be open to serve the public seven (7) days per week at least thirty (30) minutes before the first departing flight through the last departing flight on Concourse A/B or such other hours as may be approved by the Department in writing. The hours of operation may be modified from time to time upon fifteen (15) days prior written notice from the Department to Concessionaire. No facilities shall be blocked off or closed at any time during the designated minimum hours of operation. The Concession shall remain open to accommodate flight delays that are expected to last more than thirty (30) minutes to serve Airport customers.
- 6.02 Minimum Service Requirements. Concessionaire shall provide the following services and amenities at the Premises: comfortable, upscale furnishings; high quality, complimentary snacks and beverages, including fresh, healthy and gluten-free options; computer workstations/spaces; current newspapers and other periodicals; high definition televisions; electric charging stations; and free internet access. Concessionaire may provide premium food and alcoholic beverages at an additional cost to its customers, subject to the provisions of Section 6.06 below, and may provide duty-free services subject to all applicable regulations.

- 6.03 Delivery of Goods. Concessionaire shall arrange and be responsible for the timely delivery of all goods, stock, fixtures, and supplies to and from the Premises, at such times, at such on-Airport location(s), and by such on-Airport routes as approved in writing by the Department. Concessionaire agrees that all deliveries shall be made during the times and at the locations(s) designated by the Department.
- 6.04 Shopping Services. County shall have the right at its cost to monitor and test all of Concessionaire's services by a shopping service selected by County and enter the Premises to conduct surveys that may or may not pertain to Concessionaire's business.
- 6.05 Quality Merchandise. Concessionaire shall only offer high-quality food, beverages and products, which are safe, free of adulteration, sanitary, properly labeled, and as advertised. Concessionaire shall upon written demand from County cease selling any item that County shall determine is objectionable for sale or display at the Airport and immediately remove such item from its inventory and not thereafter offer such item for sale at the Airport. Upon prior written approval from County, Concessionaire may from time to time add or delete items from its merchandise offerings. Concessionaire shall without any additional charge to the purchaser, exchange any product determined by the purchaser to be unsatisfactory, flawed, defective, or of poor quality or shall provide a full refund of the purchase price.
- 6.06 Street Pricing. Concessionaire shall charge street prices for food and beverages sold on the Premises, which are not provided on a complimentary basis to its customers as a part of the cost to access the Premises. For purposes of this Agreement, "Street Price" means pricing at a level roughly equivalent to what a consumer would pay for food and beverages at an upscale bar or lounge with limited food service location in Palm Beach County ("Comparable Locations"). No less than thirty (30) days prior to the Date of Beneficial Occupancy, Concessionaire shall provide County with a menu of food and beverages, which will not be provided on a complimentary basis to its customers, and the associated cost of each item. Unless otherwise approved by the Department, Concessionaire shall provide a price comparison survey from no less than three Comparable Locations demonstrating that amount to be charged for each item will not exceed median price established by the Comparable Locations ("Price Survey"). County reserves the right to reject any Comparable Location provided by Concessionaire and to require an alternative location to be provided. County may require Concessionaire to perform a Price Survey up to two (2) times each Contract Year to establish Concessionaire's compliance with the requirements of this Section. The Price Survey shall be delivered to County within thirty (30) days of County's written request.
- 6.07 ~~Right to Object.~~ County shall have the right to raise reasonable objections to the appearance or condition of the Premises, the quality and quantity of merchandise, the character of the service, the appearance and performance of service personnel, and to require any such conditions or practices objectionable to the Department to be remedied by Concessionaire.

- 6.08 Nondiscriminatory Services Requirement. Concessionaire shall provide all services authorized hereunder to its customers and patrons upon a fair, equal, and nondiscriminatory basis and charge fair, reasonable, and nondiscriminatory prices; provided, however, that Concessionaire may make or give such reasonable and nondiscriminatory discounts, rebates, or other similar price reductions as it may desire to its employees, Airport employees, seniors and military.
- 6.09 Type of Operation. Concessionaire shall maintain and operate the Premises granted hereunder in an orderly, proper, and first-class manner, which, in the sole judgment of County, does not annoy, disturb, or offend others at the Airport.
- 6.10 Payment. At all times during the Term of this Agreement, Concessionaire shall accept as payment for goods and services travelers' checks and at least three (3) nationally recognized credit or debit cards. The selection of acceptable credit cards shall include at least two (2) of the following: VISA, Master Card, or American Express. Such travelers' checks and credit and debit cards shall be accepted as a service to the public for all purchases.
- 6.11 Services to the General Public. Concessionaire shall without charge provide services such as making change, giving directions, and providing general information to the public. Concessionaire shall strive to ensure that all of its employees know the layout of the Terminal and have the ability to provide passengers and visitors with information regarding the locations of Airport services.
- 6.12 Personnel.
- A. Concessionaire shall maintain a sufficient number of properly trained employees to ensure that all customers of Concessionaire receive prompt and courteous service at all times. All employees of Concessionaire shall be polite, clean, appropriately attired, and neat in appearance while on or about the Premises. Concessionaire shall promptly remove any employee who is discourteous or displays performance or behavior inconsistent with County's high level of customer service, or who fails to support a professional image of the Airport.
 - B. Employees of Concessionaire shall wear appropriate nametags, subject to the approval of County, and employees performing similar jobs shall have a similar dress code or wear similar uniforms, which shall be clean and pressed.
 - C. County shall have the right to object to the demeanor, conduct, and appearance of any employee of Concessionaire, or any of its invitees or those doing business with it, whereupon Concessionaire shall take all steps necessary to remedy the cause of the objection.
 - D. The management, maintenance, and operation of the Premises shall be under the supervision and direction of an active, qualified, competent, and experienced manager, who shall at all times be authorized to represent and act for Concessionaire. Concessionaire shall cause such manager to be assigned a duty station or office in the Premises at which he or she shall be available during

normal business hours, and Concessionaire will at all times during the absence of such manager assign, or cause to be assigned, a qualified subordinate to assume and be directly responsible for the carrying out of his or her duties. A local representative of the Concessionaire shall be available by telephone twenty-four (24) hours per day, seven (7) days per week, and three hundred sixty-five (365) days per year in case of an emergency. The contact information for this representative shall be on record with County at all times.

- 6.13 Training Program. Concessionaire shall have an employee training program that must to be successfully completed by each of Concessionaire's employees working at the Airport within two (2) weeks of the date of hire as a condition of continued employment. The training program shall include a customer service component to provide employees with the knowledge, skills, and competencies required to increase overall customer satisfaction. The training program shall also include disability sensitively training relevant to each employee's job duties, information regarding Concessionaire's nondiscrimination obligations under this Agreement, training on how to effectively assist individuals with limited English proficiency and information regarding Concessionaire's and County's policies and procedures applicable to Concessionaire's employees at the Airport. Concessionaire shall provide the Department with complete copies of its training materials upon the Department's request. All employees with direct day-to-day contact with the public shall complete a "refresher" customer service and disability sensitivity training course no less than once a year, and any employee who receives two (2) or more complaints, regardless of the outcome of any investigation or resolution of such complaints, shall be required to attend the next available "refresher" course. Upon request by Department, Concessionaire shall provide Department a complete list of all employees who have successfully completed the training program and any "refresher" courses.

ARTICLE 7 - CONSTRUCTION OF IMPROVEMENTS

- 7.01 General. Concessionaire shall make no additions, alterations or improvements to the Premises, or improvements constructed thereon, without the prior written approval of the Department. Any such additions, alterations or improvements shall be made in accordance with the construction requirements contained herein and as established by the Department. All improvements constructed or placed on the Premises shall be of attractive construction and first-class design, shall comply with any and all applicable governmental laws, regulations, rules and orders, shall follow standard construction methods, and shall be constructed in accordance with the requirements of this Article. Approval of the Department shall extend to and include architectural and aesthetic matters and the Department may, in its sole and absolute discretion, reject any layout or design proposals submitted and require Concessionaire to resubmit any such layout or design proposals until Concessionaire receives the Department's approval.
- 7.02 Initial Leasehold Improvements. Concessionaire shall complete construction of all leasehold improvements necessary to open the Premises to the public within twelve (12) months of the Effective Date of this Agreement, which shall include, but not be limited to, expansion of the kitchen and food preparation areas, construction of a new bar, and

buffet station, renovation of reception, office and luggage storage areas and restrooms, as more particularly detailed in Concessionaire's Proposal, and the installation of all necessary security and access controls as required by the Department and TSA ("Initial Leasehold Improvements"), unless otherwise approved by the Department in writing. Concessionaire agrees to expend a minimum of Five Hundred Sixteen Thousand Dollars (\$516,000) ("Minimum Investment") on the construction, furnishing, and equipping the Premises. Costs that may be counted toward the Minimum Investment shall include all costs paid for work performed, services rendered and materials furnished for the construction of the Initial Leasehold Improvements, subject to the following terms, conditions and limitations:

- A. Only true third party costs and payments made by Concessionaire shall be included in the Minimum Investment. Costs incurred by any sublessee, licensee or other occupant of the Premises, or any portion thereof, other than Concessionaire shall not be included in the Minimum Investment.
- B. Costs for consultants (other than engineering and design consultants, as provided above) shall not be included in the Minimum Investment. Legal fees and accountant fees shall not be included in the Minimum Investment.
- C. Finance and interest expenses shall not be included in the Minimum Investment.
- D. Administrative, supervisory and overhead or internal costs of Concessionaire shall not be included in the Minimum Investment.

7.03 Construction Plans.

- A. Prior to constructing any improvements on the Premises, including, but not limited to, the Initial Leasehold Improvements, Concessionaire shall cause detailed preliminary construction plans and specifications for the improvements to be prepared (hereinafter collectively referred to as the "Plans") and deliver the preliminary Plans to the Department for review, comment and approval, which approval shall not be unreasonably withheld, conditioned or delayed. The Department shall review the preliminary Plans and provide a written response to Concessionaire within thirty (30) days of delivery of the preliminary Plans to County for review. In the event the Department does not approve the preliminary Plans, Concessionaire will be notified of the reasons for the disapproval and the necessary modifications and/or alterations to the Plans. Concessionaire shall resubmit modified Plans to the Department within thirty (30) days of the date of the Department's written notice of disapproval. Within sixty (60) days following approval of the preliminary Plans by the Department, Concessionaire shall prepare or cause to be prepared final working Plans in substantial conformity to the approved preliminary Plans and shall submit the final working Plans to the Department for approval. Upon approval of the final working Plans by the Department, Concessionaire shall obtain all permits and other government approvals required for the commencement of construction. Prior to

commencement of construction, Concessionaire shall deliver to the Department one (1) complete set of the final working Plans as approved by the governmental agencies exercising jurisdiction thereover. Minor changes from the final working Plans shall be permitted if such changes may be reasonably inferred from the final working Plans, or if they are made to comply with requirements of any governmental agency exercising jurisdiction thereover.

- B. Within sixty (60) days following Concessionaire's receipt of a certificate of occupancy or certificate of completion, as appropriate, for improvements constructed pursuant to this Article, Concessionaire, at its sole cost and expense, shall have prepared and deliver to the Department: one (1) complete set of as-built drawings in a hardcopy format, one (1) complete set of as-built drawings in a PDF format and one (1) complete set of as-built drawings in Auto CADD files in the latest version acceptable by the Department. All improvements constructed upon the Premises shall be completed at Concessionaire's sole cost and expense and shall be completed in accordance with the approved Plans.
- C. Within sixty (60) days following the substantial completion of construction of the Initial Leasehold Improvements, Concessionaire shall, at its sole cost and expense, have prepared and delivered to the Department a written agreed upon procedures examination report detailing: (a) the costs of the Initial Leasehold Improvements to evidence satisfaction of the Minimum Investment and (b) Net Book Value of the Initial Leasehold Improvements as of the Date of Beneficial Occupancy ("Investment Report"). The Capital Investment Report shall be in a form and substance reasonably satisfactory to County and shall be prepared and certified by a qualified and licensed independent Certified Public Accountant, not a regular employee of Concessionaire, selected by Concessionaire, and shall include an opinion regarding the information contained in the schedules. The Capital Investment Report shall not contain 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, regarding the information contained in the required schedules.
- D. Except as otherwise provided for herein, if the costs incurred by Concessionaire for the Initial Leasehold Improvements are less than the required Minimum Investment, Concessionaire shall pay the difference to County within thirty (30) days of delivery of the Investment Report. In the event Concessionaire fails to make the required Minimum Investment, County may elect to require Concessionaire to expend the remaining Minimum Investment on the future improvement and refurbishment of the Premises. In the event County elects to defer payment of such costs, the parties shall enter into an amendment to this Agreement to address the improvement and refurbishment of the Premises required to be made by Concessionaire pursuant to this paragraph.

- 7.04 Construction Bonds. Concessionaire shall ensure that all improvements are constructed to completion in accordance with the approved Plans and that all persons or entities performing work or providing materials relating to such improvements including, but not limited to, all contractors, subcontractors, laborers, materialmen, suppliers and professionals, are paid in full for such services and materials. Prior to the commencement of any improvements to the Premises, the estimated cost of which exceeds Fifty Thousand Dollars (\$50,000), Concessionaire shall cause to be made, executed and delivered to County at Concessionaire's sole cost a bond that is in a form and substance reasonably satisfactory to County, that a company reasonably acceptable to County issues, and that guarantees Concessionaire's compliance with its obligations arising under this Agreement. 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. In lieu of the bond required by this Section, Concessionaire may file with County an alternative form of security in the form of cash, money order, certified check, cashier's check, clean irrevocable letter of credit, or security of a type listed in Part II of Chapter 625, Florida Statutes; provided, however, the form of the security and company issuing such security, if applicable, shall be subject to the prior written approval of County and shall be in accordance with County's standard policies and procedures. Any such alternative form of security shall be for the same purpose and be subject to the same conditions as those applicable to the bond required by this Section. Any such alternative form of security may be reduced by Concessionaire subject to approval of County during the construction of the improvements, but not more than once per month, based upon the percentage of completion of the improvements plus retainage, and the Department, on behalf of County, may execute such certificates, notices or other documents as may be necessary to effectuate such reduction. Concessionaire shall provide County evidence reasonably satisfactory to County evidencing the percentage of completion of the improvements, including, but not limited to, an executed Application and Certification for Payment (A1A Document G702) indicating the balance to finish the work, including retainage.
- 7.05 Contractor Requirements. Concessionaire shall require contractors to furnish for the benefit of County a payment and performance bond satisfying the requirements of Section 255.05, Florida Statutes, in a form approved by County. Concessionaire shall require its contractors to name County as a dual obligee on the bond(s). 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 the Risk Management Department may reasonably require. The Risk Management Department may require additional insurance for any alterations or improvements approved hereunder, in such amounts as the Risk Management Department reasonably determines to be necessary.
- 7.06 No Liens. Concessionaire 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 and understands that County's estate shall not be subject to such liability. Concessionaire shall notify any and all parties or entities

performing work or providing materials relating to any improvements made by Concessionaire of this provision of this Agreement. If so requested by County, Concessionaire shall file a notice satisfactory to County in the Public Records of Palm Beach County, Florida, stating that County's estate shall not be subject to liens for improvements made by Concessionaire. In the event that a construction lien is filed against the 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 thirty (30) days from the date of filing. In the event that Concessionaire fails to transfer or satisfy such claim within the thirty (30) day period, County may do so and thereafter charge Concessionaire all costs incurred by County in connection with the satisfaction or transfer of such claim, including attorneys' fees, and Concessionaire shall promptly pay to County all such costs upon demand.

ARTICLE 8 - MAINTENANCE AND REPAIR

- 8.01 General Obligations. Concessionaire shall be obligated, without cost to County, to maintain the Premises in good appearance, repair and safe condition. Concessionaire shall maintain and repair all improvements on the Premises and all furnishings, fixtures, and equipment therein, whether installed by Concessionaire or by others, which shall include replacing worn wall coverings and repainting and replacing or repairing worn flooring, fixture and furnishings. Concessionaire shall be obligated to maintain all improvements constructed by Concessionaire outside the Premises with County's approval in good appearance, repair and safe condition, including, but not limited to, seating areas, flooring and other similar exterior improvements and/or features associated with the Premises. County shall have the right to cause any improvements constructed by Concessionaire outside the Premises to be removed upon thirty (30) days prior written notice to Concessionaire. Concessionaire's responsibilities include the maintenance, repair, and replacement of all utility lines and connections, wiring, communication cables, fire alarm systems and protection devices, panels, and associated parts and equipment located within or exclusively serving the Premises. All such maintenance and repairs shall be of quality equal to the original in materials and workmanship, and all work, including color schemes, shall be subject to the prior written approval of County.
- 8.02 Preventative and Routine Maintenance. Concessionaire shall establish a preventative and routine maintenance program to maintain the Premises in like-new condition. County shall be the sole judge of the quality of maintenance of the Premises. County or its authorized agents may, during Concessionaire's working hours and without notice, enter upon the Premises to determine if maintenance satisfactory to County is being performed. If it is determined that such maintenance is not satisfactory, County shall notify Concessionaire in writing. If such maintenance is not performed to County standards by Concessionaire within seven (7) days after receipt of written notice, County or its agents thereafter shall have the right to enter upon the Premises and perform the maintenance thereof and Concessionaire agrees to promptly reimburse County for the cost thereof, plus a twenty-five percent (25%) administrative overhead.

- 8.03 Routine Refurbishment. On or about the commencement of each Contract Year, commencing with the second Contract Year, representatives of County and Concessionaire shall tour the Premises to determine what routine refurbishment, if any, is required to maintain the Premises in first-class condition. Within thirty (30) days of the date of the tour, County will provide Concessionaire with a report detailing the items in need of refurbishment, and Concessionaire shall promptly undertake such refurbishment at its sole cost and expense. If Concessionaire and County cannot agree upon the type and extent of refurbishment, County may, in its sole discretion, determine the refurbishment required. For purposes of this paragraph, "refurbishment" shall mean the routine repainting or redecoration of concession space within the Premises, including the replacement or repair of worn or damaged carpet, tile, furnishings, fixtures, finishes, or equipment.
- 8.04 Hazardous Conditions. Upon discovery, Concessionaire shall immediately give notice to the Department of any hazardous or potentially hazardous conditions in the Premises or Terminal. Any hazardous or potentially hazardous condition in the Premises shall be corrected immediately by Concessionaire upon receipt of notice from the Department. At the direction of the Department, Concessionaire shall close the Premises until such hazardous or potentially hazardous condition is rectified. The provisions of Article 20 shall not apply to this Section.
- 8.05 Maintenance Personnel. Concessionaire shall employ sufficient personnel, and provide the necessary equipment, to keep the Premises and all furnishings, fixtures, and equipment clean, neat, safe, sanitary, and in good working order and condition at all times.
- 8.06 Health and Safety Regulations. Concessionaire shall comply with all health and sanitary regulations adopted by all applicable governing bodies and all rules and regulations promulgated by County. Concessionaire shall give access for inspection purposes to any duly authorized representatives of such governing bodies. Concessionaire shall provide County with copies of all inspection reports within forty eight (48) hours of receipt.
- 8.07 Trash/Refuse. Concessionaire shall provide a complete and proper arrangement for the adequate sanitary handling of all trash and other refuse caused as a result of the operation of the Premises and shall provide for its timely removal and placement in the Airport-provided dumpster. Piling of boxes, cartons, barrels, or other similar items in view of a public area is prohibited. Concessionaire shall keep any areas used for trash and garbage storage prior to removal from Airport in a clean and orderly condition so as not to attract rodents, pests, or birds, or create an offensive odor. In transporting trash and refuse from the Premises, Concessionaire shall use only carts, vehicles, or conveyances that are covered, leak proof, and equipped with wheels suitable for operating on carpets and tile without damaging the flooring. Equipment used to transport trash shall not be left unattended in any public area of the Terminal. Disposal shall take place during hours as may be approved by County. Trash or debris shall not be allowed to accumulate or be stored on any portion of the Premises.

- 8.08 Janitorial Services. Concessionaire shall at all times maintain the Premises, including all customer seating areas, and all equipment and materials used by Concessionaire in a clean and sanitary condition, including, but not limited to, keeping them free of rubbish, dirt, insects, rodents and vermin in accordance with the policies set by County as well as all laws, statutes, ordinances, and regulations set by the local and regional governmental agencies. All cooking equipment, refrigeration, freezer, storage units, and piping shall be constructed to facilitate the necessary cleaning and sterilization. Concessionaire shall provide and maintain trash receptacles, as required, in any customer seating areas provided within the Premises.

ARTICLE 9 - SIGNS, DISPLAYS AND ADVERTISING

- 9.01 Signs. Concessionaire shall install and maintain appropriate signage in or upon the Premises, provided that the location, design, installation, and maintenance of all signage shall be subject to the provisions of Article 7 and the prior written approval of the Department.
- 9.02 Advertising. Concessionaire shall not install any advertising within the Premises or Airport advertising the goods and services of third parties without the Department's prior written approval, which may be granted or withheld in the Department's sole and absolute discretion. Notwithstanding the foregoing, Concessionaire shall be permitted to promote its own goods and services at the Premises as well as the benefits of membership in any lounge networks that Concessionaire is associated with.

ARTICLE 10 - UTILITIES

- 10.01 County Obligations. County shall provide and maintain, water, sewer, general lighting, electrical power, and heating and air-conditioning for the Terminal. Electrical service shall be provided to the perimeter of the Premises only, with build-out within the Premises the responsibility of Concessionaire. At no time shall Concessionaire's use of electric current exceed the capacity of the wiring servicing the Premises. Temperatures in the Premises shall be comparable to temperatures within the Terminal. If Concessionaire requires additional capacity for lighting, electrical power, water, telephone outlets, or adjustments to the heating and air-conditioning system, beyond the capacities provided by County, such additional improvements or services shall be subject to the prior written approval of the Department, and any such approved improvements or services shall be made at Concessionaire's expense. County shall not be liable for any interruptions to the utility services provided at the Airport or to the Premises.
- 10.02 Utility Charges. Concessionaire agrees to pay for all utilities it uses, including deposits, installation costs and service charges. No such payment of utilities shall constitute a payment of rent or credit against any other amount due under this Agreement. Meters for the utilities shall be installed by Concessionaire. In the event meters are impractical, the Department shall cause a monetary estimate of annual utility consumption to be prepared, which shall be payable monthly and adjusted from time to time by the Department based on increases in utility rates.

10.03 Additional Services. Concessionaire may, at its own expense, request and receive telephone services, Wi-Fi services, or communication systems and shall obtain written approval from County before installation. Shared Concessionaire Wi-Fi services may be installed by County and Concessionaire may be required to obtain their Wi-Fi services through County's Wi-Fi provider in the future.

ARTICLE 11 - TITLE TO IMPROVEMENTS

Except as otherwise provided for herein, all fixtures and improvements that are constructed or placed at the Airport, excluding furnishings, equipment and trade fixtures, shall become the absolute property of County upon the expiration or earlier termination of this Agreement and County shall have every right, title, and interest therein, free and clear of any liens, mortgages or encumbrances. Upon the request of County, Concessionaire shall provide County with a bill of sale or other evidence of the transfer of ownership of improvements pursuant to this Section together with evidence satisfactory to County that the improvements are free from liens, mortgages and other encumbrances. Notwithstanding the foregoing, County may require the removal of any or all improvements installed by Concessionaire on the Airport upon the expiration or earlier termination of this Agreement.

ARTICLE 12 - AIRPORT SECURITY PROGRAM

Concessionaire shall observe all security regulations and other requirements of any agency of the Federal government, including, but not limited to, the FAA and TSA, applicable to Concessionaire, as such regulations or requirements have been or may be amended, including without limitation, Title 14, Part 139 of the Code of Federal Regulations and Title 49, Part 1542 of the Code of Federal Regulations. Concessionaire agrees to comply with the Airport Security Program and the Air Operations Area (AOA) Vehicle Access Program, and amendments thereto, and to comply with such other rules and regulations as may be reasonably prescribed by County, and to take such steps as may be necessary or directed by County to insure that sublessees, employees, invitees and guests observe these requirements. Concessionaire shall conduct background checks of its employees to the extent required by any Federal, State or local law or as required by FAA, TSA or County. The Department shall have the right to require the removal or replacement of any employee of Concessionaire at the Airport that the Department has reasonably determined may present a risk to public safety or the security of the Airport. If as a result of the acts or omissions of Concessionaire, its sublessees, employees, invitees or guests, County incurs any fines and/or penalties imposed by the FAA or TSA; any expense in enforcing the regulations of the FAA or TSA or the rules or regulations of County; or any expense in enforcing the Airport Security Program, then Concessionaire agrees to pay to County all such costs and expenses, including all costs of administrative proceeding, court costs, and attorneys fees and all costs incurred by County in enforcing this provision. Concessionaire further agrees to rectify any security deficiency or other deficiency as may be determined by County, the FAA or TSA. In the event Concessionaire fails to remedy any such deficiency, County may do so at the cost and expense of Concessionaire. Concessionaire acknowledges and agrees that County may take whatever action is necessary to rectify any security deficiency or any other deficiency identified by County, the FAA or TSA.

ARTICLE 13 - INSURANCE

Unless otherwise specified in this Agreement, Concessionaire shall, at its sole expense, maintain in full force and effect at all times during the Term and any extension thereof, the insurance limits, coverages and endorsements required herein. Concessionaire acknowledges and agrees that the requirements contained in this Article, or County's review or acceptance of insurance, shall not in any manner limit or qualify the liabilities and obligations assumed by Concessionaire under this Agreement.

- 13.01 Commercial General Liability. Concessionaire shall maintain Commercial General Liability Insurance with limits of liability not less than One Million Dollars (\$1,000,000) each occurrence, including coverage for, but not limited to, Premises/Operations, Products/Completed Operations, Contractual Liability, Personal/Advertising Injury and Cross Liability. This coverage shall be provided on a primary basis.
- 13.02 Liquor Liability. Concessionaire shall maintain Liquor Liability coverage with limits of One Million Dollars (\$1,000,000) each occurrence. Coverage may be provided by way of the Commercial General Liability policy utilizing a Liquor Liability endorsement. This coverage shall be provided on a primary basis.
- 13.03 Business Auto Liability. Concessionaire shall maintain Business Automobile Liability Insurance with limits of liability 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 maintain only Hired & Non-Owned Auto Liability Insurance. This coverage may be satisfied by way of endorsement to the Commercial General Liability/Airport Liability policy, or a separate Business Auto Liability policy. This coverage shall be provided on a primary basis.
- 13.04 Business Interruption Insurance. Concessionaire shall maintain Business Interruption Insurance, which shall include Rent Insurance in an amount not less than the annual rental payable hereunder. Rent Insurance shall be carried in the name of Concessionaire as named insured and shall be payable to County to be applied to rental for the period from the occurrence of the damage or destruction until completion of the restoration or repairs.
- 13.05 Worker's Compensation & Employers Liability. Concessionaire shall maintain Worker's Compensation & Employers Liability in accordance with Chapter 440, Florida Statutes, and Federal law. This coverage shall be provided on a primary basis.
- 13.06 Umbrella or Excess Liability. If necessary, Concessionaire may satisfy the minimum limits required above for Commercial General Liability and/or Business Auto Liability coverage under Umbrella or Excess Liability Insurance. The Umbrella or Excess Liability policy shall have an aggregate limit not less than the highest "each occurrence" limit for the Commercial General Liability, Business or Auto Liability. County shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability policy, unless the Certificate of Insurance notes the Umbrella or Excess Liability policy provides coverage on a "Follow-Form" basis.

13.07 Property, Wind & Flood Insurance.

- A. Builder's Risk Insurance. Concessionaire shall maintain Builder's Risk insurance covering the Concessionaire's betterments and improvements during the course of construction at the Premises in an amount at least equal to one hundred percent (100%) of the estimated completed property or project value as well as subsequent modifications of that sum. Coverage shall be provided on an All-Risk basis including coverage for the perils of wind and flood. Concessionaire agrees this coverage shall be provided on a primary basis.
- B. After construction is completed, Concessionaire shall maintain:
1. Property insurance in an amount not less than one hundred percent (100%) of the total replacement cost of the betterments and improvements made by or on behalf of Concessionaire to the Premises as well as Concessionaire's contents located on the Premises. The settlement clause shall be on a Replacement Cost basis. Coverage shall be written with a Special - Cause of Loss (All-Risk) form and include an endorsement for Ordinance & Law in an amount not less than twenty-five percent (25%) of the Property insurance limit. This coverage shall be provided on a primary basis.
 2. Flood insurance, regardless of the flood zone, in an amount not less than one hundred percent (100%) of the total replacement cost of the betterments and improvements to the Premises made by or on behalf of Concessionaire as well as Concessionaire's contents located on the Premises, or the maximum amount available from the National Flood Insurance Program. This coverage shall be provided on a primary basis.
 3. Windstorm insurance, unless included as a covered peril in the property insurance, in an amount not less than one hundred percent (100%) of the total replacement cost of the betterments and improvements to the Premises made by or on behalf of Concessionaire as well as Concessionaire's contents located on the Premises, or the maximum amount available under the Florida Windstorm Underwriting Association. This coverage shall be provided on a primary basis.

13.08 Additional Insured Endorsement. Concessionaire shall endorse County as "Additional Insured" on each of the liability policies required to be maintained by Concessionaire hereunder, with the exception of Worker's Compensation/Employers Liability and Business Auto Liability. The "Additional Insured" endorsements shall provide coverage on a primary basis. Each "Additional Insured" endorsement shall read: "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, and Employees, c/o Insurance Tracking Services, Inc., P.O. Box 20270, Long Beach, CA 90801", or as otherwise approved or modified by County.

13.09 Certificate of Insurance.

- A. Concessionaire shall provide the Department with a certificate of insurance, or certificates of insurance, evidencing limits, coverages and endorsements required herein within the time frames set forth below:
1. Commercial General Liability insurance prior to the Effective Date;
 2. Business Auto Liability insurance prior to allowing vehicles on to the Premises;
 3. Liquor Liability, Business Interruption and Worker's Compensation insurance on or before the Date of Beneficial Occupancy.
 4. Builder's Risk insurance and Property, Wind and Flood insurance within the time frames set forth in Section 13.07.
- B. All certificates of insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. In the event coverage is cancelled or is not renewed, Concessionaire shall provide County a new certificate of insurance or certificates of insurance evidencing replacement coverage no later than thirty (30) days prior to the expiration or cancellation of the coverage. The certificate holder's name and address shall read "Palm Beach County Board of County Commissioners c/o Insurance Tracking Services, Inc., P.O. Box 20270, Long Beach, CA 90801", or as otherwise approved or modified by County.

13.10 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. The requirements of this paragraph shall not apply to any policy, a condition to which the policy specifically prohibits such an endorsement, or voids coverage if Concessionaire enters into such an agreement on a pre-loss basis.

13.11 Premiums and Proceeds. Concessionaire shall not keep, use, sell or offer for sale in or upon the Premises any article which may be prohibited by any, condition, provision, or limitation of the property, flood or wind insurance policies. Concessionaire shall be responsible for all premiums, including increases, for property, flood and wind insurance policies. Concessionaire agrees that all property, flood and windstorm insurance proceeds shall be made available for use to promptly replace, repair or rebuild the building, betterments and improvements, including, but not limited to, those made by or on behalf of Concessionaire.

13.12 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.

13.13 Right to Review or Adjust 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 thereof. 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.

13.14 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 14 - DAMAGE OR DESTRUCTION

14.01 Concessionaire's Obligations. Concessionaire hereby assumes full responsibility for the condition of the Premises and character, acts and conduct of all persons admitted to the 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 Premises, improvements, or any part thereof, shall be damaged in any way whatsoever, by the act, default or negligence of Concessionaire or a Concessionaire Party, Concessionaire shall at its sole cost and expense, restore the Premises to the condition existing prior to such damage. Concessionaire shall promptly commence such restoration and diligently pursue such restoration to completion in accordance with the construction requirements set forth in Article 7. If Concessionaire fails to restore the Premises as required above, County shall have the right to enter the Premises and perform the necessary restoration, and Concessionaire shall fully assume and be liable to County for payment of the costs incurred by County, plus a twenty-five percent (25%) administrative overhead, which shall be due and payable within thirty (30) days of the date of County's invoice.

14.02 Insurance Proceeds. Upon receipt by Concessionaire of the proceeds of any insurance policy or policies as a result of or associated with damage pursuant to Section 14.01, the proceeds shall be deposited in an escrow account approved by the Department so as to be available to pay for the cost of repair, replacement or rebuilding the Premises. Such proceeds shall be disbursed during construction to pay the cost of such work. If the amount of the 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 of repair, replacement or rebuilding the Premises, the excess amount shall be remitted to Concessionaire.

- 14.03 Minor Damage. In the event that the Premises are damaged by casualty for which Concessionaire is not responsible pursuant to Section 14.01, and such damage does not render the Premises untenable, as reasonably determined by County, County shall make commercially reasonable efforts to restore the Premises to its condition existing as of the Effective Date of this Agreement, subject to the provisions of Section 14.05 below. In such event, any and all payments due County pursuant to this Agreement shall continue without abatement.
- 14.04 Major Damage. In the event the Premises are damaged by casualty for which Concessionaire is not responsible pursuant to Section 14.01 hereof and such damage renders the Premises untenable in whole or in part, as reasonably determined by the County, then County may, at County's sole option: (a) elect to restore the Premises, subject to the provisions of Section 14.05 below, or (b) terminate this Agreement. County shall notify Concessionaire of County's election within sixty (60) business days of the date of such casualty. In the event County elects to restore the Premises, County shall use commercially reasonable efforts to complete such restoration within a reasonable period of time. County shall not be responsible for any delay in such restoration arising through no fault of County. Concessionaire shall be entitled to a pro-rata abatement of the Minimum Annual Guarantee due hereunder commencing with the date of such casualty and ending upon substantial completion of restoration of the Premises. In the event that County elects to terminate this Agreement, Concessionaire shall immediately fulfill any outstanding obligations which arose prior to or as a consequence of such casualty, whereupon this Agreement shall terminate, and the parties shall be released from all further obligations hereunder except for those which expressly survive termination or expiration hereof. Concessionaire hereby waives any claims relating to such termination.
- 14.05 Limitations and Exclusions. County's obligation to restore or reconstruct the Premises pursuant to this Article shall be limited to returning the Premises to the condition in which it existed as of the Effective Date of this Agreement. Notwithstanding any provision of this Agreement to the contrary, County's obligation shall further be limited by the amount of any insurance proceeds available to County for such restoration or reconstruction. Concessionaire agrees that in the event County elects to restore or reconstruct the Premises, Concessionaire shall, at its sole cost and expense, proceed with commercially reasonable efforts to reconstruct and replace the tenant finishes, improvements, furnishings, fixtures and equipment installed by or for the benefit of Concessionaire in or about the Premises. Such reconstruction and replacement shall be completed in a manner and condition at least equal to that which existed prior to such damage or reconstruction and shall be completed in accordance with the plans and specifications approved by County pursuant to Article 7.

ARTICLE 15 - INDEMNIFICATION

Concessionaire shall protect, defend, reimburse, indemnify and hold the County Parties 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 (collectively referred to herein as "Damages") against, or in which County is named or joined, arising out of this Agreement or use or occupancy of the Premises by any Concessionaire Party, including, but not limited to 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 a Concessionaire Party's acts, omissions or operations hereunder, or the performance, non-performance or purported performance of a Concessionaire Party or any breach of the terms of this Agreement; provided, however, Concessionaire shall not be responsible to a County Party for Damages that are solely attributable to the negligence or willful misconduct of such County Party. Concessionaire further agrees to hold harmless and indemnify the County Parties 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 a Concessionaire Party's activities or operations or use of the 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 the laws of the State of Florida. The obligations arising under this Article shall survive the expiration or termination of this Agreement.

ARTICLE 16 - EXPIRATION OF AGREEMENT, DEFAULT, AND REMEDIES

- 16.01 Expiration. This Agreement shall automatically terminate and expire at the end of the Term.
- 16.02 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 failure by Concessionaire to pay the Concession Fee in accordance with the requirements of Article 5 or make 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.
 - B. The failure by Concessionaire to observe or perform any of the covenants, conditions or provisions of this Agreement to be observed or performed by Concessionaire, other than those described in paragraph A above, where such failure shall continue for a period of thirty (30) days after written notice from County to Concessionaire; provided, however, that if the nature of Concessionaire's default is such that more than thirty (30) days are reasonably required for its cure, then Concessionaire shall not be deemed to be in default if

Concessionaire commenced such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion.

- C. To the extent permitted by law, (1) the making by Concessionaire or any guarantor hereof of any general assignment, or general arrangement for the benefit of creditors; (2) 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]; (3) the appointment of a trustee or receiver to take possession of substantially all of Concessionaire's assets located at the Airport or of Concessionaire's interest in this Agreement, where possession is not restored to Concessionaire within thirty (30) days; or (4) the attachment, execution or other judicial seizure of substantially all of Concessionaire's assets located at the Airport or of Concessionaire's interest in this Agreement, where such seizure is not discharged within thirty (30) days.
 - D. The discovery by County that any information given to County by Concessionaire relating to the RFP or this Agreement was materially false.
- 16.03 Remedies In the event of any such material default or breach by Concessionaire, County may, with or without notice or demand, pursue any available right or remedy at law or equity including the right, at its option, to immediately terminate this Agreement, by giving written notice to that effect. Such termination shall be without prejudice to County to any remedy for arrearages or payments due hereunder or breach of covenant or damages for the balance of the Concession Fee and other sums due hereunder, payable through the full Term of this Agreement, or any other damages or remedies whatsoever. Upon termination of this Agreement, 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.
- 16.04 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, that if the nature of County's obligations is such that more than sixty (60) days are required

for performance then County shall not be in default if County commences performance within such sixty (60) day period and thereafter diligently prosecutes the same to completion. Notwithstanding the foregoing, a notice of cancellation shall not be of any force or effect if County has remedied the default prior to receipt of Concessionaire's notice of cancellation.

- C. The lawful assumption by the United States Government or any authorized agency thereof, of the operation, control, or use of the Airport and facilities, or any substantial part or parts thereof, in such a manner as to substantially restrict the operation of Concessionaire, for a period of at least ninety (90) consecutive days.

16.05 Termination for Convenience. This Agreement may be terminated by County, with the Department acting on behalf of County, upon one hundred eighty (180) days advance written notice to Concessionaire. In the event County terminates this Agreement for convenience, County shall reimburse, or cause Concessionaire to be reimbursed for the unamortized cost of the Initial Leasehold Improvements. Reimbursements made pursuant to this Section shall be payable within ninety (90) days of the date of Concessionaire's surrender of the Premises to County. The unamortized costs of Initial Leasehold Improvements shall be determined by their Net Book Value. For purposes of this Agreement, "Net Book Value" means the value of the Initial Leasehold Improvements, excluding personal property (such as furnishings and equipment) and trade fixtures; less any accumulated depreciation. For purposes of this Section, accumulated depreciation shall be calculated on a straight line basis from the Date of Beneficial Occupancy to the end of the Term of this Agreement. Accumulated depreciation shall include any pro rata annual depreciation for any periods less than a year calculated on a monthly basis, rounded up to the nearest whole monthly period.

16.06 Surrender of Premises. Concessionaire shall immediately surrender the Premises to County in good and fit condition upon expiration or earlier termination of this Agreement, depreciation and wear from ordinary use for the purpose for which the Premises were leased being excepted. All repairs and obligations for which Concessionaire is responsible shall be completed by the earliest practical date prior to surrender. Concessionaire shall remove all of its personal property and trade fixtures from the Premises prior to the expiration of this Agreement. Any personal property or trade fixtures not removed by Concessionaire shall, at the option of County, become property of County, or alternatively, may be disposed of by County at Concessionaire's expense.

16.07 Holdover. In the event Concessionaire fails to surrender the Premises to County after this Agreement has been terminated, County shall be entitled to collect from Concessionaire, double the amount of the monthly pro rata share of the Minimum Annual Guarantee each month, or portion thereof, during the holdover period. All other terms and conditions in such holdover shall be the same as herein provided.

ARTICLE 17 - ASSIGNMENT AND TRANSFER

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

ARTICLE 18 - LAWS, REGULATIONS, PERMITS AND TAXES

18.01 General.

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

18.02 Permits and Licenses Generally. Concessionaire shall, at its sole cost and expense, be strictly liable and responsible for obtaining, paying for, and maintaining current, and fully complying with, any and all permits, licenses and other governmental authorizations, however designated, as may be required at any time throughout the Term of this Agreement by any Federal, State or local governmental entity or any court of law having jurisdiction over Concessionaire or Concessionaire's operations and activities, for any activity of Concessionaire's conducted on the Airport 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 Airport 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.

18.03 Air and Safety Regulation. Concessionaire 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 Airport. 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.

18.04 Payment of Taxes. Concessionaire shall pay any and all taxes and other costs lawfully assessed against 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, 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 19 - 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 AIRPORT, UNLESS SUCH LOSS, DAMAGE, OR INJURY IS CAUSED SOLELY BY COUNTY'S SOLE NEGLIGENCE. THE PARTIES EXPRESSLY AGREE THAT UNDER NO CIRCUMSTANCES SHALL COUNTY BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE, AND NUISANCE), SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS. 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 20 - NOTICES

All notices and elections (collectively, "notices") to be given or delivered by or to any party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service or overnight mail, 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 mail, or on the date of transmission with confirmed answer back if by telecopier or fax if transmitted before 5PM on a Business Day and on the next Business Day if transmitted after 5PM or on a non-Business Day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby 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:

County:

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

With copy to:

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

Concessionaire:

Gideon Toal Management Services, LLC
500 West Seventh Street
Suite 534, Unit 21
Fort Worth, Texas 76102

With copy to:

Bourland, Wall & Wenzel, P.C.
Attn: David P. Dunning
301 Commerce, Suite 1500
Fort Worth, Texas 76102

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

ARTICLE 21 - GOVERNMENTAL RESTRICTIONS

- 21.01 Federal Right to Reclaim. In the event a United States governmental agency shall demand and take over the entire facilities of the Airport or Terminal 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 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.
- 21.02 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.
- 21.03 County Tax Assessment Right. None of the terms, covenants and conditions of this Agreement shall in any way be construed as a release or waiver on the part of County, as a political subdivision of the State of Florida, or any of the public officials of County of Palm Beach, of the right to assess, levy, and collect any ad valorem, non ad valorem, license, personal, intangible, occupation, or other tax which shall be lawfully imposed on the business or property of Concessionaire.
- 21.04 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 Airport 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.
- 21.05 Operation of Airports. Concessionaire expressly agrees for itself, its subleases, successors and assigns, to prevent any use of the Airport which would interfere with or adversely affect the operation, maintenance or development of the Airport, or otherwise constitute an Airport hazard.
- 21.06 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 22 - NON-DISCRIMINATION

22.01 Non-Discrimination in County Contracts. Concessionaire acknowledges that County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Concessionaire is prohibited from discriminating against any employee, applicant, or client because of race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity and expression, disability, or genetic information.

22.02 Federal Non-Discrimination Covenants.

- A. Concessionaire, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:
1. In the event facilities are constructed, maintained, or otherwise operated on the Premises for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Concessionaire will maintain and operate such facilities and services in compliance with all requirements imposed by the nondiscrimination acts and regulations listed in the Nondiscrimination Authorities (as hereinafter defined), as may be amended, such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
 2. No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of County property, including, but not limited to, the Premises.
 3. In the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
 4. Concessionaire shall comply with, and use the Premises in compliance with, the requirements imposed by or pursuant to the Nondiscrimination Authorities.
- B. In the event of breach of any of the above nondiscrimination covenants, County shall have the right to terminate this Agreement and to enter, re-enter, and repossess the Premises, and hold the same as if this Agreement had never been made or issued. This Agreement shall not be terminated pursuant to this paragraph until the procedures of 49 CFR Part 21 are followed and completed, including, the exercise or expiration of appeal rights.

- C. For purposes of this Article, the term "Non-Discrimination Authorities" includes, but is not limited to, the non-discrimination statutes, regulations and authorities listed in Appendix "E" of Appendix "4" of FAA Order 1400.11, Non-discrimination in Federally-Assisted Programs at the Federal Aviation Administration, as may be amended.
- D. Concessionaire shall comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates Concessionaire for the period during which Federal assistance is extended to the Airport through the Airport Improvement Program. In cases where Federal assistance provides, or is in the form of personal property; real property or interest therein; structures or improvements thereon, this provision obligates Concessionaire for the longer of the following periods: (a) the period during which the property is used by County or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which County or any transferee retains ownership or possession of the property.

22.03 Airport Concession Disadvantaged Business Enterprises ("ACDBE"). This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. It is the policy of County that ACDBEs shall have the maximum practicable opportunity to participate in the performance of contracts. 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 or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. Concessionaire agrees to include the aforementioned statement in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

22.04 Airport Concession Disadvantaged Business Enterprise Participation Goal.

- A. Concessionaire agrees that the ACDBE participation in this Agreement shall be at least equal to twenty-six percent (26 %) throughout the Term of this Agreement and any extension thereof, or Concessionaire shall clearly demonstrate to the Department its good faith efforts to do so in a manner acceptable to the Department.
- B. "Good faith efforts" are those efforts that could reasonably be expected to result in ACDBE participation. Concessionaire shall actively seek to obtain ACDBE participation in this Agreement and shall document those efforts. Efforts that are merely "pro forma" are not considered good faith efforts in meeting the ACDBE goal. In determining whether or not a Concessionaire has made such good faith

efforts, the Department will refer to the description of good faith efforts as provided in 49 CFR Parts 23 and 26.

- C. For the purpose of verifying Concessionaire's good faith efforts, Concessionaire shall keep and maintain such books of account and records as necessary to document compliance with 49 CFR Part 23, as now or hereafter amended or any successor regulation, and this Section. County and its representatives shall have the right to inspect and audit such books of account and records upon reasonable notice to Concessionaire at a location convenient for County and its representatives.
- D. Concessionaire shall provide written quarterly reports on or before the twentieth (20th) day of each reporting month (January, April, July and October of each Contract Year) to the Department, in a form and detail satisfactory to the Department, as to the participation of ACDBE's in this Agreement. The quarterly reports shall detail ACDBE participation for each quarter, as well as the cumulative "to date" participation for the entire Contract Year. Quarterly reports shall be certified by an officer of Concessionaire as being true and accurate. If requested by the Department, the quarterly reports shall include certification of receipt payment from the ACDBE firms participating in this Agreement, in a form and detail satisfactory to the Department. In the event the ACDBE participation level drops below the established ACDBE participation goal, Concessionaire shall take immediate corrective measures to ensure that the ACDBE participation is increased to the established ACDBE participation goal. Concessionaire shall document its good faith efforts to achieve the ACDBE participation goal and provide written reports to the Department documenting such good faith efforts. The Department may require the reports required hereunder to be submitted electronically.
- E. Concessionaire shall use good faith efforts to replace any ACDBE that is terminated or has otherwise failed to complete its agreement or subcontract with another ACDBE. Concessionaire shall notify the Department of any ACDBE's inability or unwillingness to perform and shall provide reasonable documentation. Concessionaire shall obtain prior approval from the Department of the substitution an ACDBE.
- F. Concessionaire shall provide the Department with copies of all subcontracts and agreements with ACDBE firms providing goods or services under this Agreement upon request.

22.05 Americans with Disabilities Act. Concessionaire shall comply with all applicable requirements of the Americans with Disabilities Act, the State of Florida Accessibility Requirements Manual, and Section 504 of the Rehabilitation Act of 1973 and all implementing rules, regulations and orders, including, but not limited to 28 CFR Parts 35 and 36 and 49 CFR Parts 27 and 37, and shall cooperate with County to ensure

Concessionaire remains in compliance with such requirements throughout the Term of this Agreement.

ARTICLE 23 - MISCELLANEOUS

- 23.01 County Not Liable. County shall not be responsible or liable to Concessionaire for any claims for compensation or any losses, damages or injury sustained by Concessionaire resulting from (1) cessation for any reason of air carrier operations at the Airport or (2) diversion of passenger traffic to any other facility. County shall not be responsible or liable to Concessionaire for any claims for compensation or any losses, damages or injury whatsoever sustained by Concessionaire including, but not limited to, those resulting from failure of any water supply, heat, air conditioning or electrical current or from an act of God, state of war, terrorism, civilian commotion or riot or any cause beyond the control of County. All personal property placed on or moved on to the Airport shall be at the sole risk of Concessionaire. County shall not be liable for any damage or loss of any personal property placed or moved on to the Airport.
- 23.02 Relationship of the Parties. Concessionaire, or any successor in interest to this Agreement, is and shall be deemed to be an independent contractor and operator and shall be solely responsible to all parties for its respective acts or omissions, and County shall in no way be responsible therefor.
- 23.03 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.
- 23.04 Subordination to Bond Resolution. This Agreement and all rights granted to Concessionaire hereunder are expressly subordinated and subject to the lien and provisions of the pledge, transfer, hypothecation or assignment made by County in the Bond Resolution, and County and Concessionaire agree that to the extent permitted by authorizing legislation, the holders of the Bonds or their designated representatives shall exercise any and all rights of County hereunder to the extent such possession, enjoyment and exercise are necessary to insure compliance by Concessionaire and County with the terms and provisions of this Agreement and Bond Resolution.
- 23.05 Subordination to Federal and State 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, the United States of America, the State of Florida or any of their 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.

- 23.06 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 Concessionaire's operations, nor as enabling, permitting, or creating any cause of action or claim arising out of the lawful exercise of County's governmental authority.
- 23.07 Rights Reserved to County. All rights not specifically granted Concessionaire by this Agreement are reserved to County.
- 23.08 Invalidity of Clauses. The invalidity of any portion, article, paragraph, provision clause, or any portion thereof of this Agreement shall have no effect upon the validity of any other part or portion hereof.
- 23.09 Venue. To the extent allowed by law, the venue for any action arising from this Agreement shall be in Palm Beach County, Florida.
- 23.10 Governing Law. This Agreement shall be governed by and in accordance with the laws of the State of Florida.
- 23.11 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.
- 23.12 Paragraph Headings. The headings of the various articles and sections of this Agreement, and its Table of Contents, are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.
- 23.13 Binding Effect. The terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors, assigns and sublessees, if any. This provision shall not constitute a waiver of any conditions against assignment or subletting.
- 23.14 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.

- 23.15 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.
- 23.16 Scrutinized Companies. As provided in Section 287.135, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, the Concessionaire certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to Section 215.4725, Florida Statutes. When contract value is greater than \$1 million: As provided in Section 287.135, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, the Concessionaire certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or is engaged in business operations in Cuba or Syria. If the County determines, using credible information available to the public, that a false certification has been submitted by Concessionaire, this Agreement may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed, pursuant to Section 287.135, Florida Statutes. Said certification must also be submitted at the time of Agreement renewal, if applicable.
- 23.17 Annual Appropriation. Nothing in this Agreement shall obligate County during any fiscal year to expend money or incur any liability that involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. County's obligations under this Agreement, which involve the expenditure of money, shall be subject to annual budgetary funding and appropriations by the Palm Beach County Board of County Commissioners.
- 23.18 Conflict. In the event of any conflict and for purposes of resolving any disputes which may arise regarding this Agreement, the RFP, or Concessionaire's Proposal, the order-of-precedence shall be (1) this Agreement; (2) the RFP; and (3) Concessionaire's Proposal.
- 23.19 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 County or Department, rather than any implied standard of good faith, fairness or reasonableness. Wherever this Agreement requires County or Department's consent or approval or permits County or Department to act, such consent, approval or action may be given or performed by the Airport Director. If Concessionaire requests 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.

- 23.20 Excusable Delay. Any party in performing under this Agreement shall use reasonable efforts to remedy the cause or causes of an excusable delay. Excusable delays are those delays due to force majeure, acts of God, fire, flood, earthquake, explosion, riot, sabotage, windstorm, or labor dispute, and shall toll the time to perform under this Agreement.
- 23.21 Incorporation by References. All terms, conditions, specifications of the RFP, Concessionaire's Proposal and all exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Agreement by reference.
- 23.22 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.
- 23.23 No recording. Neither this Agreement, nor any memorandum or short form hereof, shall be recorded in the Public Records of Palm Beach County, Florida.
- 23.24 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.
- 23.25 Inspections. The authorized employees and representatives of County and any applicable federal, state, and local governmental entity having jurisdiction hereof shall have the right to inspect the Premises at all reasonable times for the purposes of compliance with the provision of this Agreement and/or applicable laws.
- 23.26 No Third Party Beneficiaries. No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement including but not limited to any citizen or employees of County and/or Concessionaire.
- 23.27 Non-exclusive Rights. Concessionaire acknowledges and agrees that Concessionaire's rights under this Agreement are non-exclusive with the exception of the exclusive right to occupy and use the Premises for the purposes set forth herein. Notwithstanding any provision of this Agreement to the contrary, County shall retain the right to grant the same or similar privileges under separate agreements to other lessees or concessionaires at the Airport.
- 23.28 Radon. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from County's public health unit.

{Remainder of page intentionally left blank}

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

ATTEST:
SHARON R. BOCK
CLERK & COMPTROLLER

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

By: _____
Deputy Clerk

By: _____
Melissa McKinlay, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: _____
County Attorney

By: *Jim Kelly*
Director, Department of Airports

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

GIDEON TOAL MANAGEMENT SERVICES, LLC :

Tara Swest
Signature

By: *[Signature]*
Signature

Tara Swest
Print Name

Alvin Brown
Print Name

Ann Kidd
Signature

President
Title

Ann Kidd
Print Name

(Seal)

EXHIBIT "A"
THE PREMISES

