

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: September 12, 2006

[] Consent [X] Regular
[] Workshop [] Public Hearing

Department:

Submitted By: Department of Airports

Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to adopt: A resolution of the Board of County Commissioners of Palm Beach County, Florida; establishing an initial rental rate for certain storage units located at the Palm Beach County Glades Airport and North County General Aviation Airport; authorizing the County Administrator or his designee to execute a standard form Palm Beach County General Aviation Airport Storage Unit Lease Agreement on behalf of the Board of County Commissioners; providing for severability; and providing an effective date.

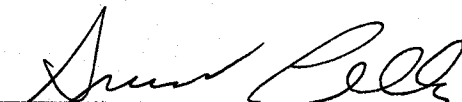
Summary: The County presently does not have a standard form document allowing for the leasing of storage units at Palm Beach County general aviation airports. The proposed standard form lease document allows for rental rate adjustments coinciding with the three year appraisals, insures compliance with insurance requirements, Federal, State, and local laws, and the stipulation that the Lessee must maintain a current Hangar or Office Lease Agreement at Palm Beach County Airports. The leasing of these units would generate an annual increase in revenue of \$132,432.00, at this time, based on the recommended rate of \$1.00 per square foot (Attachment A). Countywide (LMB).

Background and Justification: The North County General Aviation Airport currently has 33 storage units ranging in size from 110 square feet to 620 square feet, which were originally designed to be used for County storage. Palm Beach County Glades Airport will have 2 units. There has been an increase of inquiries by existing North County Airport hangar and office tenants regarding the leasing of these units for storage of excess aviation-related items.

Attachment:

- (A) Recommended rate calculations
- (B) Resolution

Recommended By:



Department Director

8/13/06

Date

Approved By:



County Administrator

8/12/06

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	<u>(33,108)</u>	<u>(132,432)</u>	<u>(132,432)</u>	<u>(132,432)</u>	<u>(132,432)</u>
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>(33,108)</u>	<u>(132,432)</u>	<u>(132,432)</u>	<u>(132,432)</u>	<u>(132,432)</u>
ADDITIONAL FTE	_____	_____	_____	_____	_____
POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No X
Budget Account No: Fund 4100 Department 120 Unit 8450 Object _____
Reporting Category _____

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

Assuming 100% occupancy, the proposed fee would generate \$132,432 per year. Rates will be subject to periodic adjustments based on tri-annual appraisals.

C. Departmental Fiscal Review:

Chris Sumner

III. REVIEW COMMENTS

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

Jim Dink 8-21-06
OFMB
8/18/06
8-21-06
ON 08/14/06

Jim J. Jacoby 8/22/06
Contract Dev. and Control
8/22/06

B. Legal Sufficiency:

Laura Beebe
Assistant County Attorney

C. Other Department Review:

Department Director

ATTACHMENT "A"

North County Airport storage areas

TOTAL USABLE	DIMESIONS	Sq. Ft.	POSSIBLE	TOTAL FULL
UNITS			REVENUE EACH	OCCUPANCY
			MONTHLY	MONTHLY
2	31 X 20 (could easily be tow 15 X 20 Units)	620	\$620.00	\$1,240.00
3	20 X 20	400	\$400.00	\$1,200.00
14	23 X 23	504	\$504.00	\$7,056.00
14	10 X 11 w rollup doors	110	\$110.00	\$1,540.00

Average square foot rate of 10 locations and recommended initial rate_of \$1.00 Per square foot.	MONTHLY	\$11,036.00
	ANNUAL	\$132,432.00

REMARKS: Called 10 storage locations surrounding North County Airport Area and averaged square foot rental costs using closest comparable size to ours

RESOLUTION NO.

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA; ESTABLISHING AN INITIAL RENTAL RATE FOR CERTAIN STORAGE UNITS LOCATED AT THE PALM BEACH COUNTY GLADES AIRPORT AND NORTH COUNTY GENERAL AVIATION AIRPORT; AUTHORIZING THE COUNTY ADMINISTRATOR OR HIS DESIGNEE TO EXECUTE A STANDARD FORM PALM BEACH COUNTY GENERAL AVIATION AIRPORT STORAGE UNIT LEASE AGREEMENT ON BEHALF OF THE BOARD OF COUNTY COMMISSIONERS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Palm Beach County, by and through its Department of Airports ("Department"), owns and operates Palm Beach County Glades Airport and North County General Aviation Airport ("Airports"); and

WHEREAS, the Airports have storage units available for lease; and

WHEREAS, the Department utilizes certain standard form documents in the conduct of business related to the operation of the County's airports; and

WHEREAS, the Board of County Commissioners desires to authorize the County Administrator or his designee to execute a new standard form "Palm Beach County General Aviation Airport Storage Unit Lease Agreement" on behalf of the Board of County Commissioners, which is attached hereto and incorporated herein as Exhibit "A" ("Storage Unit Lease Agreement").

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, that:

Section 1. Recitals. The foregoing recitals are true and correct and are expressly incorporated herein by reference and made a part hereof.

Section 2. Establishment of Rental Rate. The Board of County Commissioners hereby establishes an initial rental rate of One Dollar(\$1.00) per square foot for the lease of storage units located at the Airports. The initial rental rate shall be adjusted in accordance with the terms of the Storage Unit Lease Agreement.

Section 3. Standard Form Document. The Board of County Commissioners hereby authorizes the County Administrator or his or her designee to execute the Storage Unit Lease Agreement on behalf of the Board of County Commissioners for the lease of storage units at the Airports. The County Administrator's designee hereunder shall be the Director of the Department of Airports. It is the intention of the Board of County Commissioners that this delegation of signature authority is strictly limited to the parameters set forth in this Resolution. Any deviation from the standard terms and conditions shall be brought before the Board of County Commissioners for approval.

Section 4. Severability. If any section, sentence, clause, phrase, or word of this Resolution is held invalid or unconstitutional by a Court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Resolution.

Section 5. Effective Date. This Resolution shall be effective immediately upon adoption.

The foregoing resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____, and, being put to a vote, the vote was as follows:

COMMISSIONER	Tony Masilotti, Chairman
COMMISSIONER	Addie L. Greene, Vice Chair
COMMISSIONER	Karen T. Marcus
COMMISSIONER	Jeff Koons
COMMISSIONER	Mary McCarty
COMMISSIONER	Burt Aaronson
COMMISSIONER	Warren H. Newell

Then the Chair thereupon declared the resolution duly passed and adopted this _____ day of _____, 2006.

**PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS**

Sharon R. Block, Clerk and Comptroller

By: _____
Deputy Clerk and Comptroller

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: _____
County Attorney

**PALM BEACH COUNTY GENERAL AVIATION AIRPORT
STORAGE UNIT LEASE AGREEMENT**

This Lease, is made and entered into this _____ day of _____, 20____, (the "Effective Date") by and between Palm Beach County, a political subdivision of the state of Florida (the "COUNTY"), and _____ whose address is _____, _____, _____ ("LESSEE").

WITNESSETH

WHEREAS, COUNTY, by and through its Department of Airports (the "Department"), owns and operates the _____ Airport (the "Airport") located in Palm Beach County, Florida; and

WHEREAS, Lessee and County entered into that certain _____ Agreement dated _____ (R xxx xxxx), as amended (the "Primary Lease"); and

WHEREAS, Lessee requires storage space in connection with the Primary Lease; and

WHEREAS, LESSEE has indicated willingness and demonstrated the ability to lease the Airport property in accordance with the terms and conditions of this Lease.

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 hereto expressly acknowledge, the parties hereto covenant and agree to the following terms and conditions.

1. **Term.** The term of this Lease shall be for a period of one (1) year commencing upon the _____ day of _____, _____ (the "Commencement Date") and terminating on the _____ day of _____, _____. This Lease shall be automatically renewed at one (1) year intervals thereafter; provided, however, either party may elect to not renew this Lease upon providing no less than thirty (30) days advance written notice to the other party prior to the expiration of the then current term. Notwithstanding any provision of this Lease to the contrary, this Lease shall automatically terminate upon the termination or expiration of the Primary Lease.

2. **Premises.** COUNTY hereby leases to LESSEE and LESSEE hereby rents from COUNTY that certain storage unit identified as unit number _____, Building _____, containing approximately _____ square feet, located at the _____ Airport, all as more particularly described on Exhibit "A", dated _____, _____ attached hereto and made a part hereof (the "Premises").

3. **Rental.** LESSEE shall pay COUNTY as the initial annual rental for the Premises, the sum of _____ Dollars (\$ _____), payable in equal monthly installments of _____ Dollars (\$ _____), plus any applicable taxes as may be required by law. Payment of rental by LESSEE to County shall commence on the Commencement Date. Rental shall be payable in advance, without demand and without any deduction, hold back or set off whatsoever, on or before the first day of each and every month throughout the term of this Lease, as adjusted in accordance with the provisions of Section 5 below. If the Commencement Date occurs on a day other than the first day of a month, LESSEE shall pay rent from the Commencement Date to the first day of the following month on a per diem basis [calculated on the basis of a thirty (30) day month], payable in advance on the Commencement Date. Any rent payment due hereunder for any other fractional month shall likewise be calculated and paid on such a per diem basis. Rental payable for each month during any renewal term shall be the monthly rental in effect prior to the renewal date, as adjusted in accordance with the provisions of Section 5 below. Rental shall be made payable to Palm Beach County Board of Commissioners and shall be mailed or hand delivered to the following address, or such other address as may be designated by the Department.

Department of Airports
Fiscal Department
846 Palm Beach International Airport
West Palm Beach, FL 33406-1470

COUNTY may, at any time, elect to hire, utilize, or select an agent(s) to administer this Lease and to collect rent payments on behalf of COUNTY and the Department. COUNTY will provide thirty (30) days written notice to LESSEE prior to any change in payment procedure or the payment addresses. COUNTY may offer alternative methods of payment, including, but not limited to, payment by debit card, credit card, or similar method of payment. If LESSEE selects an alternative method of payment, LESSEE agrees to abide by any terms and conditions promulgated by COUNTY in connection with the abovementioned method of payment. Interest at the rate established from time-to-time by the COUNTY (currently set at one and one-half percent [1-1/2%] per month not to exceed eighteen percent (18%) per annum) shall accrue against the delinquent payment(s) from date due until the date payment is received by the Department. Notwithstanding the foregoing, COUNTY shall not be prevented from terminating this Lease for default in the payment of rentals or from enforcing any other provisions contained herein or implied by law.

4. Payment of Taxes. LESSEE shall pay any and all taxes and other costs lawfully assessed against its leasehold interest in the Premises, its improvements and its operations under this Lease. LESSEE 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 LESSEE'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, LESSEE 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.

5. Adjustment of Rent.

If LESSEE is in possession of the leased premises on October 1, 20____, or any three year anniversary thereof ("Adjustment Date"), by virtue of this Lease, a new rental rate, which shall be determined as hereinafter set forth, shall apply to the Premises. The appraisal shall set forth the fair market rental for the Premises. Within ninety (90) days prior to each Adjustment Date, the Department shall select a qualified appraiser who shall reappraise the Premises to determine the fair market rentals. The Department shall submit to LESSEE a written statement of the then current fair market rental as established by the appraisal and the annual rental shall be adjusted to equal the value so determined by the appraisal, and shall be payable, in equal monthly installments, in advance, without demand, commencing on the Adjustment Date. In no case shall the rental so adjusted be less than the rental first established in this Lease. When such new rental rate is approved and established by appropriate action of the Board of County Commissioners of Palm Beach County, Florida, this Lease shall automatically be considered as amended to reflect the new rental rate, without formal amendment hereto, upon written notification by the Department to LESSEE of the establishment of the rental rate applicable to the Premises.

A. Notwithstanding anything to the contrary contained in this Lease, the rental rate shall be established at all times to ensure compliance with the provisions of Section 710 (rate covenant) of the Palm Beach County Airport System Revenue Bond Resolution, dated April 3, 1984, as amended, and supplemented, and any successor bond resolution (the "Bond Resolution"), which is hereby incorporated by reference and made a part hereof.

6. Security Deposit. LESSEE shall pay to COUNTY, prior to the Effective Date of this Lease, a refundable security deposit, in the form of a certified or cashier's check, in an amount equal to three (3) months rental due hereunder. The security deposit shall be held by the Department and will be refunded to LESSEE upon termination of this Lease provided that LESSEE is not in default of any of the provisions of this Lease; the Premises are left in good and serviceable condition, to be determined in the sole discretion of the Department; all rentals, fees, and taxes due are paid in full by LESSEE; and LESSEE has returned the access key to the Department. If there is a rental or fee deficiency or if the Premises require maintenance or repair in order to be returned to serviceable condition, the Department may apply the security deposit, or any part thereof, to the deficiency or to costs incurred by COUNTY, plus any applicable administrative overhead.

7. Additional Rent. Any and all sums of money or charges required to be paid by LESSEE under this Lease, other than the annual rent, shall be considered "Additional Rent," whether or not the same is specifically so designated, and COUNTY shall have the same rights to enforce due and timely payment by LESSEE of all Additional Rent as are available to COUNTY with regard to annual rent.

8. Description of Specific Privileges, Uses and Rights. The County hereby grants to LESSEE, the limited right to use the Premises for the storage of business related items and materials used by Lessee in connection with the Primary Lease and for no other purposes whatsoever without limiting the generality of the foregoing, use of the Premises shall be limited by the following:

A. LESSEE shall not use the Premises for any commercial purpose, including, but not limited to, the sale of products or services of any kind, whether or not such transactions are engaged in for a profit. .

B. LESSEE agrees that use of the Premises shall be in accordance with federal, state and local laws and regulations and general aviation minimum standards adopted by County applicable to the Airports as may be amended from time to time, including, but not limited to, the Palm Beach County Airport Rules and Regulations, (Resolution No. R-98-220),

C. LESSEE shall not use the Premises to store furniture, boats, recreational vehicles, or any other objects unrelated to the Primary Lease.

D. LESSEE shall not perform repair service on automobiles or automotive equipment of any kind, other than an authorized motorized towing vehicle, from or at the Premises.

E. LESSEE shall not perform painting, or "doping" operations of any kind within the Premises and shall not install or use compressors for any purpose.

F. LESSEE shall install and maintain an appropriate fire extinguisher within the Premises at all times.

G. LESSEE shall not have open flames or weld within the Premises.

H. Lessee shall not store any flammable or combustible fluids or materials within the Premises, including but not limited to, gas and oil.

9. Description of General Privileges, Uses and Rights. In addition to the specific privileges granted in Section 8 above, COUNTY hereby grants to LESSEE the following general, nonexclusive privileges, uses, and rights on the Airport, all of which shall be subject to the terms, conditions, and covenants set forth in this Lease:

A. The general use, in common with others, of all public Airport facilities and improvements which are now or may hereafter be connected with or appurtenant to the Airport (including airfield access). For purposes of this Lease, "public Airport facilities" shall include all necessary roadways, sidewalks, or other public facilities appurtenant to the Airport, which are not specifically leased to or under the contractual control of others.

B. The right of ingress to and egress from the Premises over and across public roadways serving the Airport. Said right shall be subject to such laws, rules, regulations and orders as now or may hereafter have application at the Airport.

Except as expressly set forth in Sections 9 (A) and (B) above, nothing contained in this Lease shall be construed to grant to LESSEE the right to use any space or area improved or unimproved which is leased to a third party, or which COUNTY has not leased herein.

10. Condition of Premises. LESSEE acknowledges that COUNTY has made no representations or warranties of any nature whatsoever regarding the Premises including, without limitation, the physical and/or environmental condition of the Premises, or any improvements located thereon, or the value of such Premises or improvements, or the suitability of the Premises for LESSEE's intended use thereof.

11. Obligations of COUNTY.

A. Condition of Airport. Except as to the Premises and facilities leased to others by COUNTY, COUNTY shall maintain all public Airport facilities in good and adequate condition for their intended use to the extent required by law.

B. Utilities. COUNTY shall provide at no additional cost to LESSEE electrical power within the Premises

12. Obligations of LESSEE.

A. Maintenance. LESSEE shall, at its sole cost and expense, maintain the Premises in a clean, safe and presentable condition consistent with good business practice, industry standards, and in accordance with all applicable laws, regulations, and rules of any applicable governmental entity. LESSEE shall repair all damages to the Premises and improvements caused by its employees, patrons, invitees, suppliers of services or furnishers of material, or any other persons whomsoever, and all damages caused by or resulting from or in any way arising out of LESSEE's operations thereon or LESSEE's use of the Premises. LESSEE hereby agrees that it shall abide by the decision of the Department with respect to any and all such maintenance or repair. Upon written notice by the Department to LESSEE, LESSEE shall perform the required maintenance or repair in accordance with the Department's decision. If LESSEE has not made a good faith effort, as determined by the Department, to begin to perform the required maintenance or repair within twenty (20) days after written notice and to diligently pursue the same to completion, COUNTY shall have the right to enter the Premises and perform the necessary maintenance or repair, and LESSEE hereby expressly agrees that it shall fully assume and be liable to COUNTY for payment of any costs incurred by COUNTY, plus a twenty-five percent (25%) administrative overhead. Such maintenance or repair cost, plus the administrative cost, shall be due and payable within thirty (30) days from the date of the Department's billing therefore.

B. Security. LESSEE acknowledges and accepts full responsibility for the security and protection of the Premises and any and all of LESSEE's property placed upon the Premises. LESSEE 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 ("PBSO"), and expressly acknowledges that any special security measures deemed necessary or desirable for additional protection of the Premises and property thereon, shall be the sole responsibility of LESSEE and shall involve no cost to COUNTY. COUNTY shall have the right to review, change, alter, or revise any security policy or procedure at any time based on the COUNTY's responsibility to operate the Airport in a safe and secure manner. LESSEE shall comply with all security requirements of the County, the U.S. Department of Homeland Security, and agencies thereof, and PBSO relating to the Premises and Airport.

13. Indemnification. LESSEE agrees to protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers and each of them, free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages (including attorney fees at trial and appellate levels) and causes of action of every kind and character against, or in which COUNTY is named or joined, arising out of this Lease or LESSEE's use or occupancy of the Premises, including, without limitation, those arising by reason of any damage to property or the environment, or bodily injury (including death) incurred or sustained by any party hereto, or of any party acquiring any interest hereunder, any agent or employee of any party hereto or of any party acquiring an interest hereunder, and any third or other party whomsoever, or any governmental agency, arising out of or incident to or in connection with LESSEE's acts, omissions or operations hereunder, or the performance, non-performance or purported performance of LESSEE or any breach of the terms of this Lease; provided, however, LESSEE shall not be responsible to COUNTY for damages resulting out of bodily injury (including death) or damages to property which are judicially determined to be solely attributable to the negligence of COUNTY, its respective agents, servants, employees and officers. LESSEE further agrees to hold harmless and indemnify COUNTY for any fines, citations, court judgments, insurance claims, restoration costs or other liability resulting from or in any way arising out of or due to LESSEE's activities or operations or use of the Premises whether or not LESSEE was negligent or even knowledgeable of any events precipitating a claim or judgment arising as a result of any situation involving said 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 LESSEE. LESSEE recognizes the broad nature of this indemnification and hold-harmless clause, and acknowledges that COUNTY would not have entered into this Lease 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. The obligations arising under this section shall survive the expiration or termination of this Lease.

14. Insurance. Without limiting LESSEE's obligation to indemnify COUNTY, as provided herein, LESSEE shall provide, pay for, and maintain in force at all times during the term of this Lease, a policy of General Liability Insurance to protect against bodily injury liability and property damage in an aggregate amount of not less than Five Hundred Thousand Dollars (\$500,000). A certificate of the insurance evidencing all the required insurance must be provided to COUNTY prior to the Effective Date of this Lease and renewal certificates must be provided throughout the term of this Lease. Certificate(s) of insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. Certificate(s) shall clearly state that coverage required by this Lease has been endorsed to include Palm Beach County, a political subdivision of the State of Florida, as additional insured. COUNTY shall have the right to review and modify insurance requirements of this Lease from time to time, provided that COUNTY gives LESSEE ninety (90) days prior written notice of any such change.

15. Assignment by LESSEE. LESSEE shall not assign an interest in this Lease, or any part thereof, without the prior written consent of the Department, which consent may be granted or withheld at the Department's sole and absolute discretion for any reason or no reason at all. Any attempted assignment without Department approval shall be null and void. In the event the Department provides such consent, LESSEE shall have the right only to the extent permitted by the Department's consent to assign all or any portion of the Premises, provided that any such assignment shall be limited to only the same purposes as are permitted under this Lease. LESSEE is expressly prohibited from subleasing, mortgaging or otherwise encumbering this Lease, or any part thereof. Any such sublease, mortgage or encumbrance shall be considered null and void and will be considered grounds for termination of this Lease.

16. Assignment by COUNTY. COUNTY may freely assign this Lease at any time without the consent of LESSEE, and COUNTY shall be released from all liability and obligation arising under this Lease upon such assignment. In the event of an assignment by COUNTY, LESSEE agrees that it shall recognize COUNTY's assignee as its new landlord under this Lease upon the effective date of such assignment. LESSEE acknowledges and agrees that this Lease shall be subject and subordinate to any future agreement entered into between COUNTY and its assignee related to the Premises, and shall be given only such effect as will not conflict with nor be inconsistent with terms and conditions of such agreement. LESSEE acknowledges and agrees that COUNTY may transfer any security deposit held by COUNTY pursuant to Section 6 above to COUNTY's assignee.

17. Signs and Improvements. No signs, emblems, or advertising shall be placed or erected on or in the Premises, nor shall LESSEE make any alterations, changes or additions to the Premises.

18. Disclaimer of Liability. COUNTY HEREBY DISCLAIMS, AND LESSEE 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 LESSEE, ITS EMPLOYEES, AGENTS OR INVITEES DURING THE TERM OF THIS LEASE OR ANY EXTENSION HEREOF INCLUDING, BUT NOT LIMITED TO, LOSS, DAMAGE OR INJURY TO THE IMPROVEMENTS OR PERSONAL PROPERTY OF LESSEE OR LESSEE'S INVITEES THAT MIGHT BE LOCATED OR STORED ON THE PREMISES, UNLESS SUCH LOSS, DAMAGE OR INJURY IS CAUSED BY COUNTY'S NEGLIGENCE. THE PARTIES HERETO EXPRESSLY AGREE THAT UNDER NO CIRCUMSTANCES SHALL COUNTY BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE, AND NUISANCE), SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR ANY OTHER DAMAGE RELATED TO THE LEASING OF THE PREMISES PURSUANT TO THIS LEASE. LESSEE RELEASES COUNTY FROM ANY AND ALL LIABILITY RELATING TO ANY INFORMATION PROVIDED BY COUNTY RELATING TO THIS LEASE. FURTHERMORE, LESSEE 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 LEASE WAS AT ITS SOLE RISK. THE FOREGOING DISCLAIMER SHALL NOT BE CONSTRUED TO CONSTITUTE AN AGREEMENT BY LESSEE TO INDEMNIFY THE COUNTY FOR THE COUNTY'S NEGLIGENT, WILLFUL OR INTENTIONAL ACTS.

19. Default. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by LESSEE:

- A. The vacating or abandonment of the Premises by LESSEE for a period of more than sixty (60) consecutive, calendar days.
- B. A default under the Primary Lease, which is not cured within any applicable cure period, if any.
- C. The failure by LESSEE to make payment of rent or any other payment required to be made by LESSEE, as and when due, where such failure shall continue for a period of three (3) days after written notice from the Department to LESSEE.
- D. The failure by LESSEE to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by LESSEE, other than described in paragraph C above, where such failure shall continue for a period of fifteen (15) days after written notice from the Department; provided, however, that if the nature of LESSEE's default is such that more than fifteen (15) days are reasonably required for its cure, then LESSEE shall not be deemed to be in default if LESSEE has commenced such cure within such fifteen (15) day period and thereafter diligently pursues such cure to completion.
- E. To the extent permitted by law, (i) the making by LESSEE or any guarantor hereof of any general assignment, or general arrangement for the benefit of creditors; (ii) the filing by or against LESSEE of a petition to have LESSEE 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 LESSEE, the same is dismissed within sixty (60) days]; (iii) the appointment of a trustee or receiver to take possession of substantially all of LESSEE's assets located at the Premises or of LESSEE's interest in this Lease, where possession is not restored to LESSEE within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of LESSEE's assets located at the Premises or of LESSEE's interest in this Lease, where such seizure is not discharged within thirty (30) days.
- F. The discovery by COUNTY that any information given to COUNTY by LESSEE relating to this Lease or the Primary Lease was materially false.

20. Remedies. In the event of any such material default or breach by LESSEE, COUNTY may, at any time thereafter, with or without notice or demand and without limiting any other right or remedy which COUNTY may have under the law by reason of such default or breach, elect to exercise any one of the following remedies:

- A. Declare the entire rent for the balance of the Lease term, or any part thereof, due and payable forthwith, and bring an action for the recovery thereof.
- B. Terminate LESSEE's right to possession of the Premises by any lawful means and reenter and retake possession of the Premises for the account of LESSEE, in which case the rent and other sums due hereunder shall be accelerated and due in full and LESSEE shall be liable for the difference between the rent which is stipulated to be paid hereunder plus other sums as described herein and what LESSEE is able to recover from its good faith efforts to relet the Premises, which deficiency shall be paid by LESSEE. Upon such reletting, all rentals received by COUNTY shall be applied, first to the payment of any indebtedness other than rent due under this Lease from LESSEE; second, to the payment of any costs and expenses of such reletting, which shall include all damages incurred by COUNTY due to LESSEE's default including, but not limited to, the cost of recovering possession of the Premises including attorneys' fees, expenses relating to the renovation or alteration of the Premises, and real estate commissions paid by COUNTY relating to the unexpired term of this Lease; third, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be paid to LESSEE.
- C. Treat this Lease as terminated and reenter and retake possession of the Premises for the account of COUNTY, thereby terminating any further liability under this Lease on the part of LESSEE and COUNTY. Notwithstanding the foregoing, COUNTY shall have a cause of action to recover any rent remaining unpaid when COUNTY retakes possession of the Premises for the account of COUNTY.
- D. Stand by and do nothing, holding LESSEE liable for the rent as it comes due.

- E. Pursue any other remedy now or hereafter available to COUNTY under the laws and judicial decisions of the State of Florida.

Notwithstanding anything in this Lease to the contrary, upon the occurrence of a material default or breach of this Lease by LESSEE, COUNTY shall have the right to bring an action for damages. COUNTY further reserves all rights which the laws of the State of Florida confer upon a landlord against a Tenant in default.

21. Termination by LESSEE. LESSEE may terminate this Lease, if LESSEE is not in default of this Lease, 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. The issuance by any court of competent jurisdiction of an injunction in any way preventing the use of the Airport for Airport purposes or a substantial part of the Premises, which injunction remains in force for a period of at least ninety (90) days.
- B. The default by COUNTY in the performance of any covenant or agreement required to be performed by COUNTY and the failure of COUNTY to remedy such default for a period of ninety (90) days after receipt from LESSEE of written notice to remedy same; provided, however, that no notice of cancellation, as provided herein, shall be of any force or effect if COUNTY shall have remedied the default prior to receipt of LESSEE's notice of termination; or in the event the same cannot be cured within such ninety (90) day period and COUNTY has commenced such cure and thereafter diligently pursues the same until completion.
- 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 LESSEE, for a period of at least ninety (90) days.

In the event of termination as herein provided, the parties shall be relieved of all obligations created hereunder except for those obligations accruing prior to termination of this Lease and those obligations that specifically survive termination of this Lease.

22. Surrender of Premises. LESSEE expressly agrees that it shall immediately surrender the Premises to COUNTY in good and fit condition upon expiration or termination of this Lease, depreciation and wear from ordinary use for the purpose for which the Premises were leased being excepted. All repairs and obligations that LESSEE is responsible for shall be completed by the earliest practical date prior to surrender. In the event LESSEE shall holdover, refuse, or fail to give up the possession of the Premises at the termination of this Lease, LESSEE shall be liable to COUNTY for any and all damages, and in addition thereto, LESSEE shall also be strictly liable to pay to COUNTY during the entire time period of such holdover, double rental, as provided for in section 83.06, Florida Statutes. LESSEE shall remove all of its personal property from the Premises prior to the expiration of this Lease. Any personal property of LESSEE, including, but not limited to aircraft, not removed shall become the property of COUNTY.

23. Damage or Destruction. LESSEE 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 LESSEE or by or with the consent of any person acting for or on behalf of LESSEE. If the Premises, improvements, or any part thereof, are damaged in any way whatsoever by the act, default or negligence of LESSEE, or its agents, employees, officers, invitees, contractors or any person admitted to the Premises by LESSEE or otherwise, LESSEE shall, at its sole cost and expense, restore the Premises to the condition existing prior to such damage. LESSEE shall commence such restoration within thirty (30) days and shall diligently pursue such restoration to completion. Such repairs, replacements or rebuilding shall be made by LESSEE in accordance with the construction requirements established by the Department. If LESSEE fails to restore the Premises as required above, COUNTY shall have the right to enter the Premises and perform the necessary restoration, and LESSEE hereby expressly agrees that it shall fully assume and be liable to COUNTY for payment of the costs therefore, plus twenty-five percent (25%) administrative overhead. Such restoration cost, plus the administrative cost, shall be due and payable within thirty (30) days from date of written notice.

24. Partial Destruction. If any of the improvements on the Premises are damaged or destroyed in part by fire or other casualty, COUNTY may terminate this Lease upon written notice to LESSEE within ninety (90) days after the date of any such damage or destruction or commence restoration of the Premises within a commercially reasonable period of time subject to the limitations set forth herein. In the event of restoration of the Premises by COUNTY pursuant to this paragraph, LESSEE's obligation to pay rental shall be abated proportionately on a square footage basis as to that portion of the Premises rendered unusable by reason of casualty commencing on the date of the casualty. Such abatement shall continue until thirty (30) days after notice by COUNTY to LESSEE that the Premises have been substantially repaired or restored. Notwithstanding any provision of this Lease to the contrary, COUNTY shall have no obligation under this Lease to restore the Premises in the event the casualty was the result of the act, default or negligence of LESSEE or its sublessees, contractors, employees, officers, licensees, agents or invitees. In such event, LESSEE shall be obligated to restore the Premises in accordance with Section 23 above.

25. Total Casualty. In the event of a total casualty to the Premises, which renders the Premises unusable, as reasonably determined by the Department, either party shall have the right to terminate this Lease within ninety (90) days of the date of the casualty by delivering a written notice of termination to the other party in accordance with the notice provisions in this Lease; provided, however, LESSEE shall not have the right to terminate in the event the casualty was the result of the act, default or negligence of LESSEE or LESSEE's sublessees, contractors, employees, officers, licensees, agents or invitees.

26. Waiver. TENANT hereby waives any claim against COUNTY for damages or compensation in the event this Lease is terminated pursuant to paragraph 24 or 25 above.

27. Limitations. Notwithstanding any provision of this Lease to the contrary, COUNTY shall have no obligation to repair, rebuild or restore LESSEE's personal property or fixtures or any improvements made by LESSEE to the Premises. In the event COUNTY elects to restore or rebuild the Premises following a casualty, COUNTY's obligation to restore, rebuild or restore the Premises pursuant to this Lease shall exist only to the extent of the insurance proceeds received by COUNTY as a result of such casualty. LESSEE shall not be entitled to and hereby waives any claims against COUNTY for any compensation or damage for any loss of use of the Premises, in whole or in part, or for any inconvenience or annoyance occasioned by any such damage, destruction, repair or restoration. In addition, COUNTY shall not be liable for any damage or inconvenience or interruption of the business of LESSEE occasioned by fire or other casualty.

28. Inspection. COUNTY, its agents and employees and any applicable Federal, State or local governmental entity having jurisdiction shall have the right to enter the Premises at any time for the purpose of inspecting the Premises for compliance with the provisions of this Lease and/or applicable laws. LESSEE agrees that COUNTY may take such action and to make such repairs or alterations as are, in the sole opinion of the COUNTY, desirable or necessary, and to take such materials into or out of the Premises for the safe and economical accomplishment of said purposes without in any way being deemed guilty of an actual or constructive eviction of the LESSEE.

29. Relationship of the Parties. LESSEE or any successor in interest to this Lease, is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions, and COUNTY shall in no way be responsible therefore.

30. Remedies Cumulative. The rights and remedies of the parties hereto with respect to any of the terms and conditions of this Lease shall be cumulative and not exclusive and shall be in addition to all other rights and remedies of the parties.

31. Notice. Any notice given under the provisions of this Lease shall be in writing and shall be delivered (as elected by the party giving such notice) by hand delivery, courier service, nationally-recognized overnight mail service, or 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 service, or overnight mail, 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 designated 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:

Department of Airports
Palm Beach County
Building 846, Palm Beach International Airport
West Palm Beach, Florida 33406-1491

With a copy to:

Palm Beach County Attorney's Office
Airport Attorney
301 North Olive Avenue, Suite 601
West Palm Beach, FL 33401

LESSEE:

E-mail Address:

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

32. Federal Right to Reclaim. In the event a United States governmental agency shall demand and take over the entire facilities of the Airport or the portion thereof wherein the Premises are located, for public purposes for a period in excess of ninety (90) days, either party may terminate this Lease 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 LESSEE may have against the United States as a result of such taking.

33. Governmental Review. LESSEE acknowledges this Lease may be subject to review or inspection by the Federal Aviation Administration or State of Florida to determine satisfactory compliance with State or Federal law or grant assurance requirements and this Lease shall be in full force and effect and binding upon both parties pending such review or inspection by the Federal Aviation Administration and/or State of Florida, if applicable; provided, however, that upon such review or inspection all parties hereto agree to modify any of the terms of this Lease which shall be determined by the Federal Aviation Administration or State of Florida to be in violation of existing laws, regulations, grant assurances or other requirements.

34. County Tax Assessment Right. None of the terms, covenants and conditions of this Lease shall in any way be construed as a release or waiver on the part of the COUNTY, as a political subdivision of the State of Florida, or any of the public officials of the County of Palm Beach, of the rights 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 Premises, the business or property of LESSEE.

35. Height Restriction. LESSEE expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Premises to such a height so as to comply with Title 14, Part 77 of the Code of Federal Regulations, as amended and as may be amended from time to time.

36. 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 Premises together with the right to cause in said airspace such noise as may be inherent in the operations of aircraft now known or hereafter used, for navigation of or flight in the said airspace for landing on, taking off from, or operating on the Airport.

37. Operation of Airport. LESSEE expressly agrees for itself, its successors and assigns, to prevent any use of the Premises which would interfere with or adversely affect the operation, maintenance or development of the Airport, or otherwise constitute an Airport hazard.

38. Release. LESSEE acknowledges that noise and/or vibration are inherent to the operation of Airport and hereby releases COUNTY from any and all liability relating to the same.

39. Non-discrimination. LESSEE for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree (a) that no person on the grounds of race, creed, color, national origin, sex, sexual orientation, religion, marital status, age, or disability shall be excluded from participation in or denied the use of the Premises, (b) that in the construction of any improvements on, over, or under such Premises and the furnishing of services, no person on the grounds of race, creed, color, national origin, sex, sexual orientation, religion, marital status, age, or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (c) that LESSEE shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended from time to time. In the event of the breach of any of the foregoing non-discrimination covenants, COUNTY shall have the right to terminate this Lease and to reenter and repossess said Premises and the facilities hereon, and hold the same as if said Lease had never been made or issued. This cancellation provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21, are followed and completed including exercise or expiration of appeal rights.

40. COUNTY not Liable. COUNTY shall not be responsible or liable to LESSEE for any claims for compensation or any losses, damages or injury whatsoever sustained by LESSEE including, without limitation, those resulting from failure of any water supply, heat, air conditioning, electrical current, or sewerage or drainage facility, or caused by natural physical conditions on the Premises, whether on the surface or underground, including stability, moving, shifting, settlement of ground, or displacement of materials by fire, water, windstorm, tornado, hurricane, act of God or state of war, civilian commotion or riot, or any cause beyond the control of COUNTY. All personal property placed on or moved onto the Premises shall be at the sole risk of LESSEE. COUNTY shall not be liable for any damage or loss of said personal property.

41. Compliance with Laws. Notwithstanding anything to the contrary herein, LESSEE shall not use or permit the use of the Premises or the Airport for any illegal or improper purpose or for any purpose which would invalidate any policies of insurance, now existing or hereafter written on the Premises or the Airport for COUNTY or LESSEE.

42. Waiver. 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, event of default, or nonperformance, and COUNTY's right to insist on strict performance of this Lease shall not be affected by any previous waiver or course of dealing.

43. Subordination to Bond Resolution. This Lease and all rights granted to LESSEE 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 LESSEE 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 LESSEE and COUNTY with the terms and provisions of this Lease and Bond Resolution.

44. Subordination to Agreements. This Lease 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, of which the Premises are a part, and shall be given only such effect as will not conflict with nor be inconsistent with such terms and conditions. LESSEE understands and agrees that this Lease shall be subordinate to the provisions of any existing or future agreement between COUNTY and the United States of America or 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.

45. Exclusive Rights. Notwithstanding anything contained in this Lease to the contrary, it is expressly understood and agreed that the rights granted under this Lease are nonexclusive, other than the exclusive right of use of the Premises, and that COUNTY may grant similar privileges to another lessee or other lessees on other parts of the Airport.

46. Public Entity Crimes. As provided in sections 287.132-133, Florida Statutes, as may be amended from time to time, by entering into this Lease or performing any work in furtherance hereof, LESSEE 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 hereof. This notice is required by section 287.133(3)(a), Florida Statutes.

47. Governmental Authority. Nothing in this Lease shall be construed to waive or limit COUNTY's governmental authority as a political subdivision of the State of Florida to regulate LESSEE or its operations.

48. Rights Reserved to the COUNTY. All rights not specifically granted LESSEE by this Lease are reserved to the COUNTY.

49. Invalidity of Clauses. The invalidity of any portion, article, paragraph, provision, clause or any portion thereof of this Lease shall have no effect upon the validity of any other part or portion hereof.

50. Paragraph Headings. The heading of the various articles and sections of this Lease 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 Lease or any part or parts of this Lease.

51. No Recording. Neither this Lease, nor any memorandum or short form hereof, shall be recorded in the Public Records of Palm Beach County, Florida.

52. Binding Effect. The terms, conditions and covenants of this Lease shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns, if any. This provision shall not constitute a waiver of any conditions against assignment or subletting.

53. Performance. The parties expressly agree that time is of the essence in this Lease and the failure by LESSEE to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall, at the option of COUNTY, in addition to any other rights or remedies, relieve COUNTY of any obligation to accept such performance without liability.

54. No-Broker. LESSEE warrants to COUNTY that no real estate broker or agent has been used or consulted in connection with the transaction contemplated by this Lease and agrees to indemnify and hold COUNTY harmless from all loss, cost, damage or expense (including reasonable attorneys' fees) incurred by COUNTY as a result of any claim arising out of the acts of LESSEE (or others on its behalf) for a commission, finder's fee or similar compensation made by any broker or agent who claims to have dealt with LESSEE.

55. Incorporation by References. Exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Lease by such reference.

56. Venue and Governing Law. To the extent allowed by law, the venue for any action arising from this Lease shall be in Palm Beach County, Florida. This Lease shall be governed by and in accordance with the laws of the State of Florida.

57. Negotiated Agreement. The parties agree that they have had meaningful discussion and/or negotiation of the provisions, terms and conditions contained in this Lease. Therefore, doubtful or ambiguous provisions, of any, contained in this Lease shall not be construed against the party who physically prepared this Lease.

58. Entirety of Agreement. The parties agree that this Lease 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 Lease may be added to, modified, superseded or otherwise altered except by written instrument executed by the parties hereto.

59. 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.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first written above.

**PALM BEACH COUNTY
BY ITS DIRECTOR OF AIRPORTS**

Witnesses:

Print Name

Signature

Print Name

Signature

By: _____

Director

Witnesses:

Print Name

Signature

Print Name

Signature

LESSEE:

By: _____

Print Name

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

By: _____

County Attorney