

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

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Meeting Date: October 2, 2007 [X] Consent [] Regular
[] Workshop [] Public Hearing

Department:

Submitted By: Department of Airports

Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a License Agreement with Rohan Aviation, d/b/a Kemper Aviation ("Kemper") for the use of an office trailer located at Palm Beach County Park Airport ("Airport") to conduct its flight school classroom training on specific days and times.

Summary: The Agreement is on a month-to-month basis. Kemper will be required to pay a monthly license fee to the County in the amount of \$487.00, which may be adjusted from time to time. Kemper will be responsible for maintaining adequate insurance coverage and cleanliness of the trailer. Kemper will have use of the facility during specific days and times solely for the purpose of flight school classroom training. Countywide (JB)

Background and Justification: Kemper has requested the right to use the trailer for flight school classroom training. The trailer is primarily used by the Department's General Aviation Manager and is not needed on a full-time basis.

Attachments:
1. License Agreement (3)

Recommended By: [Signature] 8/27/07
Department Director Date

Approved By: [Signature] 9/11/07
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	=====	=====	=====	=====	=====
# ADDITIONAL FTE	_____	_____	_____	_____	_____
POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No X
 Budget Account No: Fund 4100 Department _____ Unit 8230 Object 4413
 Reporting Category _____

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

If approved, the County will receive \$487 per month in return for the use of the facility.

C. Departmental Fiscal Review: CM Simon

III. REVIEW COMMENTS

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

Minimal fiscal impact for this month-to-month lease.

Old Jan Dub 9-18-07
 OFMB
 9/18/2007
 CM 9/18/07

W. J. Sweet 9/19/07
 Contract Dev. and Control
 9/18/07
 This Contract complies with our contract review requirements.

B. Legal Sufficiency:

James Brub
 Assistant County Attorney

C. Other Department Review:

 Department Director

**PALM BEACH COUNTY
DEPARTMENT OF AIRPORTS**

LICENSE AGREEMENT

BETWEEN

**PALM BEACH COUNTY, FLORIDA
A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA
(COUNTY)**

and

**ROHAN AVIATION, d/b/a KEMPER AVIATION,
A FLORIDA CORPORATION
(LICENSEE)**

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "Agreement") made and entered into this ___ day of AUG 3 2007, 200_, by and between Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as ("County") and Rohan Aviation, Inc., d/b/a Kemper Aviation, a Florida Corporation whose principal place of business is located at 2633 Lantana Road, Suite 18, Lantana, Florida 33462, hereinafter referred to as ("Licensee").

WITNESSETH:

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

WHEREAS, Licensee desires to use office space located in a trailer owned by County on the Airport to conduct flight school classroom training; and

WHEREAS, County is willing to grant Licensee a revocable license to use the Premises 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 revocable license to use the Premises (as hereinafter defined) upon the following terms and conditions:

ARTICLE 1 BASIC PROVISIONS

Section 1.01 Recitals

The foregoing recitals are true and correct and incorporated herein.

Section 1.02 Premises

The premises, which are the subject of this Agreement, consist of approximately 442 square feet of office space, as more particularly identified in Exhibit "A", attached hereto and incorporated herein (the "Premises").

ARTICLE 2 LENGTH OF TERM AND COMMENCEMENT DATE

The term of this Agreement shall be for a period of one (1) month, commencing on October 1, 2007 (the "Commencement Date") and expiring on October 31, 2007 the "Term"). This Agreement shall be automatically renewed for one (1) month intervals thereafter; provided, however, either party may elect not to renew this Agreement upon providing no less than thirty (30) days advance written notice to the other party prior to the expiration of the then current term.

ARTICLE 3 LICENSE FEE

Section 3.01 License Fee.

Licensee, simultaneous with its execution of this Agreement, shall pay County for the use and occupancy of the Premises for the Term of this Agreement a license fee of Four Hundred and Eighty Seven Dollars (\$487.00) monthly, together with applicable sales taxes thereon. Payment of license fee by Licensee to County shall commence on the Commencement Date. The license fee shall be payable in advance, without demand and without any deduction, holdback or set off whatsoever, on or before the first day of each and every month throughout the Term of this Agreement and any extension thereof.

Section 3.02 Adjustment of License Fee.

The amount of license fees due hereunder may be adjusted from time-to-time by the County upon prior written notice to Licensee. Notwithstanding any provision of this Agreement to the contrary, the rate shall be maintained at all times to ensure compliance with the provisions Section 710 (rate covenant) of the Palm Beach County Airport System Revenue Bond Resolution, dated April 3, 1984, as amended and supplemented (the "Bond Resolution"), which is hereby incorporated by reference and made a part hereof.

Section 3.03 Security Deposit.

Licensee, simultaneously with its execution of this Agreement shall deposit with the County a sum equal to one (1) month's license fee as security ("Security Deposit") for the faithful performance and observance by Licensee of the terms, conditions, covenants and provisions of this Agreement, including, without limitation the surrender of possession of the Premises to County pursuant to Section 4.08 of this Agreement. The Security Deposit may be commingled with other funds of County, and County shall have no liability for the accrual or payment of any interest thereon. In the event of the failure of Licensee to keep and perform any of the terms, covenants and conditions of this Agreement to be kept and performed by Licensee, then County, at its option, may appropriate and apply Security Deposit, or so much thereof as County may deem necessary, to compensate the County for all loss or damage sustained or suffered by County due to such default or failure on the part of Licensee. Should any portion of the Security Deposit be so appropriated and applied by County, then Licensee shall, upon the demand of County, forthwith remit to County a sufficient amount in cash to restore the Security Deposit to the original sum deposited, and Licensee's failure to do so within twenty-four (24) hours after receipt of such demand shall constitute a default of this Agreement. Should Licensee comply with all of the terms, covenants and conditions of this Agreement, the Security Deposit shall be returned in full to Licensee within one (1) month after expiration of this Agreement.

**ARTICLE 4
CONDUCT OF BUSINESS AND USE OF PREMISES BY LICENSEE**

Section 4.01 Use of Premises and Hours of Operation.

Licensee shall use the Premises solely and exclusively for flight school classroom training. Licensee shall not use, permit or suffer the use of the Premises for any other business or purpose whatsoever. Licensee's hours of operation on the Premises during the Term of this Agreement shall be as follows:

Monday, Tuesday, Wednesday, and Thursday of each week:

8:00 a.m. to 11:00 a.m.
and
3:00 p.m. to 6:00 p.m.

Licensee shall not have the right to use or occupy the Premises during any other days or times.

Section 4.02 Improvements.

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

Section 4.03 Condition of Premises.

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

Section 4.04 Waste or Nuisance.

Licensee shall not commit or suffer to be committed any waste upon the Premises or any nuisance or other act or thing which may result in damage or depreciation of value of the Premises. All refuse is to be removed from the Premises daily at Licensee's sole cost and expense. Licensee will keep the access to the Premises, the parking areas, driveways and other contiguous areas to the Premises free and clear of obstruction.

Section 4.05 Utilities

County may charge Licensee for any utilities used or consumed by Licensee during its activities on the Premises. Utility charges shall be based on the Department's estimate of the costs associated with Licensee's use of such utilities. Licensee shall pay all utility charges within thirty (30) days of the Department's invoice. County shall not be liable for any interruption in utility services.

Section 4.06 Cleanliness of Premises.

Licensee shall, at Licensee's sole cost and expense, shall maintain the Premises in a neat, orderly, sanitary, and presentable condition, including, but not limited to restroom cleanliness and restocking of restroom supplies.

Section 4.07 Governmental Regulations.

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 Premises. 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.

Section 4.08 Non-Discrimination.

Licensee 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 Licensee 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 Agreement and to reenter and repossess the Premises and the facilities hereon, and hold the same as if the Agreement 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.

Section 4.09 Surrender of Premises.

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

Section 4.10 Personal Property.

Licensee shall not store or keep any personal property on or within the Premises.

Section 4.11 County's Right to Enter

County shall have the right to enter the Premises 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 Premises; 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 Premises 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 8.04 shall not apply to this Section.

**ARTICLE 5
REPAIRS AND MAINTENANCE OF PREMISES**

Section 5.01 Responsibility of County and Licensee.

County shall not be obligated or required to make or conduct any maintenance or repairs whatsoever to the Premises. All portions of the Premises and all improvements erected on the Premises shall be kept in good repair and condition by Licensee. Upon expiration or earlier termination of this Agreement, Licensee shall deliver the Premises to County in good repair and condition as specified herein. In the event of any damage to the Premises, County may complete the necessary repairs and Licensee shall reimburse County for all expenses incurred by County in doing so within fifteen (15) days after written request for reimbursement from County.

**ARTICLE 6
INSURANCE AND INDEMNITY**

Section 6.01 Liability Insurance.

Licensee shall, during the entire Term hereof, keep in full force and effect General Liability Insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence combined single limit bodily injury and property damage liability and Workers Compensation insurance covering all employees in accordance with Chapter 440, Florida Statutes. The General Liability policy shall include coverage for Premises - Operations, Contractual and Product Liability, Independent Contractors, Contractual Liability and Broad Form Property Damage Liability coverage.

Section 6.02 General Provisions.

Except for Workers Compensation, all insurance policies shall name County as additional insured. The additional insured endorsement shall read: "Palm Beach County Board of County Commissioners, a political subdivision of the State of Florida, its Officers, Employees and Agents, c/o Palm Beach County Department of Airports, 846 Palm Beach International Airport, West Palm Beach, Florida 33406". Insurance shall be with an insurance company licensed to do business in the State of Florida and subject to the approval of County's Risk Management Department. A Certificate of Insurance evidencing such insurance coverage shall be provided to County prior to the Effective Date. The Certificate shall indicate at least thirty (30) days prior notice of cancellation or adverse material change in coverage.

The insurance requirements contained herein, as well as County's review or acceptance of insurance maintained by Licensee hereunder is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Licensee under this Agreement.

Section 6.03 Indemnification of County.

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 Premises; (ii) the occupancy or use by Licensee of the Premises 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 termination of this Agreement.

Section 6.04 Waiver of Subrogation.

By entering into this Agreement, Licensee agrees to a Waiver of Subrogation for each required policy when required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, Licensee shall 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, a condition to which the policy specifically prohibits such an endorsement, or voids coverage should Licensee enter into such an agreement on a pre-loss basis. Nothing contained in this Section shall be construed as an obligation of Licensee to provide a Waiver of Subrogation in the event that Licensee's insurer will not provide it.

Section 6.05 Assignment and Subletting

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

**ARTICLE 7
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 Premises, which license is expressly revocable by County for any reason whatsoever upon notice to Licensee. Upon Licensee's receipt of 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.

**ARTICLE 8
MISCELLANEOUS**

Section 8.01 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 Bond Resolution, and County and Tenant 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.

Section 8.02 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 Premises 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.

Section 8.03 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 Premises. 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.

Section 8.04 Notices.

All notices, consents, approvals, 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 national overnight delivery service, 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 national overnight delivery service, 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 Department of Airports
846 Palm Beach International Airport
West Palm Beach, FL 33406-1470
Attn: Deputy Director, Airports Business Affairs

- (b) If to the Licensee at:

Rohan Aviation, Inc. d/b/a Kemper Aviation
2633 Lantana Road, Suite 18
Lantana, Florida 33462

Any 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 parties.

Section 8.05 Recording.

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

Section 8.06 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.

Section 8.07 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.

Section 8.08 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.

Section 8.09 Captions.

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

Section 8.10 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.

Section 8.11 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.

Section 8.12 Liability of County.

Licensee shall look solely to the estate and property of the County in the Premises for the collection of any judgment, or in connection with any other judicial process, requiring the payment of money by County in the event of any default by County with respect to any of the terms, covenants and conditions of this Agreement to be observed and performed by County, and no other property or estates of County shall be subject to levy, execution or other enforcement procedures for the satisfaction of Licensee's remedies and rights under this Agreement.

Section 8.13 Effective Date.

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

(Remainder of page left blank intentionally)

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.

ATTEST:
SHARON R. BOCK, Clerk
& Comptroller

PALM BEACH COUNTY, FLORIDA, A
POLITICAL SUBDIVISION OF THE
STATE OF FLORIDA, BY ITS BOARD
COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Addie L. Greene, Chairperson

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By: _____
County Attorney

By: _____
Director, Department of Airports

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

Rohan Aviation, Inc. d/b/a Kemper
Aviation, a Florida Corporation

Sabrina Pitman
Signature

By: Jeffrey W. Rozelle
Signature

Sabrina Pitman
Typed or Printed Name

JEFFREY W. ROZELLE
Typed or Printed Name

Vincenzo Taddo
Signature

VINCENZO TADDEO
Typed or Printed Name

(Corporate Seal)

EXHIBIT "A"



PREMISES: 2633 Lantana Road, Lantana, Florida 33462