

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

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Meeting Date: March 10, 2020 Consent Regular
 Workshop Public Hearing
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Submitted By: Department of Airports

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: License Agreement with Drive Shack Palm Beach LLC (Drive Shack), commencing December 19, 2019, and expiring on January 12, 2020, unless terminated earlier, providing for the use of a ground area on Perimeter Road at the Palm Beach International Airport (PBI) in connection with Drive Shack's operations at PBI, for payment of license fees in the amount of \$50.00 per day.

Summary: Drive Shack leases ground area at PBI and operates a golf-related entertainment venue pursuant to a Development Site Lease Agreement (R2017-0939, as amended) and has requested an area for their employees to use for temporary overflow parking to support Drive Shack's peak season operation. Drive Shack used the area for a total of 11 days, from December 19, 2019 through December 29, 2019. Delegation of authority for execution of the standard County agreement above was approved by the BCC in R-2007-2070. **Countywide (AH)**

Background and Justification: N/A

Attachments: One (1) License Agreement

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Recommended By: Rev. Laura Beebe 2-10-20
Department Director Date

Approved By: [Signature] 2/14/2020
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	<u>(\$550)</u>	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>(\$550)</u>	<u>\$-0-</u>	<u>\$-0-</u>	<u>\$-0-</u>	<u>\$-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

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

Budget Account No: Fund 4100 Department 120 Unit 8340 RSource 4416
 Reporting Category _____


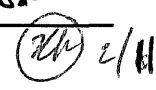
B. Recommended Sources of Funds/Summary of Fiscal Impact:

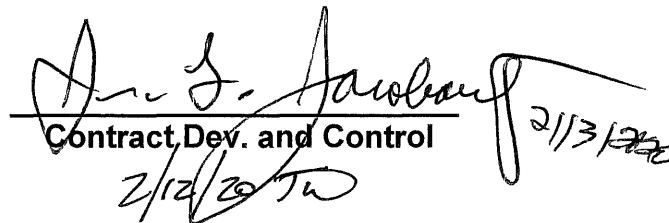
The fiscal impact of the License Agreement is license fees for the use and occupancy of the property, in the amount of \$50.00 per day, for the 11 days, for a total of \$550.00.

C. Departmental Fiscal Review: 

III. REVIEW COMMENTS

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

 2/11/2020
 OFMB  2/11


 Contract Dev. and Control 2/13/20
 2/12/20 TW

B. Legal Sufficiency:

Anne Delgant 2-14-2020
 Assistant County Attorney

C. Other Department Review:

 Department Director

REVISED 11/17

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

WRITTEN CONSENT OF THE SOLE MEMBER
OF
DRIVE SHACK PALM BEACH LLC

June 15, 2017

WHEREAS, Drive Shack Holding LLC is the sole member (the "Member") of Drive Shack Palm Beach LLC (the "Company");

WHEREAS, the Company desires to enter into a Development Site Lease Agreement (the "Lease") between the Company and Palm Beach County;

WHEREAS, the Member believes entering into the Lease and the transactions contemplated thereby is in the best interests of the Company and desires to authorize the Company to enter into the Lease;

WHEREAS, Sarah Watterson is the President of the Company, Sara Yakin is the Secretary of the Company and Lawrence Goodfield Jr. is the Treasurer of the Company (each, an "Authorized Officer"); and

WHEREAS, the Member desires to authorize each of the Authorizing Officers to cause the Company to enter into the Lease and the transactions contemplated thereby.

NOW, THEREFORE, BE IT:

RESOLVED, that it is advisable for, and in the best interests of the Company to, enter into the Lease and the transactions contemplated thereby;

FURTHER RESOLVED, that causing the entry by the Company into the Lease and the transactions contemplated thereby is authorized and approved in all respects;

FURTHER RESOLVED, that causing the entry by the Company into the Lease with such changes and additions thereto as the Authorized Officers, or any of them, determine to be appropriate in each case, is hereby approved, adopted and authorized in all respects, and that the Authorized Officers be, and each individually hereby is, authorized, in the name and on behalf of the Company, to pay any and all fees and expenses arising in connection with the actions ratified and/or authorized by the foregoing resolutions, and to execute and deliver the Lease and such other instruments, agreements, consents, certificates and documents and take such further actions as any of them may deem necessary or appropriate to effectuate the purposes of each and all of the foregoing resolutions; and

FURTHER RESOLVED, that all actions of any kind previously taken by the Authorized Officers or individuals under their supervision in connection with the actions ratified and/or authorized by the foregoing resolutions are hereby ratified, confirmed and approved in all respects and are adopted as acts of the Company.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has duly executed this written consent as of the day first written above.

DRIVE SHACK HOLDINGS LLC

By: *Sarah Watterson*
Sarah Watterson
President



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/23/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MARSH USA, INC. 99 HIGH STREET BOSTON, MA 02110 Attn: Boston.certrequest@Marsh.com Fax: 212-948-4377	CONTACT NAME: _____	
	PHONE (A/C, No, Ext): _____	FAX (A/C, No): _____
E-MAIL ADDRESS: _____		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A : National Casualty Company		11991
INSURER B : Endurance Assurance Corporation		11551
INSURER C : _____		
INSURER D : _____		
INSURER E : _____		
INSURER F : _____		

COVERAGES **CERTIFICATE NUMBER:** NYC-009713677-15 **REVISION NUMBER:** 17

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER: _____	X		KKO0000023916700	01/01/2020	01/01/2021	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
							MED EXP (Any one person)	\$ EXCLUDED
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 5,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			KKO0000023916800	01/01/2020	01/01/2021	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			GUR30000417502	07/27/2019	07/27/2020	EACH OCCURRENCE	\$ 25,000,000
							AGGREGATE	\$ 25,000,000
								\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			WCC332284A	01/01/2020	01/01/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER	
							E.L. EACH ACCIDENT	\$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Certificate Holder is included as additional insured where required by written contract.

CERTIFICATE HOLDER Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, and Employees c/o Department of Airports 846 Palm Beach International Airport West Palm Beach, FL 33406	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Elizabeth Stapleton <i>Elizabeth Stapleton</i>
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LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "Agreement") made and entered into as of December 20, 2019, by and between Palm Beach County, a political subdivision of the State of Florida, ("County") and Drive Shack Palm Beach LLC, a Delaware limited liability company, whose principal place of business is located at 218 W 18th St, 3rd Floor, New York, NY 10011 ("Licensee").

WITNESSETH:

WHEREAS, County, by and through its Department of Airports (the "Department"), is the owner and operator of the Palm Beach International Airport (the "Airport"); and

WHEREAS, County is the owner of that certain real property as more particularly depicted on the attached Exhibit "A"; and

WHEREAS, Licensee is the Tenant under that certain Development Site Lease Agreement with County dated July 11, 2017 (R1017-0939, as amended), and incorporated herein by reference (the "Lease"), under which Tenant operates the Drive Shack entertainment venue located at 1710 Belvedere Road, West Palm Beach, FL 33406 ("Drive Shack"); and

WHEREAS, County is willing to grant Licensee a revocable license to use the Property for the purposes hereinafter defined.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth on the part of the Licensee to be observed and performed, the County hereby grants the Licensee a non-exclusive, revocable license to use the Property (as hereinafter defined) upon the following terms and conditions:

ARTICLE 1 BASIC PROVISIONS

1.01 Recitals. The foregoing recitals are true and correct and incorporated herein.

1.02 Property. The Property, which is the subject of this Agreement, is more particularly identified in Exhibit "A", attached hereto and incorporated herein (the "Property").

1.03 The Lease. The obligations of Licensee, as Tenant under the Lease, where not superseded or in conflict with this Agreement, shall apply to this Agreement.

ARTICLE 2 LENGTH OF TERM AND COMMENCEMENT DATE

The term of this Agreement shall commence on December 19, 2019 (the "Commencement Date") and expire on January 12, 2020 (the "Term"), unless terminated earlier as provided for herein, including revocation or termination as provided in Article 9 below.

ARTICLE 3 LICENSE FEE

3.01 License Fee. Licensee shall pay County for the use and occupancy of the Property a license fee in the amount of Fifty Dollars (\$50.00) for each day of the Term, together with applicable sales taxes thereon. Payment of the license fee shall be due within thirty (30) days following the date of County's invoice.

ARTICLE 4
CONDUCT OF BUSINESS AND USE OF PROPERTY BY LICENSEE

4.01 Use of Property. Licensee shall use the Property solely and exclusively for overflow parking for employee vehicles only, in accordance with the operational conditions attached hereto as Exhibit "D" (the "Operational Conditions"). Licensee shall not use, permit or suffer the use of the Property for any other business or purpose whatsoever.

4.02 Improvements. Licensee shall make no improvements, alterations or additions to the Property whatsoever, without the prior written consent of the Department, which may be granted or withheld in the Department's sole and absolute discretion.

4.03 Condition of Property. Licensee accepts the Property in its "As is", "Where is" condition as of the Commencement Date. Licensee further acknowledges that County has not made any warranties or representations of any nature whatsoever regarding the Property including, but not limited to, any warranties or representations relating to the physical condition of the Property or any improvements located therein, or the suitability of the Property or any improvements for the Licensee's intended use.

4.04 Waste or Nuisance. Licensee shall not commit or suffer to be committed any waste upon the Property or any nuisance or other act or thing which may result in damage or depreciation of value of the Property.

4.05 Compliance with Laws. Licensee shall, at its sole cost and expense, secure any and all required licenses and permits and shall comply with all local, state and federal laws pertaining to Licensee or its use of the Property, including all applicable zoning, building and fire laws and regulations. Licensee acknowledges and agrees that County has made no representations whatsoever regarding Licensee's ability to use the Property for the purposes set forth in this Agreement. Licensee shall ensure that its invitees, guests and any all other persons entering the Property with or without Licensee's consent or knowledge comply with all applicable laws on the Property. Licensee shall indemnify, defend and save County harmless from any and all penalties, fines, costs, expenses, suits, claims, or damages resulting from Licensee's failure to perform its obligations specified in this Section. The foregoing indemnification agreement shall survive the expiration or earlier termination of this Agreement.

4.06 Non-Discrimination.

A. The County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the Licensee warrants and represents that throughout the term of the Agreement, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered default of the Agreement.

B. Federal Nondiscrimination Covenants. Licensee shall comply with all applicable requirements of the Federal Nondiscrimination Requirements set forth in Exhibit "B".

4.07 Surrender of Property. Upon expiration or earlier termination of Licensee's license to use the Property, Licensee, at its sole cost and expense, shall surrender the Property to the County in at least the same condition as the Property was in as of the Commencement Date of this Agreement.

4.08 County's Right to Enter. County shall have the right to enter the Property at any time, without notice, for any purpose whatsoever. County agrees to exercise reasonable efforts to minimize interference with or disruption of Licensee's operations on the Property; provided, however, County shall not be required to expend additional sums of money in order to comply with the foregoing requirement. In the event that a County work activity must take place within the Property during Licensee's operating hours, which will disrupt or interfere with the Licensee's operations, County will endeavor to provide prior notice to Licensee. The notice requirements provided under Section 10.04 shall not apply to this Section.

**ARTICLE 5
REPAIRS AND MAINTENANCE OF PROPERTY/SECURITY**

5.01 Repairs & Maintenance. County shall not be obligated or required to make or conduct any maintenance or repairs whatsoever to the Property. All portions of the Property and all improvements erected on the Property shall be kept in good repair and condition by Licensee. Licensee shall maintain the Property free of trash and debris. Upon expiration or earlier termination of this Agreement, Licensee shall deliver the Property to County in good repair and condition as specified herein, free of all improvements constructed by Licensee, if any. In the event of any damage to the Property, County may complete the necessary repairs or maintenance of the Property and Licensee shall reimburse County for all expenses incurred by County in doing so, plus a twenty five percent (25%) overhead, within fifteen (15) days after written request for reimbursement from County.

5.02 Security. Licensee acknowledges and accepts full responsibility for the security and protection of the Property and any and all personal property and improvements now existing or hereafter placed on or installed in or upon the Property, and for the prevention of unauthorized access to the Property. Licensee fully understands that the police security protection provided by County is limited to that provided to any other business situated in Palm Beach County by the Palm Beach County Sheriff's Office and expressly acknowledges that any special security measures deemed necessary or desirable for additional protection of the Property, shall be the sole responsibility of Licensee and shall involve no additional cost to County.

**ARTICLE 6
INSURANCE**

6.01 Maintenance of Insurance. Licensee agrees to maintain, on a primary basis and at its sole expense, at all times during the Term of this Agreement, and any extension thereof, the insurance coverages and limits set forth in Exhibit "C", attached hereto and incorporated herein. The requirements contained herein, as well as County's review or acceptance of insurance maintained by Licensee is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Licensee under this Agreement.

**ARTICLE 7
INDEMNIFICATION**

Licensee shall indemnify, defend and save County harmless from and against any and all claims, actions, damages, liability and expense in connection with: (i) loss of life, personal injury and/or damage to or destruction of property arising from or out of any occurrence in, upon or at the Property; (ii) the occupancy or use by Licensee of the Property or any part thereof; or (iii) any act or omission of Licensee, its agents, contractors, employees or invitees. In the event the County is made a party to any litigation commenced against Licensee or by Licensee against any third party, then Licensee shall protect and hold County harmless and pay all costs and attorney's fees incurred by County in connection with such litigation, and any appeals thereof. Licensee recognizes the broad nature of this indemnification provision and specifically acknowledges the receipt of good and value separate consideration in support thereof. This provision shall survive expiration or earlier termination of this Agreement.

**ARTICLE 8
ASSIGNMENT**

Licensee may not assign, sublet or rent any portion of the Property.

**ARTICLE 9
REVOCATION OF LICENSE/DEFAULT**

9.01 Revocation of License. Notwithstanding any provision of this Agreement to the contrary, the rights granted to Licensee hereunder amount only to a non-exclusive license to use the Property, which license is expressly revocable by County for any reason whatsoever upon notice to Licensee. Upon notice from County of the revocation of the license granted hereby, this Agreement shall terminate and County shall be relieved of all further obligations hereunder accruing subsequent to the date of such termination.

9.02 Termination for Convenience by Licensee. Licensee may terminate this Agreement for convenience upon written notice to County, whereupon the parties shall be relieved of all further obligations hereunder with the exception of those obligations accruing prior to such termination and those obligations which expressly survive termination of this Agreement.

9.03 Default. Failure to perform or observe any of the agreements, covenants or conditions contained in this Agreement to be performed or observed by such party upon written notice shall constitute a default of this Agreement.

**ARTICLE 10
MISCELLANEOUS**

10.01 Subordination to Bond Resolution. This Agreement and all rights granted to Licensee hereunder are expressly subordinated and subject to the lien and provisions of the pledge, transfer, hypothecation or assignment made by County in the Palm Beach County Airport System Revenue Bond Resolution dated April 3, 1984 (R-84-427), as amended and supplemented (the "Bond Resolution"), and County and Licensee 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 Licensee and County with the terms and provisions of this Agreement and Bond Resolution.

10.02 Subordination to State/Federal Agreements. This Agreement shall be subject and subordinate to all the terms and conditions of any instrument and documents under which the County acquired the land or improvements thereon, of which the Property are a part, and shall be given only such effect as will not conflict with nor be inconsistent with such terms and conditions. Licensee understands and agrees that this Agreement shall be subordinate to the provisions of any existing or future agreement between County and the United States of America, the State of Florida or any of their respective 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.

10.03 Entire Agreement. This Agreement and any Exhibits attached hereto and forming a part thereof as if fully set forth herein, constitute all agreements, conditions and understandings between County and Licensee concerning the Property. All representations, either oral or written, shall be deemed to be merged into this Agreement. Except as herein otherwise provided, no subsequent alteration, waiver, change or addition to this Agreement shall be binding upon County or Licensee unless reduced to writing and signed by them.

10.04 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:

- | | |
|--|---|
| (a) If to the County at:
Palm Beach County Dept. of Airports
Attn: Airport Director
846 Palm Beach International Airport
West Palm Beach, FL 33406-1470
Fax: (561) 471-7427 | (b) If to the Licensee at:
Drive Shack Palm Beach LLC,
218 W 18th St.
3rd Floor
New York, NY 10011
Fax: (646) 514-1500 |
|--|---|

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

10.05 Recording. Licensee shall not record this Agreement or any memorandum or short form thereof.

10.06 Waiver of Jury Trial. The parties hereto waive trial by jury in connection with proceedings or counterclaims brought by either of the parties hereto against the other, in connection with this Agreement.

10.07 Governing Law and Venue. This Agreement shall be governed by and interpreted according to the laws of the State of Florida and venue shall be in Palm Beach County.

10.08 Time of Essence. Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.

10.09 Captions. The captions and section designations set forth herein are for convenience only and shall have no substantive meaning.

10.10 Severability. In the event that any section, paragraph, sentence, clause or provision of this Agreement is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

10.11 Waiver. No waiver of any provision of this Agreement shall be effective against any party hereto unless it is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

10.12 Office of the 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 Licensee, 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.

10.13 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 Licensee.

10.14 Scrutinized Companies. As provided in Section 287.135, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, Licensee 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, Licensee 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 Licensee, this Agreement may be terminated and a civil penalty equal to the greater of \$2 Million Dollars or twice the amount of this Agreement shall be imposed, pursuant to Section 287.135, Florida Statutes. The aforementioned certification must also be submitted at the time of any Agreement renewal, if applicable.

10.15 Effective Date. This Agreement shall become effective when executed by the parties hereto.

(SIGNATURES FOLLOW ON NEXT PAGE)

IN WITNESS WHEREOF, County and Licensee have executed this Agreement, or have caused the same to be executed as of the day and year first above written.

WITNESSES:

SK Schley
Signature
Steven K. Schley
Typed or Printed Name

Ray Walter
Signature
RAY WALTER
Typed or Printed Name

PALM BEACH COUNTY, FLORIDA,
A POLITICAL SUBDIVISION OF THE
STATE OF FLORIDA

By: Paula Burke
Director of Airports

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: Anne Helgent
County Attorney

WITNESSES:

Patrick O'Mara
Signature
PATRICK O'MARA
Typed or Printed Name

Eth
Signature
Ethan Holdaway
Typed or Printed Name

LICENSEE:
DRIVE SHACK PALM BEACH, LLC

By: Laurence A Goodfield Jr
Signature
Laurence A Goodfield Jr
Typed or Printed Name

Title: Treasurer

(Seal)

EXHIBIT "A"
THE PROPERTY

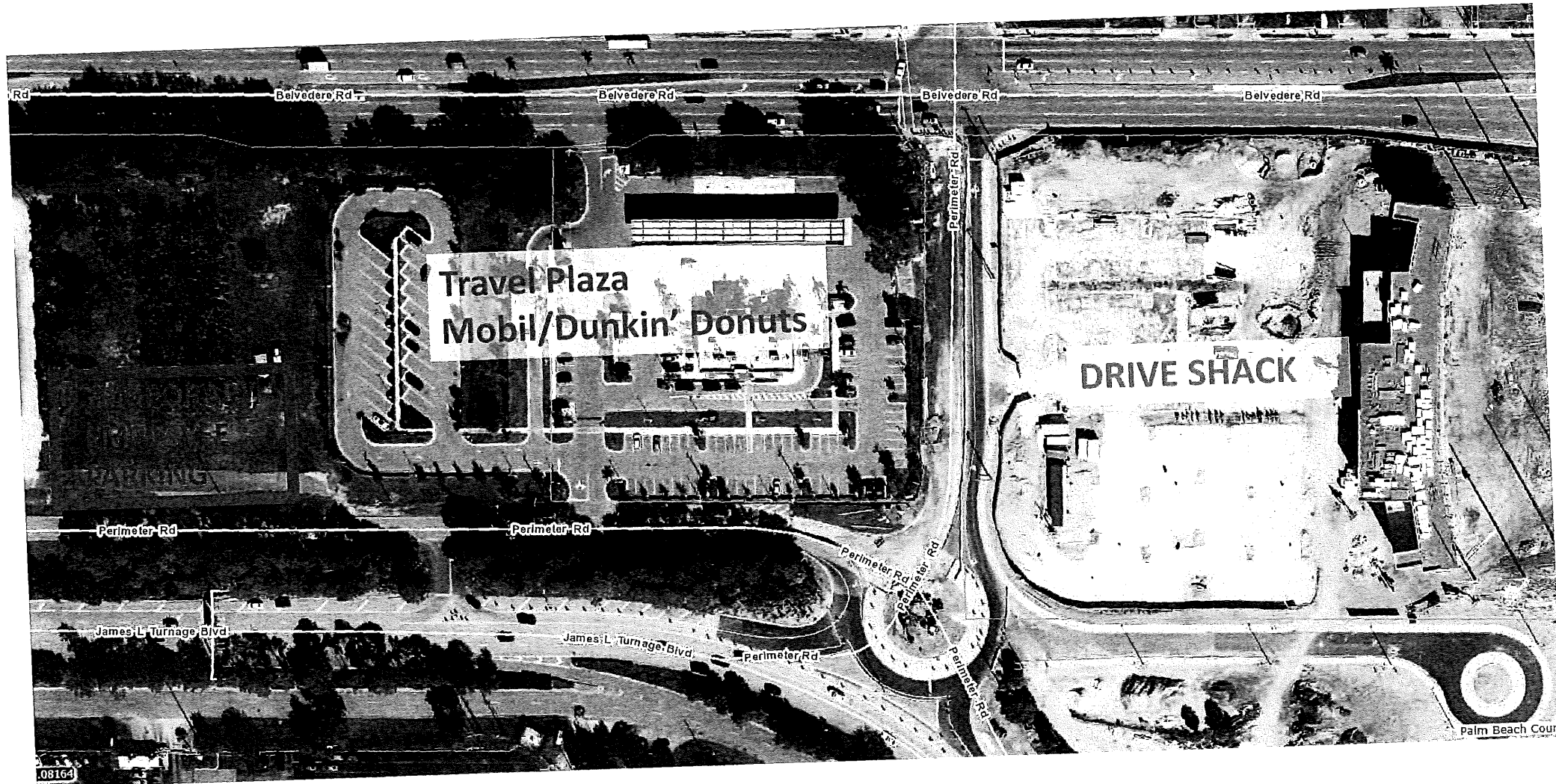


EXHIBIT "B"
FEDERAL NONDISCRIMINATION REQUIREMENTS

FEDERAL NONDISCRIMINATION REQUIREMENTS

A. Title VI Clauses for Compliance with Nondiscrimination Requirements.

During the performance of this Agreement, Licensee, for itself, its assignees, and successors in interest, agrees as follows:

1. **Compliance with Regulations:** Licensee will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities ("Nondiscrimination Acts and Authorities" as set forth in paragraph B below), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
2. **Nondiscrimination:** Licensee, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Licensee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when this Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by Licensee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Licensee of Licensee's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** Licensee will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, Licensee will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the non-discrimination provisions of this Agreement, County will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to Licensee under this Agreement until Licensee complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** Licensee will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Licensee will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Licensee becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Licensee may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, Licensee may request the United States to enter into the litigation to protect the interests of the United States.

B. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, Licensee, for itself, its assignees, and successors in interest, agrees to comply with the following non-discrimination statutes and authorities, as may be amended, including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or

activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

C. Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

1. Licensee for itself and its 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) 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 said facilities, (2) that in the construction of any improvements on, over, or under such land, 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, (3) that Licensee will use the Licensee Premises and any License Area in compliance with all other requirements imposed by or pursuant to the Nondiscrimination Acts And Authorities.
2. In the event of breach of any of the above nondiscrimination covenants, County will have the right to terminate this Agreement and to enter or re-enter and repossess the Licensee Premises and any License Area and the facilities thereon, and hold the same as if this Agreement had never been made or issued.

D. Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program.

Licensee for itself and its 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 property described in this Agreement 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, the Licensee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Authorities (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. In the event of breach of any of the above nondiscrimination covenants, County will have the right to terminate this Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if this Agreement had never been made or issued.

E. Airport Concession Disadvantaged Business Enterprises ("ACDBE").

This Agreement may be 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. Licensee 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. Licensee 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.

F. General Civil Rights Provision.

Licensee agrees to 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. If Licensee transfers its obligation to another, the transferee is obligated in the same manner as Licensee. This provision obligates Licensee for the period during which the property is owned, used or possessed by Licensee and the Airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights

EXHIBIT "C"
INSURANCE

Certificate(s) of Insurance. Licensee shall provide the County with Certificate(s) of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect. The Certificate(s) of Insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation (ten (10) days for nonpayment of a premium) or non-renewal of coverage. The Certificate Holder address shall read: "Palm Beach County Board of County Commissioners, c/o Department of Airports, 846 Palm Beach International Airport, West Palm Beach, FL 33406-1470 (e-mail: properties@pbia.org)", or as otherwise approved or modified by County.

Commercial General Liability. Licensee shall maintain Commercial General Liability Insurance at a limit of liability of not less than One Million Dollars (\$1,000,000.00) each occurrence. Coverage shall not contain any endorsement(s) excluding or limiting Premises/Operations, Damage to Rented Property, Personal Injury, Product/Completed Operations, Contractual Liability, Severability of Interests or Cross Liability. Coverage shall be provided on a primary basis.

Additional Insured. Licensee shall endorse the County as an Additional Insured with a "CG026 Additional Insured - Designated Person or Organization" endorsement to the Commercial General Liability policy. The additional insured endorsement shall read: "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, and Employees", or as otherwise approved or modified by County. Coverage shall be provided on a primary basis.

Business Automobile Liability. Licensee shall maintain Business Automobile Liability Insurance at a limit of liability of not less than One Million Dollars (\$1,000,000.00) each occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event the Licensee does not own automobiles, Licensee agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy. Coverage shall be provided on a primary basis.

Workers' Compensation & Employer's Liability. Licensee shall maintain Workers' Compensation & Employer's Liability in accordance with Chapter 440, Florida Statutes, and Federal law. This coverage shall be provided on a primary basis.

Waiver of Subrogation. Licensee agrees by entering into this Agreement to a Waiver of Subrogation for each policy required herein. When required by the insurer, or should a policy condition not permit Licensee to enter into any pre-loss agreement to waive subrogation without an endorsement, then Licensee agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Licensee enter into such an agreement on a pre-loss basis.

EXHIBIT "D"
OPERATIONAL CONDITIONS

1. Licensee shall use the Property only from 12:00 pm (noon) until one-hour following close of the Drive Shack, but not later than 3:00 a.m.
2. Licensee shall post an employee or agent on the Property during all hours the Property is utilized. The employee or agent shall be provided a copy of these Operational Conditions and shall be familiar with the contents provided herein. The employee or agent shall provide direction to users where to park, and how to safely traverse to the Drive Shack thru the Travel Plaza site without walking on roadways.
3. Use of the Property shall be limited to the short-term parking of Drive Shack employee vehicles. There shall be no overnight parking of vehicles, and no sleeping in vehicles. There shall be no maintenance of any type to vehicles on the Property.
4. There shall be no public parking, or use of the Property as an extension of the "Cell Phone Waiting Area". The employee or agent posted at the Property shall direct such users to the appropriate parking areas to the east of the Property.
5. Licensee shall inspect the area at the completion of each daily use and shall remove any trash or debris from the Property at such time.
6. Licensee shall immediately report any damage to the Property to the Airport Communications Center at 561-471-7420. "Damage" shall include, but not be limited to, a "rut" caused by a vehicle. Licensee shall be responsible for all restoration of the Property in accordance with this Agreement.