

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	* SEE BELOW				
# 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. The fixed rentals, fees and charges payable by Northwest through the end of the contract term (September 30, 2011) will be assumed by Delta in the form of a termination fee.

C. Departmental Fiscal Review: CM Simon

III. REVIEW COMMENTS

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

[Signature] 5/18/09
[Signature] 5/26/09
 OFMB
 CM 5/18/09

[Signature] 5/18/09
 Contract Dev. and Control
 E. Jones 5/28/09

B. Legal Sufficiency:

[Signature] 4/1/09
 Assistant County Attorney

C. Other Department Review:

 Department Director

**AGREEMENT TO TERMINATE
AIRLINE-AIRPORT USE AND LEASE AGREEMENT**

THIS AGREEMENT TO TERMINATE AIRLINE-AIRPORT USE AND LEASE AGREEMENT (this "Agreement") is made and entered into this _____ day of _____, 2009, by and between Palm Beach County, a political subdivision of the State of Florida ("COUNTY"), and Northwest Airlines, Inc., a Minnesota corporation, having its offices and principal place of business at 5101 Northwest Drive, St. Paul, Minnesota 55111-3034 ("AIRLINE").

WITNESSETH:

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

WHEREAS, COUNTY and AIRLINE entered into that certain Airline-Airport Use and Lease Agreement dated April 23, 2007 (R-2007-0859) (the "Northwest Agreement"); and

WHEREAS, on October 29, 2008, AIRLINE merged with Delta Air Lines, Inc. ("Delta"), and became a wholly-owned subsidiary of Delta (the "Merger"); and

WHEREAS, as a result of the Merger, the parties hereto desire to terminate the Northwest Agreement and to provide for payment of a termination fee by Delta through a separate amendment to that certain Airline-Airport Use and Lease Agreement by and between COUNTY and Delta dated January 30, 2007 (R-2007-0386), as amended.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, and for 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. **Recitals.** The foregoing recitals are true and correct and are hereby incorporated herein by reference and made a part hereof.

2. **Termination.** The Northwest Agreement is hereby terminated as of the effective date of this Agreement. Upon termination, AIRLINE and COUNTY shall be released from all further obligations under the Northwest Agreement, with exception of those obligations that expressly survive the expiration or earlier termination of the Northwest Agreement. Nothing in this Agreement shall be construed as releasing AIRLINE or COUNTY from any obligations arising prior to the termination of the Northwest Agreement, including, but not limited to, AIRLINE's obligation to pay all rentals, fees and charges under the Northwest Agreement accruing prior termination of the Northwest Agreement (the "Outstanding Amounts"). In the event that AIRLINE does not pay any of the Outstanding Amounts when due, Delta agrees to promptly pay to COUNTY all such Outstanding Amounts not paid by AIRLINE.

3. **Entire Agreement.** This Agreement embodies the entire understanding and agreement between the parties hereto and supersedes any and all prior negotiations, understandings, or agreements relating to the subject matter hereof.

4. **Governing Law; Jurisdiction.** This Agreement shall be governed by the laws of the State of Florida. Each party hereto agrees to submit to the personal jurisdiction and venue of the State and Federal Courts located in Palm Beach County, Florida for resolution of all disputes.

5. **Binding Effect.** The rights and obligations of the parties under this Agreement shall inure to the benefit of, and shall be binding upon, the heirs, estates, representatives, successors and assigns of the parties hereto.

6. Effective Date. This Agreement shall become effective when signed by the parties hereto and approved by the Palm Beach County Board of County Commissioners.

IN WITNESS WHEREOF, the undersigned hereby execute this Agreement effective as of the date first written above.

ATTEST:

Sharon R. Bock, Clerk & Comptroller

By: _____
Deputy Clerk

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

By: _____
John F. Koons, Chairman

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: _____
County Attorney

APPROVED AS TO TERMS AND CONDITIONS

By: _____
Director - Department of Airports

Signed, sealed and delivered in the Presence of two (2) witnesses for Delta:

Signature _____
James Masoco
Print Name

Signature _____
Leslie Klemperer
Print Name

DELTA AIR LINES, INC.
By: _____

Typed or printed name of Corporate Officer
David Hamm
Title: **Director- Corporate Real Estate**

(Seal)

Signed, sealed and delivered in the Presence of two (2) witnesses for AIRLINE:

Signature _____
James Masoco
Print Name

Signature _____
Leslie Klemperer
Print Name

NORTHWEST AIRLINES, INC.
By: _____
Dawn M. Arnevik
Typed or printed name of Corporate Officer

Title: **Director- Properties**

(Seal)

**THIRD AMENDMENT TO AIRLINE-AIRPORT USE AND LEASE AGREEMENT
BETWEEN PALM BEACH COUNTY AND DELTA AIR LINES, INC.**

THIS THIRD AMENDMENT TO THE AIRLINE-AIRPORT USE AND LEASE AGREEMENT is made and entered into this _____ day of _____, 2009, by and between Palm Beach County, a political subdivision of the State of Florida ("COUNTY"), and Delta Air Lines, Inc., a Delaware corporation, having its offices and principal place of business at Hartsfield-Jackson International Airport, Atlanta, GA 30320 ("AIRLINE").

WITNESSETH:

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

WHEREAS, pursuant to the Airline-Airport Use and Lease Agreement between COUNTY and AIRLINE dated January 30, 2007 (R2007-0386), as amended ("Delta Agreement"), AIRLINE leases various Airport terminal facilities and equipment in connection with its operations as a commercial air carrier; and

WHEREAS, on October 29, 2008, a wholly-owned subsidiary of AIRLINE merged with Northwest Airlines Corporation ("NWC") and as a result of such merger, NWC became a wholly-owned subsidiary of AIRLINE and NWC's wholly-owned subsidiary, Northwest Airlines, Inc. ("Northwest"), became an indirect wholly-owned subsidiary of AIRLINE (the "Merger"); and

WHEREAS, as a result of the Merger, that certain Airline-Airport Use and Lease Agreement by and between COUNTY and Northwest dated April 23, 2007 (R-2007-0859) ("Northwest Agreement") was terminated; and

WHEREAS, the parties desire to amend the Delta Agreement to provide for the payment of a termination fee to COUNTY by AIRLINE in consideration of COUNTY's agreement to terminate the Northwest Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, and for 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. Recitals. The foregoing recitals are true and correct and are hereby incorporated herein by reference and made a part hereof. Terms not defined herein shall have the meanings ascribed to them in the Delta Agreement.

2. Termination Fee. In consideration of COUNTY's agreement to terminate the Northwest Agreement, AIRLINE shall pay COUNTY a termination fee based upon the space allocations and types identified in the attached Exhibit "A" at the rates applicable to Signatory Airlines as established in the then current Statement of Rates ("Termination Fee"). The Termination Fee shall be adjusted annually in accordance with Article 7 of the Delta Agreement based upon the space allocations and types set forth in Exhibit "A". The parties acknowledge and agree that the space allocations set forth in Exhibit "A" are for the sole purpose of calculating the Termination Fee, that this Amendment does not provide for the lease of additional space to AIRLINE by COUNTY, and that all payments made pursuant to this Amendment shall be considered a Termination Fee. Commencing as of the effective date of termination of the Northwest Agreement and continuing through the remainder of the current term of the Delta Agreement (*i.e.*, through September 30, 2011), the Termination Fee shall be payable in monthly installments on or before the first (1st) business day of each and every month and shall be remitted to the Department in accordance with the requirements of Article 6.03(A) of the Delta Agreement. The Termination Fee shall be separately stated in AIRLINE's remittances and in COUNTY's invoices. COUNTY shall not account for the

Termination Fee as rental income and AIRLINE shall not account for the Termination Fee as rental expense.

3. Taxes. AIRLINE shall be responsible for payment of all taxes and assessments imposed by any governmental entity arising out of this Amendment, if any. AIRLINE shall have the right to contest the amount or validity of any tax imposed in accordance with Article 20.08 of the Delta Agreement.

4. Incorporation by Reference. Exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Amendment by such reference.

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

6. Effective Date. This Amendment shall become effective when signed by both the parties hereto and approved by the Palm Beach County Board of County Commissioners.

IN WITNESS WHEREOF, COUNTY has caused this Third Amendment to the Airline-Airport Use and Lease Agreement to be signed by the Chair or Vice Chair of the Palm Beach County Board of County Commissioners (the "Board") pursuant to the authority granted by the Board, and AIRLINE, Delta Air Lines, Inc., has caused these presents to be signed in its corporate name by its duly authorized officer, 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

By: _____
Deputy Clerk

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

By: _____
John F. Koons, Chairman

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: _____
County Attorney

**APPROVED AS TO TERMS
AND CONDITIONS**

By: _____
Director - Department of Airports

Signed, sealed and delivered in the
presence of two (2) witnesses for
AIRLINE:

Signature: _____
Print Name: James MASOERO

Signature: _____
Print Name: Lisa Gavin

DELTA AIR LINES, INC.

By: _____
David Hamm
Director, Corporate Real Estate

Title: _____
(Seal)

EXHIBIT "A"
TO THIRD AMENDMENT TO AIRLINE-USE AND LEASE AGREEMENT

Space Type	Space Allocation
Aircraft Parking Apron	175 lineal ft.
Baggage Make Up (Type 4 Space)	1781.25 sq. ft.
Curbside Office (Type 4 Space)	93.28 sq. ft.
Holdroom (Type 2 Space)	2,478.84 sq. ft.
Ticket Counter (Type 1 Space)	711.26 sq. ft.
Ticket Office (Type 2 Space)	649.77 sq. ft.
Operations Area (Type 4 Space)	1,900 sq. ft.
Preferential Use Loading Bridge, Support System & Holdroom Furnishings	1
Baggage Make Up Conveyors/Devices	1781.25 sq. ft.
Service Office (Type 4 Space)	345.63 sq. ft.