

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

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

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

No fiscal impact.

C. Departmental Fiscal Review: C. Willinger

III. REVIEW COMMENTS

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

atwillhita 12-15-08
OFMB
CM 12/11/08

J. Jones 12/16/08
 Contract Dev. and Control
J. Jones 12/16/08

B. Legal Sufficiency:

This amendment complies with our review requirements.

J. Jones 12/16/08
 Assistant County Attorney

C. Other Department Review:

 Department Director

**FIRST AMENDMENT TO AIRLINE OPERATING AND LEASE AGREEMENT
BETWEEN PALM BEACH COUNTY AND AIR CANADA**

THIS FIRST AMENDMENT TO AIRLINE OPERATING AGREEMENT AND LEASE AGREEMENT (this "Amendment") is made and entered into _____ by and between Palm Beach County, a political subdivision of the State of Florida ("COUNTY"), and Air Canada, a Canadian corporation, having its office and principal place of business at 7373 Cote Vertu West, Ville Saint Laurent, Quebec, Canada ("AIRLINE").

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

WHEREAS, the parties entered into that certain Airline-Airport Use and Lease Agreement dated December 2, 2008 (the "Agreement"); and

WHEREAS, the parties hereto desire to amend the Agreement in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained and for such other good and valuable consideration, the receipt of which the parties hereby expressly acknowledge, the parties hereto covenant and agree to the following terms and conditions:

1. The recitals set forth above are true and correct and incorporated herein by this reference. Terms not defined herein shall have the meaning ascribed to them in the Agreement.

2. The second sentence of Article 4.06(I) of the Agreement is hereby deleted in its entirety and replaced with the following:

AIRLINE agrees that all aircraft maintenance shall be performed in accordance with all applicable local, state and federal laws, as now or hereafter amended.

3. The last sentence of Articles 6.03(C) and 6.03(D) of the Agreement are hereby deleted in their entirety and replaced with the following:

The rentals, fees and charges identified in this paragraph shall be delinquent if payment is not received by COUNTY within thirty (30) days of receipt of the invoice by AIRLINE.

4. Article 6.05 of the Agreement is hereby amended to add the following:

C. Except as otherwise required by law or a court of competent jurisdiction, COUNTY will not disclose the Activity Reports submitted hereunder to any third

party without AIRLINE's consent, which consent will not be unreasonably withheld, and provided that AIRLINE has clearly identified the confidential and exempt information contained in such Activity Reports and the specific statutory exemption(s) relied upon by AIRLINE for nondisclosure under Florida Public Records law.

5. Article 6.06(B) of the Agreement is hereby deleted in its entirety and replaced with the following:

B. COUNTY or its duly authorized representative(s) may examine, with prior written notice to AIRLINE, any and all such books, ledgers, accounts and records during all reasonable business hours, in AIRLINE's offices or such other place as mutually agreed to between AIRLINE and the Department. Upon COUNTY's written request for examination of such books, ledgers, accounts and records, AIRLINE shall produce such items in Palm Beach County within ten (10) business days or pay all reasonable and necessary expenses, including, but not limited to, transportation, food, and lodging for COUNTY's Internal Auditor or his representative(s) to audit said books and records outside Palm Beach County.

6. Article 8.03(D)(3) of the Agreement is hereby deleted in its entirety and replaced with the following:

(3) Upon completion of construction, AIRLINE shall submit to the Department for its review and approval, which approval shall not be unreasonably withheld, delayed or conditioned, evidence of the receipt of at least three (3) price quotations for the improvements as completed, full documentation of the bidding process and the construction of the improvements, and one full and complete set of as built drawings of the improvements made.

7. Article 9.01 of the Agreement is hereby deleted in its entirety and replaced with the following:

9.01 Partial Damage. If any portion of the Airline Premises, or adjacent facilities directly and substantially affecting the use of the Airline Premises, shall be partially damaged by fire or other casualty, but does not render the Airline Premises untenable, as reasonably determined by the Department, and provided that AIRLINE is able to continue its operations, the damaged portion of the Airline Premises shall be repaired to usable condition with reasonable diligence by COUNTY, subject to Articles 9.04 through 9.06, with no rental abatement.

8. Article 11.07 of the Agreement is hereby deleted in its entirety and replaced with the following:

11.07 Right to Review. COUNTY, by and through its Risk Management Department, in cooperation with the Department, reserves the right to reasonably adjust the types, amounts and limits of coverage required hereunder from time to time throughout the term of this Agreement. COUNTY may reject any insurer or self-insurance plan providing coverage because of poor financial condition or failure to operate legally. In such event, COUNTY shall provide AIRLINE written notice of such adjustments or rejection and AIRLINE shall comply within thirty (30) days of receipt thereof. AIRLINE shall be responsible for any premium revisions as a result of any such reasonable adjustment.

9. Article 14.06 of the Agreement is hereby deleted in its entirety and replaced with the following:

14.06 Indemnification Obligations. During the period of use of AIRLINE's facilities by an Air Transportation Company at the Department's request or direction pursuant to this Article 14, AIRLINE shall be relieved of its obligations under this Agreement to indemnify and save harmless COUNTY, its officers, directors, employees, or agents with regard to any claim for damages or personal injury arising out of or in connection with the accommodated Air Transportation Company's or Requesting Airline's use of the Airline Premises unless such damage or personal injury is caused by the willful misconduct or sole negligence of AIRLINE, its officers, directors, employees, agents, or representatives.

10. The second sentence of Article 14.07 of the Agreement is hereby deleted in its entirety and replaced with the following:

Subject to the terms and conditions of this Agreement, and subject to AIRLINE's consent to proposed relocation, AIRLINE shall be eligible for reimbursement of its direct out-of-pocket labor and equipment relocation costs as approved by the Department through Rental Credits.

11. The first sentence of Article 17.01 of the Agreement is hereby deleted in its entirety and replaced with the following:

AIRLINE assures that it will comply with all applicable statutes, Executive Orders, and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, gender identity or expression, age or handicap be excluded from participating in any activity conducted with or benefiting from federal assistance.

12. Article 17.02 of the Agreement is hereby deleted in its entirety and replaced with the following:

17.02 Non-discrimination in Benefits and Services. AIRLINE for itself, its successors in interest and assigns, as a part of the consideration hereof, does

hereby covenant and agree that: (1) no person on the grounds of race, creed, color, national origin, sex, gender identity or expression, sexual orientation, religion, marital status, age or disability shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) in the construction of any improvements on, over, or under the Airline Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, national origin, sex, sexual orientation, gender identity or expression, religion, marital status, age, or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) AIRLINE shall use the Airline Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations (CFR), Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, as now or hereafter amended, to the extent such requirements are applicable to AIRLINE. In the event of breach of any of the above non-discrimination covenants, COUNTY shall have the right to terminate this Agreement and to re-enter and repossess the Airline Premises and the facilities thereon, and hold the same as if said Agreement had never been made or issued. AIRLINE, for itself, its successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained or otherwise operated on the Airline Premises for a purpose for which a Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, AIRLINE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended, but only to the extent that such requirements are applicable to AIRLINE.

13. The first sentence of Article 20.03 of the Agreement is hereby deleted and replaced with the following:

AIRLINE agrees that it shall conduct its operations and activities under this Agreement in a safe manner, shall comply with all applicable safety regulations of the Department and with safety standards imposed by applicable federal, state and local laws and regulations and shall require the observance thereof by all employees, contractors, business invitees and all other persons transacting business with or for AIRLINE resulting from, or in any way related to, the conduct of Air Transportation Services on the Airline Premises.

14. Except as specifically modified herein, all of the terms and conditions of the Agreement shall remain unmodified and in full force and effect and are hereby ratified and confirmed by the parties hereto.

15. This Amendment shall be considered effective when signed by all parties and approved by the Palm Beach County Board of County Commissioners.

(Remainder of page left blank intentionally)

IN WITNESS WHEREOF, COUNTY has caused this Amendment to be signed by the Chair or Vice Chair of the Palm Beach Board of County Commissioners ("Board"), pursuant to the authority granted by the Board, and AIRLINE, Air Canada, has caused these presents to be signed in its corporate name by its duly authorized officer, the Senior Director, acting on behalf of AIRLINE, and the seal of AIRLINE to be affixed hereto ~~and attested by the Secretary of AIRLINE~~, the day and year first written above.

ATTEST:
Sharon R. Bock, Clerk & Comptroller

PALM BEACH COUNTY, a political subdivision of the State of Florida, by its Board of County Commissioners

By: _____
Deputy Clerk

By: _____
Chair

(SEAL)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND CONDITIONS

By: _____
County Attorney

By: [Signature]
Director, Department of Airports

Signed, sealed and delivered in the presence of two witnesses for AIRLINE

AIRLINE:



[Signature]
Signature
Sylvette CHUNG LIM
Name (type or print)

By: [Signature]
Sal Ciotti
Sr Director Financial Services
Name (type or print)
Operations and CRE

[Signature]
Signature
Maria Tacucci
Name (type or print)

Title
[Signature]
Michael Pleszkewycz - 148382
Affirmé solennellement devant moi,
Affirmed solemnly in front of me,
Montréal, Québec, Canada
Date: NOVEMBER 18, 2008
(Corporate Seal)

ATTEST:
By: _____
Secretary

