

**FIRST AMENDMENT TO FIRST AMENDED AND RESTATED DUTY FREE CONCESSION  
AGREEMENT FOR THE FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT**

This First Amendment ("First Amendment") to the Agreement (hereinafter defined) between Broward County, a political subdivision of the State of Florida ("County"), and Broward Duty Free, LLC, a Florida limited liability company ("Concessionaire") (collectively, the "Parties"), is entered into effective as of the date this First Amendment is fully executed by the Parties ("Effective Date").

RECITALS:

A. County and Concessionaire entered into a First Amended and Restated Duty Free Concession Agreement with an effective date of December 3, 2013, which was amended by an Addendum to the First Amended and Restated Duty Free Concession Agreement, dated December 19, 2013 (collectively, as amended, the "Agreement").

B. By letter addressed to County dated November 25, 2013, Concessionaire committed to pay the living wage required by the Living Wage Ordinance (hereinafter defined) to its employees during the Term of the Agreement.

C. On December 11, 2018, the Board of County Commissioners amended the Living Wage Ordinance to increase the living wage rate to at least \$13.27 per hour with a health care benefit amount of at least \$1.63 per hour, or at least \$14.90 per hour without health care benefits, adjusted annually as provided in the Living Wage Ordinance, and on February 26, 2019, the Board of County Commissioners further amended the Living Wage Ordinance to increase the health care benefit amount to \$3.44 per hour beginning on January 1, 2021, adjusted annually as provided in the Living Wage Ordinance (collectively, as amended, the "Increased Living Wage").

D. The Living Wage Ordinance, as amended, provides that for covered contracts entered into prior to January 1, 2019, the covered employer and County may enter into a written amendment to reasonably mitigate the increased living wage costs.

E. Concessionaire has been paying the Increased Living Wage to its covered employees since January 1, 2019.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Amendments made to the Agreement by this First Amendment are indicated by use of strikethroughs to indicate deletions and underlining to indicate additions.
2. Article I of the Agreement is amended by adding a definition of Living Wage Ordinance:

1.50 Living Wage Ordinance shall mean the Broward County Living Wage Ordinance, Sections 26-100 et seq. of the Broward County Code of Ordinances, as may be amended from time to time.

3. Article XXII of the Agreement is amended by creating a new Section 22.48 to read as follows:

22.48 Living Wage Requirement. Concessionaire is a "covered employer" within the meaning of the Living Wage Ordinance and agrees to and shall pay all of its "covered employees" as defined therein, a living wage as required by such ordinance, and to fully comply with the requirements of such ordinance. Concessionaire shall be responsible for and shall require all of its subconcessionaires to fully comply with the requirements of the Living Wage Ordinance, whether or not the subconcessionaires meet the definition of a "covered employer" in such ordinance. In the event that Concessionaire has existing agreements with subconcessionaires that do not currently require payment of the living wage as defined by such ordinance, a requirement to comply with the Living Wage Ordinance consistent with this section 22.48 shall be included in any amendment or renewal of any such subconcessionaire agreement.

4. Article IV, Section 4.1 of the Agreement is amended to read as follows:

4.1 For the privilege of operating a non-exclusive duty free merchandise concession at the Airport, Concessionaire agrees to pay ~~to the~~ County the Privilege Fees as described below.

4.1.1 Percentage Fees shall mean the percentage of Gross Revenues based on the sale of items, as set forth in the categories below and shall be calculated as follows:

4.1.1.1 For the Term of this Agreement other than for the Five Year Period set forth in Section 4.1.1.2, Concessionaire shall pay Privilege Fees to County, Privilege Fees equal to: (a) seventeen percent (17%) of the first One Million Dollars (\$1,000,000.00) of Annual Gross Revenues, (b) twenty percent (20%) of the second One Million Dollars (\$1,000,000.00) of Annual Gross Revenues, and (c) twenty-three percent (23%) of all Annual Gross Revenues greater than Two Million Dollars (\$2,000,000.00).

4.1.1.2 For the five (5) year period beginning at 12:01 a.m. on January 1, 2020 and ending at 11:59 p.m. on December 31, 2024 ("Five Year Period"), Concessionaire shall pay Privilege Fees to County equal to: (a) nine and 37/100 percent (9.37%) of the first One Million Dollars (\$1,000,000.00) of Annual Gross Revenues, (b) twenty percent (20%) of the second One Million Dollars (\$1,000,000.00) of Annual Gross Revenues, and (c) twenty-three percent (23%) of all Annual Gross Revenues greater than Two Million Dollars (\$2,000,000.00).

For all times during the Term other than the Five Year Period, Concessionaire shall pay the Privilege Fees as required in Section 4.1.1.1 above.

...

5. The Parties stipulate that the decrease in the Privilege Fees from seventeen percent (17%) to nine and 37/100 percent (9.37%) of the first One Million Dollars (\$1,000,000.00) of Annual Gross Revenues for the Five Year Period is to reasonably mitigate the increased costs to Concessionaire resulting from the amendments to the Living Wage Ordinance, including increasing the wages for covered employees. Concessionaire certifies the truth and accuracy of the documentation submitted by Concessionaire to demonstrate increased costs. Concessionaire certifies that the stated increase is equal to or less than the amount of the increased costs to Concessionaire resulting from the Increased Living Wage.

6. In the event the Increased Living Wage is not actually paid to Concessionaire's covered employees for any reason, upon written notice by County, Section 4.1.1.2 of the Agreement shall become null and void and the Concessionaire shall pay the Privilege Fees as required in Section 4.1.1.1 of the Agreement.

7. Concessionaire acknowledges that through the Effective Date hereof, Concessionaire has no claims against County with respect to any of the matters covered by the Agreement and Concessionaire has no right of set-off or counterclaims against any of the amounts payable under the Agreement.

8. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

9. The Agreement, as amended herein, incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein, and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter hereof that are not contained in the Agreement or this First Amendment. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

10. Preparation of this First Amendment has been a joint effort of the Parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than any other.

11. The Recital clauses stated above are true and correct and are incorporated in this Agreement by reference.

12. Except as modified herein, all terms and conditions of the Agreement shall remain in full force and effect. In the event of any conflict or ambiguity between this First Amendment and

the Agreement, the Parties agree that this First Amendment shall control.

13. This First Amendment may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

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IN WITNESS WHEREOF, the Parties hereto have made and executed this First Amendment: BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor authorized to execute same by Board action on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, and Broward Duty Free, LLC signing by and through its \_\_\_\_\_ duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through  
its Board of County Commissioners

\_\_\_\_\_  
Broward County Administrator, as  
ex officio Clerk of the Broward County  
Board of County Commissioners

By: \_\_\_\_\_  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Approved as to form by  
Andrew J. Meyers  
Broward County Attorney  
2200 SW 45<sup>th</sup> Street, Suite 101  
Dania Beach, Florida 33312  
Telephone: (954) 359-6100  
Telecopier: (954) 359-1292

By:  \_\_\_\_\_ 12-30-19  
Sharon V. Thorsen (Date)  
Senior Assistant County Attorney

SVT/  
Broward Duty Free First Amend  
11/14/19

**FIRST AMENDMENT TO FIRST AMENDED AND RESTATED DUTY FREE CONCESSION  
AGREEMENT FOR THE FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT**

CONCESSIONAIRE

Broward Duty Free, LLC

Witness:

Signature

Philip Hancock

Print Name of Witness above

Signature

Roberto Graziani

Print Name of Witness above

By:

Authorized Signor

Bernard Klepach, Chairman

Print Name and Title

18th day of December, 2019