

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**RETAILER AGREEMENT**

BY THIS AGREEMENT, made and entered into this 30 day of June, 2003, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter called "Department", and Eckerd Corporation, duly authorized to conduct business in the State of Florida, hereinafter called "Retailer", hereby agree as follows:

1. GRANT OF RIGHT

Department grants to Retailer, and Retailer accepts from Department, the non-exclusive right to purchase and resell at retail the Department's SunPass<sup>®</sup> Transponders at Retailer's stores all operating under the same name.

2. TERM

- A. Initial Term. This Agreement shall begin on date of execution and shall remain in full force and effect for five (5) years.
- B. This Agreement may be renewed for a period that may not exceed three (3) years or the term of the original contract, whichever period is longer. Renewals shall be contingent upon satisfactory performance evaluations by the Department. Any renewal or extension shall be in writing and executed by both parties and shall be subject to the same terms and conditions set forth in this Agreement.

3. TERMINATION

This Agreement may be terminated by the Department or the Retailer prior to expiration and without cause by providing no less than forty-five (45) days prior written notice to the other party.

4. DESCRIPTION OF GOODS; SALE AND DELIVERY

- A. Department shall sell, transfer, and deliver to Retailer the following described SunPass<sup>®</sup> Transponder at the per unit cost shown and Retailer shall sell the product at the Suggested Retail Price shown unless otherwise agreed in writing by the parties.

<u>Transponder Type</u>	<u>Quantity</u>	<u>Retailer Cost/Unit</u>	<u>Suggested Retail Price</u>
SunPass <sup>®</sup> Transponder Type II b	1	\$ <u>20.00</u>	\$ <u>24.99</u>

- B. The Department shall have the right, at any time, without prior notice, to reduce or increase the suggested retail price of SunPass<sup>®</sup> transponders. Should the Department reduce the suggested retail price, the Department will give a

ITN-DOT-02/03-8002

proportionate credit to the Retailer on the price paid by Retailer for a Retailer's unused stock of that model at the time such reduction is made and subsequently implemented by Retailer.

C. Should the Department introduce a new model of SunPass<sup>®</sup> transponder that has a different suggested retail price, the Retailer's purchase price will be negotiated by the Department with the Retailer. Prior to negotiations, the Department will advise the Retailer of the suggested retail price for the new model.

D. The Department will provide the Retailer the SunPass<sup>®</sup> transponder packaged for retail in a sealed clear PVC clamshell package. Within the package will be the following:

1. Transponder with one battery
2. Promotion insert card with activation instructions
3. SunPass<sup>®</sup> users manual
4. Radio frequency shield bag
5. CheckPoint security tag
6. "Activation required" one-inch circular yellow sticker
7. Uniform Product Code (UPC) barcode
8. Cardboard display case

E. The Retailer's price is F.O.B. to Retailer's distribution center.

F. Title to and risk of loss of SunPass<sup>®</sup> Transponders shall pass to Retailer upon delivery and Retailer's acceptance at the Retailer's distribution center. Thereafter, such risk of loss shall be on the Retailer, including any SunPass<sup>®</sup> transponder thereafter returned to the Department until their receipt by Department.

## 5. PAYMENTS

For SunPass<sup>®</sup> transponders sold to Retailer, Retailer shall pay the Department the full amount of the purchase price of the SunPass<sup>®</sup> transponders within thirty (30) days, plus a ten (10) day grace period, of Retailer's receipt of invoice for transponders received by Retailer. If Retailer is delinquent in payment of any obligation to the Department, then Department, in its discretion and in addition to any other right and remedies it may have under this Agreement or law, may suspend all pending orders and shipments to the Retailer until such delinquency is cured.

## 6. RETAILER'S RETURN OF MERCHANDISE

A. Retailer's "Customer Return Policy" with its customers will apply to SunPass<sup>®</sup> Transponders. The Retailer will receive a full credit of the original purchase price for SunPass<sup>®</sup> Transponders that are returned by Retailer to the Department in both

ITN-DOT-02/03-8002

opened and unopened packages as long as there is no visible evidence of damage to the transponder unit.

- B. If Retailer should elect in writing to discontinue sale of the SunPass® transponders, Retailer will sell back and deliver to the Department, free and clear of all liens and encumbrances, all quantities of unsold SunPass® Transponders for Department repurchase at Retailer's original purchase price from Department. Retailer will bear all costs and expenses in returning the SunPass® Transponders to the Department.

7. PRODUCT PLACEMENT

Retailer will make every effort to place SunPass® transponders at its checkout counters for a minimum of twelve (12) months beginning with initial product roll out. In the event placement at checkout counters is not possible at select stores, Retailer will place SunPass® transponders immediately behind its checkout counters in a highly visible location.

8. ADVERTISING

- A. Retailer agrees to advertise SunPass® transponders within all of its Florida stores for a minimum of ninety (90) days during the initial rollout period. Retailer further agrees to subsequently advertise SunPass® transponders within its stores for as long as this Agreement remains in force. Unless otherwise agreed by written amendment to this Agreement, Retailer's advertising of SunPass transponders shall be at no cost to the Department. The Department will make available Point-of-Purchase (POP) material at no cost to the Retailer for use in its in-store advertising campaigns. The Department will coordinate and schedule in-store campaigns with Retailer and obtain prior approval from Retailer's advertising department for all POP material prior to production and delivery.
- B. Retailer agrees to allow the Department to use Retailer's name and logo in any Department advertisement for the sale and promotion of SunPass® transponders provided the sole purpose is to identify the Retailer as a source for the product. The Department will obtain approval from Retailer's advertising department prior to using the Retailer's name or logo in any advertisement or promotion. Retailer recognizes the value of advertising and will cooperate with the Department in the Department's efforts to advertise and sell SunPass® transponders. Department agrees to discontinue any advertising using Retailer's name if subsequently disapproved by Retailer.

9. ASSIGNMENT

Neither this Agreement nor any right under or interest in this Agreement may be assigned by Retailer without the express written consent of Department.

ITN-DOT-02/03-8002

10. AMENDMENT

Notwithstanding anything in this Agreement to the contrary, Department shall have the right to amend, modify, or change this Agreement in case of legislation, government regulation, or change in circumstance beyond the control of Department that might affect materially the relationship between Department and Retailer.

11. GOVERNING LAW

- A. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida and venue for any claims or disputes arising out of this Agreement shall be in Leon County, Florida.
- B. The parties specifically intend that the provisions of Article 2 of the Florida Uniform Commercial Code will control as to all aspects of this contract and its interpretation, and that all the definitions contained therein will be applicable to this contract except where this contract may expressly provide otherwise.

ITN-DOT-02/03-8002

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers on the day, month and year set forth above.

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

Name of Retailer

By: *[Signature]*  
Authorized Signature

DANIEL T. FINDLAN  
(Print/Type)

Title: CAT, MGA.

By: *[Signature]*  
Authorized Signature

James L. Ely, D.P.A.  
(Print/Type)

Title: Executive Director

FOR DEPARTMENT USE ONLY

APPROVED:

*[Signature]*  
Procurement Office

LEGAL REVIEW:

*[Signature]*



## Florida Department of Transportation

JEB BUSH  
GOVERNOR

### APPOINTMENT AND DELEGATION OF AUTHORITY

THOMAS F. BARRY, JR.  
SECRETARY

I, James L. Ely, Executive Director of the Florida's Turnpike Enterprise of the Florida Department of Transportation, do hereby appoint

NANCY CLEMENTS, Director of Planning and Production  
WILLIAM THORP, Chief Financial Officer  
RICHARD NELSON, Director of Business Development and Concessions Management  
BRUCE SEILER, Director of Highway Operations  
KIM POULTON, Director of Communications and Marketing

as my designees to supervise and implement the operational activities of the Florida's Turnpike Enterprise office of the Florida Department of Transportation during my absence from the office for any extended period of time.

Anytime during my absence from the office, I hereby delegate authority to sign correspondence and execute documents that require my signature to Nancy Clements, Director of Planning and Production; or in her absence, William Thorp, Chief Financial Officer; or in his absence, Richard Nelson, Director of Business Development and Concessions Management; or in his absence, Bruce Seiler, Director of Highway Operations; or in his absence, Kim Poulton, Director of Communications and Marketing. Anytime during my absence, I hereby delegate to each the authority to execute any contracts or documents not already delegated to them in their individual delegations, except in those instances where the authority to execute and sign any particular documents is either expressly retained by me or expressly delegated by the Secretary of Transportation to the District Secretaries and the Executive Director of the Florida's Turnpike Enterprise, such instances include but are not necessarily limited to:

1. Approval, execution and signature of all necessary Department resolutions to initiate eminent domain proceedings to obtain real property rights for the Florida's Turnpike Enterprise transportation facilities.
2. Approval, execution and signature of instruments of sale, lease and conveyance of property owned by the Florida's Turnpike Enterprise.
3. Approval, certification and signature of maintenance maps evidencing the Florida's Turnpike Enterprise's maintenance of right of way.
4. Approval, execution and signature of all necessary Department resolutions for engineer witnesses in Circuit Court to bind the Department of Transportation on those issues regarding design and construction for the Florida's Turnpike Enterprise's transportation facilities.

This appointment and delegation supersedes prior appointment and delegations and shall remain in full force and effect until such time as it is revoked or suspended in writing by me or my successors.

  
JAMES L. ELY  
Executive Director

Date: 10.7.02

Attest:   
Elizabeth M. Decker