

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: August 18, 2009

Consent 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 establishing a standard form Nonconcessionaire Rental Car and Parking Lot Operator Permit (Permit); authorizing the County Administrator or his designee to execute the standard form Permit; repealing Resolution 2005-0451; and becoming effective upon adoption.

Summary: The Resolution establishes a new standard form Permit for use with non-concessionaire rental car and off-airport parking lot operators at the Palm Beach International Airport, and authorizes the County Administrator or his designee to execute the standard form Permit on behalf of the Board. The Resolution repeals Resolution 2005-0451, which adopted a similar permit for nonconcessionaire rental car companies but which did not include off-airport parking lot operators. Countywide (AH)

Background and Justification: The Board approved a standard form permit for non-concessionaire rental car companies pursuant to Resolution 2005-0451. Without a permitting process, nonconcessionaire rental car companies and off-airport parking lot operators would be permitted to use airport facilities for business purposes at no charge. The new standard form Permit updates several provisions in the old form, including revenue reporting requirements, and has been modified for use with both nonconcessionaire rental car companies and off-airport parking lot operators. Permit fees are 8% of gross revenues plus an initial Permit application fee of \$250. The term of the Permit will renew annually each October 1, unless terminated by either party.

Attachments:

1. Resolution

 Recommended By: Juan Felix Department Director 7/15/09 Date
 Approved By: [Signature] County Administrator 7/24/09 Date

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>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</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: Michael Swinn

III. REVIEW COMMENTS

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

Michael J. [Signature] 7/29/09
 OFMB 09/7/23/09

[Signature] 7/28/09
 Contract Dev. and Control

B. Legal Sufficiency:

Anne Delcourt 7/29/09
 Assistant County Attorney

C. Other Department Review:

 Department Director

RESOLUTION NO. R-2009-

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA; ESTABLISHING A STANDARD FORM NONCONCESSIONAIRE RENTAL CAR AND PARKING LOT OPERATOR GROUND TRANSPORTATION PERMIT; AUTHORIZING THE COUNTY ADMINISTRATOR OR HIS DESIGNEE TO EXECUTE A STANDARD FORM NONCONCESSIONAIRE RENTAL CAR AND PARKING LOT OPERATOR GROUND TRANSPORTATION PERMIT; REPEALING RESOLUTION 2005-0451; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, Section 10-2 of the Palm Beach County Airport Rules and Regulations (the "Rules") provides that only those courtesy vehicles which hold a valid Ground Transportation Permit shall have the right to transport persons and/or baggage from areas designated as ground transportation parking zones; and

WHEREAS, Section 10-5 of the Rules requires Nonconcessionaire Rental Car Companies (as defined in the Rules) desiring to drop off or pick up customers at the Airport to obtain a permit; and

WHEREAS, County adopted a standard form Nonconcessionaire Rental Car Airport Permit pursuant to Resolution 2005-0451 on March 1, 2005; and

WHEREAS, County has determined that the security of the public on the Airport requires Nonconcessionaire Rental Car Companies and parking lot operators to obtain a Nonconcessionaire Rental Car and Parking Lot Operator Ground Transportation Permit ("Permit"), in the form attached hereto and incorporated herein as Attachment "A", and operate according to its terms and conditions; and

WHEREAS, County has further determined that the safe and efficient use of the Airport and its roadways requires Nonconcessionaire Rental Car Companies and parking lot operators to transport only those customers with bona fide reservations with said companies and operators; and

WHEREAS, Airport rental car concession agreements have reasonable requirements, regulations, charges and fees for the privilege of engaging in the car rental business at the Airport; and

WHEREAS, absent a permitting process, Nonconcessionaire Rental Car Companies and parking lot operators would be permitted to use Airport facilities for business purposes without being charged a fee for this privilege; and

WHEREAS, in order to help defray the cost of construction, improvement, operation and maintenance of Airport facilities; to pay for service and retirement of Airport debts; to regulate the entrances to property and buildings at the Airport and ingress and egress to and from them; to preserve the good order and peace at the Airport; to provide for the public health, safety and welfare; and to govern the Airport, it is necessary to establish fees, charges and regulations for Nonconcessionaire Rental Car Companies and parking lot operators desiring access to the Airport; and

WHEREAS, it is in the public interest to allow Nonconcessionaire Rental Car Companies and parking lot operators to use Airport facilities subject to the provisions and limitations in the standard form Permit; and

WHEREAS, the Board of County Commissioners desires to authorize the County Administrator or his designee to execute the standard form Permit; and

WHEREAS, the delegation to the County Administrator or his designee to execute a standard form Permit would eliminate delays caused by requiring the Permit to be brought before the Board of County Commissioners for approval, which is consistent with the goal of the Board of County Commissioners to streamline the agenda process.

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

1. **Recitals.** The foregoing recitals are true and correct and incorporated herein. Terms not defined herein shall have the meaning ascribed to them in the Permit.
2. **Standard Form Document.** The Board of County Commissioners hereby authorizes the County Administrator or his designee to execute the standard form Permit, attached hereto and incorporated herein by reference as Attachment "A", on behalf of the Board of County Commissioners. The County Administrator or his designee is hereby authorized to execute standard form Permits that include non-material changes. For purposes of this Resolution, "non-material changes" means changes that do not modify the substantive obligations of the County. In addition, the County Administrator or his designee may modify the insurance requirements

provided in the standard form Permit upon the advice of the Risk Management Department to increase coverage amounts or require additional policies of insurance. For purposes of this Resolution, the Director of the Department of Airports shall be considered to be a designee of the County Administrator.

3. **Repeal of Prior Resolution.** Effective upon adoption of this Resolution, Resolution 2005-0451 shall be repealed in its entirety; provided, however, this Resolution shall not affect the validity of any agreement or permit entered into pursuant to the aforementioned Resolution on or before September 30, 2009. Existing Non-Concessionaire Rental Car Airport Permits issued pursuant to Resolution 2005-0451 shall not be renewed.
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 affect the validity of the remaining portions of this Resolution.
5. **Effective Date.** This Resolution shall become effective immediately upon adoption.

[Remainder of Page Intentionally Left Blank]

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

Commissioner John F. Koons, Chairman -
Commissioner Burt Aaronson, Vice Chairman -
Commissioner Karen T. Marcus -
Commissioner Shelley Vana -
Commissioner Steven L. Abrams -
Commissioner Jess R. Santamaria -
Commissioner Priscilla A. Taylor -

The Chairman thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2009.

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

SHARON R. BOCK, CLERK & COMPTROLLER

By: _____
Deputy Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
Assistant County Attorney

**ATTACHMENT "A"
TO
RESOLUTION**

**PALM BEACH INTERNATIONAL AIRPORT
NONCONCESSIONAIRE RENTAL CAR AND PARKING LOT OPERATOR
GROUND TRANSPORTATION PERMIT**

THIS NONCONCESSIONAIRE RENTAL CAR AND PARKING LOT OPERATOR GROUND TRANSPORTATION PERMIT (this "Permit") is made and entered into this ____ day of _____, 200__, by and between Palm Beach County ("County"), a political subdivision of the State of Florida, and _____ ("Permittee"), having its office and principal place of business at _____.

WITNESSETH:

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

WHEREAS, Resolution No. 2009-_____, adopted by the Palm Beach County Board of County Commissioners on _____, authorizes Department to issue this Permit; and

WHEREAS, County, as the owner and operator of the Airport, has the power and authority to regulate the use of the Airport roadways to ensure the traveling public has access to an orderly ground transportation system and to ensure efficient use of the limited capacity of the Airport roadways; and

WHEREAS, Permittee has applied for a permit to engage in ground transportation on the Airport; and

WHEREAS, Permittee provides vehicle rental and/or parking services to Airport customers and derives substantial commercial benefit from the Airport's operations.

NOW, THEREFORE, in consideration of the promises and of 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:

ARTICLE 1
RECITALS

The foregoing recitals are true and correct and are hereby incorporated herein by reference.

ARTICLE 2
DEFINITIONS

- 2.01 "Airport" means the Palm Beach International Airport.
- 2.02 "Annual Report" has the meaning ascribed to it in Section 5.08.

- 2.03 "Bond Resolution" means the Palm Beach County Airport System Revenue Bond Resolution (dated April 3, 1984 R-84-427), as amended and supplemented, which is hereby incorporated herein by reference and made a part hereof.
- 2.04 "Department" means the Palm Beach County Department of Airports.
- 2.05 "FAA" means the Federal Aviation Administration or any successor agency.
- 2.06 "Gross Revenues" means all amounts paid or payable (whether received or receivable, whether cash or credit and regardless of where or by whom the payment is made) to Permittee arising out of its operations conducted at, to or from the Airport. Unless revenues are expressly and specifically excluded from Gross Revenues, all revenues that derive from, arise out of or become payable on account of this Permit, whether directly or indirectly, shall be included in Gross Revenues, including, but not limited to, amounts paid or payable for:

A. The use, rental or lease of vehicles. Gross Revenues for vehicle rental operations shall include, but shall not be limited to:

1. Fees or charges for any additional services or accessories;
2. The time and/or mileage charges, after discounts, assessed by Permittee on its customers;
3. The premiums on any and all insurance sold, including personal accident insurance, personal effects and cargo insurance, life insurance and any other insurance sold in connection with a vehicle rental;
4. Any and all add-on fees and charges including extra driver coverage, underage driver coverage and vehicle upgrade charges;
5. Any and all fees and charges for equipment, supplies and incidental items that are made available and charged for separate from the vehicle including, but not limited to, sporting equipment, cellular telephones, pagers, child restraint seats, video equipment, and any other incidental items and services; and
6. Charges commonly referred to as "drop charges" or "intercity fees".

Gross Revenues for vehicle rental operations shall not include:

1. The amount of any sales taxes or other similar excise taxes, now or hereafter levied or imposed, which are separately stated and collected from customers;
2. Sums received from customers for Collision Damage Wavier (CDW) protection and Loss Damage Waiver (LDW) protection;
3. Any sums received as insurance proceeds, or payments from Permittee's customers or insurers for damage to vehicles or other property of Permittee;

4. Sums received as the result of the loss, conversion, or abandonment of Permittee's vehicles;
 5. Sums received from the sale of vehicles or other equipment the use of which Permittee wishes to discontinue; or
 6. Amounts charged to customers for fueling rental vehicles.
- B. Parking or storage of vehicles.
 - C. Use of a Shuttle Vehicle transporting customers to or from the Airport.
 - D. Recovery of the Permit Fees payable hereunder, including, but not limited to, the fees referred to in Section 5.11.
- 2.07 "Payment Security" has the meaning ascribed to it in Section 5.12.
- 2.08 "Permit" means this Permit and all exhibits attached hereto, which are incorporated herein by this reference. Words such as "herein," "hereafter," "hereof," "hereby" and "hereunder" when used with reference to this Permit, refer to this Permit as a whole, unless context otherwise requires.
- 2.09 "Permit Fees" has the meaning ascribed to it in Section 5.02.
- 2.10 "Permit Year" means the twelve (12) month period, beginning on October 1 and ending on September 30 and each twelve (12) month period thereafter, until the termination of this Permit.
- 2.11 "Shuttle Vehicle" means any vehicle used to transport customers between the Airport and Permittee's off-airport business location(s), including, but not limited to, vans, shuttle buses, limousines, automobiles and rental vehicles.
- 2.12 "Statement of Gross Revenues" has the meaning ascribed to it in Section 5.03.
- 2.13 "Terminal" means the passenger terminal building located at the Airport.
- 2.14 "TSA" means the Transportation Security Administration or any successor agency.
- 2.15 "Vehicle Rental Agreement" means the sequentially numbered document opened at the start of a vehicle rental transaction between Permittee and its customer.

ARTICLE 3
TERM

This Permit shall be effective on the ___ day of _____, 20___, and shall terminate on September 30th, 20___, except as otherwise provided for herein. Provided that Permittee is not in violation of the terms and conditions of this Permit and has paid all applicable fees, this Permit shall automatically renew on a yearly basis (October 1st through September 30th), unless either party hereto, with Department acting on behalf of County, shall advise the other party at any time by at least thirty (30) days' advance written notice of its intent to terminate this Permit.

ARTICLE 4
PRIVILEGES AND OBLIGATIONS

4.01 Privileges. Subject to the terms and conditions of this Permit, Permittee is authorized by this non-exclusive Permit to operate its Shuttle Vehicles on the Airport's Terminal access roadways by the most direct authorized route in the transportation of only those customers with bona fide reservations, between the Airport and Permittee's off-airport business location(s). This shall include customers who made reservations prior to enplaning and customers who made reservations by telephoning Permittee from the Airport after deplaning.

4.02 Operational Standards.

- A. Permittee shall operate on the Airport in a clean, orderly and safe fashion. Permittee shall keep its Shuttle Vehicles clean and well maintained.
- B. Permittee shall load and unload its passengers on its Shuttle Vehicles only in those areas designated by Department. Permittee shall load and unload its passengers on its Shuttle Vehicles as quickly and efficiently as possible under the circumstances to ensure the availability of the designated areas for use by other Airport users. Shuttle Vehicles shall not be permitted to park or loiter on the Airport. Drivers shall remain in the Shuttle Vehicle except to assist Permittee's customers in the loading or unloading of their baggage.
- C. Permittee shall cause its drivers, agents, and other employees to conduct themselves at all times in a courteous manner towards the public and to provide prompt, efficient, and safe service. Permittee shall not allow its drivers, agents, or other employees to engage in open or public disputes or conflicts tending to be incompatible with the best interests of the public at the Airport. Department shall have the right to resolve all such disputes or conflicts, and its determinations shall be binding upon Permittee.

4.03 Solicitation. Permittee shall not allow its drivers, agents, or other employees to solicit business in any manner whatsoever on the Airport, including, but not limited to, solicitation of passengers or customers and solicitation of employees on the Airport for vehicle rental, parking or shuttle transportation services. All services shall be provided on a pre-arranged basis only.

- 4.04 Business Operations. Permittee shall not conduct any vehicle rental, vehicle parking or Shuttle Vehicle operations, or any other business on the Airport, except as expressly authorized by this Permit, without first entering into an agreement with County. Permittee shall not maintain an office on the Airport as a subtenant or subcontractor of any Airport tenant, unless otherwise approved by Department.
- 4.05 Advertising. Permittee shall not solicit business on the Airport other than indirectly by advertising through the Airport's Advertising Concessionaire. Permittee may lease, at its sole cost and expense, advertising space from the Airport's Advertising Concessionaire. Advertising fees and charges remitted to the Airport's Advertising Concessionaire shall be in addition to the Permit Fees payable hereunder.
- 4.06 Customer Identification. Upon request by an authorized representative of Department, Permittee's drivers, agents or other employees shall provide said representative with the names of its pre-reserved customers and other information applicable to the reservation(s).
- 4.07 Airport Decal. Upon issuance of this Permit, and upon annual renewal of this Permit as provided in Article 3 above, Department may issue to Permittee one (1) windshield decal per Shuttle Vehicle intended to be used by Permittee on the Airport. Permittee shall affix one (1) decal to the windshield of each of its Shuttle Vehicles as demonstrable proof that Permittee is afforded the privileges of this Permit. Permittee shall pay a non-refundable decal issuance fee of Ten Dollars (\$10.00) to Department for each decal issued. Permittee shall not operate any Shuttle Vehicle on the Airport without properly displaying the required decal and may be required to remove any Shuttle Vehicle that is not in compliance with the requirements of this Permit. Department may limit the number of Shuttle Vehicles operating on the Airport.
- 4.08 Vehicle Identification. Permittee shall not use marks, logos or symbols similar to those used to identify the Airport on any Shuttle Vehicles. Permittee shall not use the name "Palm Beach International Airport" or "Palm Beach Airport" or any variation thereof that will likely cause confusion with the name of the Airport on any Shuttle Vehicles. Permittee must include the following statement on all Shuttle Vehicles: "Privately Owned and Operated by {Insert name of Permittee}" with lettering that is two inches (2") or higher. All Shuttle Vehicle markings shall be professionally painted or affixed as a decal.
- 4.09 Vehicle Inspection. By accepting this Permit, Permittee hereby consents to the inspection of its Shuttle Vehicles operating under this Permit by County and its authorized representatives as to size, engine exhaust, radio communication, passenger access, registration, driver's license, license tag and Permit, and other matters pertaining to the efficient and safe operation of the vehicles at the Airport.
- 4.10 Non-Exclusive Rights. The privileges granted under this Permit are non-exclusive, and the County reserves the right to grant similar privileges to other Permittees or users of Airport facilities. No greater privileges with respect to the use of the Airport or any part thereon are granted or intended to be granted to the Permittee by this Permit, other than the privileges expressly and specifically granted herein.
- 4.11 Access. For security reasons or as required by the TSA or the Palm Beach County Sheriff's Department, Department may at any time deny Permittee access on the Airport, or direct Permittee's Shuttle Vehicles to take alternate routes on the Airport.

ARTICLE 5
PERMIT FEES AND AUDITS

- 5.01 Application Fee. Permittee shall pay a non-refundable application fee of Two Hundred Fifty Dollars (\$250.00) with submission of Permittee's application for this Permit. In the event this Permit expires or is otherwise terminated, Permittee shall be required to pay an additional application fee at the then current rate. Permittee acknowledges and agrees that the fees and charges payable hereunder may be modified from time to time and that Permittee shall be responsible for payment of such modified fees without formal amendment to this Permit.
- 5.02 Permit Fees. For the privileges granted herein, Permittee shall pay to Department monthly permit fees equal to eight percent (8%) of monthly Gross Revenues ("Permit Fees"). Permit Fees shall be paid without demand, deduction, holdback or setoff.
- 5.03 Monthly Statements. Permittee shall submit to Department by the fifteenth (15th) day of each month throughout the term of this Permit, and for that month immediately following the expiration or termination of this Permit, a statement certified by an authorized officer of Permittee, in a form and detail satisfactory to Department, detailing Permittee's Gross Revenues, and any exclusion(s) from Gross Revenues, for the preceding month ("Statement of Gross Revenues"). Permittee shall remit to Department the Permit Fees for the preceding month with the Statement of Gross Revenues. This Section 5.03 shall survive the termination of this Permit until all fees payable to County prior to the termination of this Permit have been paid. The Department may require the Statement of Gross Revenues to be submitted electronically.
- 5.04 Interest. If Permittee fails to pay any fees required herein when due and payable in accordance with the terms of this Permit, interest at the rate of one and one-half percent (1.5%) per month shall accrue against the delinquent payment(s) from the date due until the date payment is received by Department. Notwithstanding the foregoing, Department shall not be prevented from terminating this Permit for failure to make payment(s) when due to Department pursuant to this Permit, or from exercising any other remedies contained herein or implied by law.
- 5.05 Place of Payment. All payments due under this Permit shall be made payable to "Palm Beach County" and delivered to the Finance Division, Department of Airports, 846 Palm Beach International Airport, West Palm Beach, Florida 33406-1470, or to such other office or address as may be designated by the Department.
- 5.06 Company Records. Permittee shall keep all books of accounts and records customarily used in this type of operation in accordance with Generally Accepted Accounting Principles prescribed by the American Institute of Certified Public Accountants or any successor agency thereto. Said books of accounts and records shall be retained and be available to Department for three (3) years from the end of each Permit Year, including three (3) years following the expiration or termination of this Permit. Department shall have the right to audit and examine during normal business hours all such books of accounts and records relating to Permittee's operations herein. Permittee shall maintain a numerical sequence of contracts, both issued and non-issued. Permittee shall store its books of accounts and records sequentially, or in such other manner approved by the Department to provide reasonable and

expeditious access for audit purposes herein. If Permittee keeps its books of accounts and records at locations outside Palm Beach County, Permittee shall, at its sole cost and expense, arrange for them to be brought to a location convenient to Department's auditors for Department to conduct the audits and inspections as set forth in this Article 5. The obligations arising under this Section 5.06 shall survive the expiration or termination of this Permit.

- 5.07 Vehicle Rental, Vehicle Parking and Customer Records. For each vehicle rental, Permittee shall maintain a record of each Vehicle Rental Agreement, including a copy of each original agreement signed by Permittee's customer. Said records shall be retained and be available to Department for three (3) years from the end of each Permit Year, including three (3) years following the expiration or termination of this Permit. The Vehicle Rental Agreement shall indicate that the Airport is the point of origin. Permittee shall also keep a copy of the customer's driver's license. Permittee shall maintain a daily log of all customer vehicles parked at Permittee's facility. The obligations arising under this Section 5.07 shall survive the expiration or termination of this Permit.
- 5.08 Annual Report. On or before December 31st of each calendar year, Permittee shall provide to Department a report for the prior fiscal year (October 1st through September 30th) of its annual Gross Revenues ("Annual Report"). The Annual Report may be prepared by Permittee's chief financial officer when Permittee's annual Gross Revenues are less than Twenty-Five Thousand Dollars (\$25,000) during the preceding fiscal year. When Permittee's annual Gross Revenues during the preceding fiscal year are equal to or exceed Twenty-Five Thousand Dollars (\$25,000), Permittee shall hire at its own expense a Certified Public Accountant to prepare the Annual Report in accordance with the Generally Accepted Auditing Standards prescribed by the American Institute of Certified Public Accountants or any successor agency thereto. The Annual Report shall include the following items:
- A. A schedule summarizing the total number of vehicle rental transactions by month;
 - B. A schedule summarizing the total number of vehicle parking transactions by month;
 - C. A schedule of Gross Revenues by category of service (including all vehicle rental, vehicle parking and Shuttle Vehicle transactions) and month;
 - D. A schedule of payments to County by month;
 - E. The Annual Report shall include an opinion on the schedules required by this Section 5.08.
- 5.09 Adverse Report Opinion and Insufficient Payment. Permittee's submission of an Annual Report containing a qualified opinion, an adverse opinion, or a disclaimer of opinion, as defined by the American Institute of Certified Public Accountants or any successor agency thereto shall be a violation of this Permit. If the Annual Report indicates that the amount of Permit Fees (together with any sales taxes thereon) due and owing for any Permit Year is greater than the amount paid by Permittee to Department during said Permit Year, the Permittee shall pay the difference to Department concurrent with its submission of the Annual Report.

- 5.10 Audit by County. Notwithstanding any provision in this Permit to the contrary, County or its representative(s) may at any time perform audits of all or selected operations performed by Permittee under the terms of this Permit. To facilitate the audit performed by County, Permittee shall arrange with the Certified Public Accountant, who is responsible for preparing the Annual Report on behalf of Permittee pursuant to Section 5.08 above, to make available to County or its representative(s) any and all working papers relevant to the audit performed by the Certified Public Accountant. County or its representative(s) shall provide Permittee a copy of the audit report prepared by or on behalf of County. Permittee shall have thirty (30) days from the date of receipt of the audit report to submit a written response to the conclusions of County's audit report. Permittee's failure to submit a written response to County within the thirty (30) day period shall constitute Permittee's acceptance of the audit report as issued.
- 5.11 Permit Recoupment Fee. The fees levied in this Permit are fees imposed on Permittee and not on Permittee's customers. Accordingly, Permittee may not separately charge or collect from its customers, or state or list on its rental contracts, any amount that purports to be a fee, surcharge, tax or any other charge imposed on the customer by County or Department. Permittee may elect to charge and collect separately a fee to recoup the amounts due County, so long as this fee is not labeled or referred to, nor held out as an "airport fee," "airport tax" or the like. Permittee shall be entitled to charge and collect a fee to recoup from its customers only in accordance with the requirements of this Section 5.11.
- 5.12 Payment Security. Permittee shall submit a security deposit to County simultaneous to the submission of its executed Permit ("Payment Security"). Notwithstanding anything to the contrary contained herein, the minimum amount of the Payment Security shall be Two Thousand Dollars (\$2,000). No interest shall be paid to Permittee on the Payment Security. Department may increase the amount of the Security Deposit upon thirty (30) days' prior written notice to the Permittee, based on actual monies paid to County under this Permit equal to three (3) months of reported Permit Fees that are at least twenty-five percent (25%) more than the actual posted Payment Security amount. The Payment Security shall be in the form of cash, a clean, Irrevocable Letter of Credit ("Letter of Credit"), or a Surety Bond ("Bond"). If Permittee fails to pay any sums to County when due or fails to perform any of its obligations under this Permit or is otherwise in violation of this Permit, then, in addition to any other rights and remedies available to County at law or in equity, County shall be entitled to draw on the Payment Security and apply same to all amounts owed. Department shall notify Permittee of any such draw, whereupon Permittee shall immediately replace the Payment Security with cash, a new Letter of Credit, or a Bond in the full amount of the Payment Security required herein. Not less than thirty (30) days prior to any expiration date of the Letter of Credit or Bond, Permittee shall submit evidence in form satisfactory to County that such security instrument has been renewed. Failure to renew a Letter of Credit or Bond as required by this Section 5.12 shall: (a) entitle County to draw down the full amount of the Payment Security, and (b) be a violation of this Permit entitling County to all available remedies. The Payment Security shall not be returned to Permittee until Permittee performs and satisfies all obligations under this Permit. The obligations arising under this Section 5.12 shall survive the expiration or termination of this Permit.

ARTICLE 6
INSURANCE

- 6.01 General Insurance Requirements. Permittee shall at its sole expense maintain in full force and effect at all times during the term of this Permit the insurance limits, coverages and endorsements required herein. The liabilities and obligations assumed by Permittee under this Permit shall not be in any manner limited or qualified by the requirements of this Article 6 or County's review and acceptance of any policies of insurance.
- 6.02 Business Automobile Insurance. Permittee shall keep in full force and effect throughout the term of this Permit automobile liability insurance covering all owned, hired, and non-owned vehicles, with a combined single limit per occurrence for bodily injury (including death) and property damage liability of not less than One Million and 00/100 Dollars (\$1,000,000).
- 6.03 Worker's Compensation and Employer's Liability Insurance. Permittee shall maintain worker's compensation and employer's liability insurance in accordance with applicable law. This coverage shall be provided on a primary basis.
- 6.04 Additional Insured Endorsement. Permittee shall endorse County as an additional insured on the Permittee's automobile liability insurance policy. The additional insured endorsement shall provide coverage on a primary basis and shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents, c/o Department of Airports, 846 Palm Beach International Airport, West Palm Beach, Florida 33406."
- 6.05 Certificate of Insurance. Permittee shall submit to County a certificate of insurance evidencing limits, coverages and endorsements required herein. The certificate of insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. If Permittee's insurance coverage ceases during the term of this Permit, Permittee shall submit a new certificate of insurance evidencing replacement coverage thirty (30) days prior to the expiration of such insurance.
- 6.06 Waiver of Subrogation. Permittee hereby waives its right of subrogation for each of the insurance policies required by this Article 6 during the term of this Permit. When mandated by the insurer or should an insurance policy condition not allow a pre-loss agreement to waive subrogation without an endorsement, Permittee shall notify its insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. Notwithstanding the foregoing, this waiver of subrogation requirement shall not apply to any policy that includes a condition prohibiting such an endorsement or that voids coverage should Permittee enter into such an agreement on a pre-loss basis.
- 6.07 Deductibles, Coinsurance and Self-Insured Retention. Permittee shall be fully and solely responsible for any deductible, coinsurance penalty or self-insured retention, including any losses, damages or expenses not covered due to an exhaustion of limits or failure to comply with an insurance policy.

- 6.08 Rights of Review and Rejection. Palm Beach County's Risk Management Department ("Risk Management") may review, modify, reject or accept any required insurance policies, including, but not limited to, limits, coverages and endorsements required by this Article 6. Risk Management may also reject any insurer or self-insurance plan providing coverage or intending to do so because of poor financial condition or failure to operate legally. In such event, County shall provide Permittee a written notice of rejection, and Permittee shall acknowledge said rejection within thirty (30) days of receipt of the notice.
- 6.09 No Representation of Coverage Adequacy. Permittee acknowledges that the limits, coverages and endorsements stated in and required by this Article 6 are intended to minimize liability for County. Permittee shall not rely upon the requirements of this Article 6 when determining the appropriate types, extent or limits of insurance coverage to protect Permittee against loss.

ARTICLE 7 RELATIONSHIP OF THE PARTIES

Permittee is and shall be deemed to be an independent contractor and operator and shall be solely responsible to all parties for its respective acts or omissions. County shall in no way be liable or responsible therefor.

ARTICLE 8 INDEMNIFICATION

Permittee shall protect, defend, reimburse, indemnify and hold County, its agents, employees and elected officers, free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines or 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 Permit or Permittee's use of the Airport, including without limitation those arising because 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, and any third or other party whomsoever, or any governmental agency, arising out of, incident to or in connection with Permittee's acts, omissions or operations hereunder, or the performance, non-performance or purported performance of Permittee or any breach of the terms of this Permit. Provided, however, Permittee shall not be responsible to County for damages resulting out of damages to property or bodily injury (including death) that are judicially determined to be solely attributable to the negligence of County, its respective employees or agents. Permittee shall also 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 because of Permittee's activities or operations or use of the Airport whether or not Permittee was negligent or even knowledgeable of any events precipitating a claim or judgment arising as a result of any situation involving the activities. This indemnification shall include all deliverers, suppliers, furnishers of material, or anyone acting for, on behalf of or at the request of Permittee. Permittee recognizes the broad nature of this indemnification and hold-harmless provision, acknowledges that County would not enter into this Permit 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 in accordance with laws of the State of Florida. The obligations arising under this Article 8 shall survive the expiration or termination of this Permit.

ARTICLE 9
ASSIGNMENT

Permittee shall not in any manner assign, transfer or otherwise convey an interest in this Permit. Any such attempt shall be null and void.

ARTICLE 10
TERMINATION OF PERMIT, DEFAULT AND REMEDIES

- 10.01 Termination. This Permit shall terminate as provided for in Article 3.
- 10.02 Default. The occurrence of any one or more of the following events shall constitute a violation of this Permit by Permittee:
- A. Permittee's failure to make payment of any fees or charges required to be made by Permittee under this Permit, as and when due.
 - B. The failure by Permittee to observe or perform any of the covenants, conditions or provisions of this Permit to be observed or performed by Permittee.
 - C. The discovery by Department that any information given by Permittee to County relating to this Permit was materially false.
- 10.03 Remedies. In the event Permittee is in violation of this Permit, County, with Department acting on behalf of County, may immediately terminate this Permit by giving Permittee written notice to this effect. Upon such termination, Permittee shall immediately cease its operations on the Airport. Such termination shall be without prejudice to any of County's remedies for arrearages, payments due herein, or any other damages or remedies whatsoever.
- 10.04 County's Right to Terminate. This Permit is issued upon the terms and conditions required by County for all Permittees on the Airport that engage in the activities permitted herein. Upon ten (10) days' prior written notice, County may, at any time, terminate this Permit and at County's option issue a new Permit to Permittee upon such modified terms and conditions as County shall uniformly apply to all other similarly situated Permittees.

ARTICLE 11
LAWS, PERMITS AND LICENSES, AND SAFETY REGULATIONS

- 11.01 Compliance with Law. Throughout the term of this Permit, Permittee shall be and remain in full and complete compliance with all applicable Federal, State and local laws, statutes, regulations, rules, rulings, orders, ordinances and directives of any kind or nature without limitation, as now or hereafter amended, including, but not limited to, FAA Advisory Circulars and Airport Rules and Regulations (County Resolution No. R-98-220), as now or hereafter amended.

- 11.02 Permits and Licenses. Permittee shall at its sole cost and expense be strictly liable and responsible for obtaining, paying for, fully complying with, and maintaining current any and all permits, licenses or other governmental authorizations, however designated, as may be required at any time throughout the term of this Permit by any Federal, State or local governmental entity or any court of law having jurisdiction over Permittee or Permittee's operations and activities, for any activity or operation conducted by Permittee on the Airport. Upon written request by Department, Permittee shall provide to Department certified copies of any and all permits and licenses that Department may request.
- 11.03 Safety Regulations. Permittee shall conduct its activities and operations under this Permit in a safe manner and in compliance with all safety regulations of Department and with safety standards imposed by applicable Federal, State and local laws and regulations. Permittee shall also require the observance thereof by all employees, agents and invitees. Permittee shall procure and maintain such fire prevention and extinguishing devices as required by County and by law and shall at all times be familiar and comply with the fire regulations and orders of County and the fire control agency with jurisdiction over the Airport. Neither Permittee, nor employee, agent, or any person working for or on behalf of Permittee, shall require any personnel engaged in the performance of Permittee's operations to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to individual safety or health, as determined by standards adopted pursuant to the Occupational Safety and Health Act of 1970, as same may be amended from time to time, as well as all State and local laws, regulations, and orders relative to occupational safety and health.
- 11.04 FAA and TSA Regulations. Permittee shall observe all security regulations and other requirements of any agency of the Federal government, including, but not limited to, the FAA and TSA, as such regulations or requirements have been or may be amended including, without limitation, Title 14, Part 139 and Title 49, Part 1500 of the Code of Federal Regulations. Permittee shall comply such rules and regulations as may be reasonably prescribed by County to take such steps as may be necessary or directed by County to ensure that its employees observe these requirements. Permittee shall conduct background checks of its employees to the extent required by any Federal, State or local law or if, to the extent permitted by law, required by County. County shall have the right to order the removal or replacement of any employee of Permittee on the Airport that County has reasonably determined may present a risk to public safety or to the security of the Airport. If as a result of the acts or omissions of Permittee, County incurs any fines and/or penalties imposed by the FAA or TSA; any expense in enforcing the regulations of the FAA or TSA or the rules or regulations of County; or any expense in enforcing the Airport Security Program, then Permittee agrees to pay to County all such costs and expenses, including all costs of administrative proceedings, court costs, and attorneys fees and all costs incurred by County in enforcing this provision. Permittee further shall rectify any security deficiency or other deficiency as may be determined by County, the FAA or TSA. If Permittee fails to remedy any such deficiency, County may do so at the cost and expense of Permittee. Permittee acknowledges and agrees that County may take whatever action is necessary to rectify any security deficiency or any other deficiency identified by County, the FAA or TSA.

ARTICLE 12
DISCLAIMER OF LIABILITY

COUNTY HEREBY DISCLAIMS, AND PERMITTEE 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 PERMITTEE, ITS EMPLOYEES, AGENTS, OR INVITEES DURING THE TERM OF THIS PERMIT INCLUDING, BUT NOT LIMITED TO, LOSS, DAMAGE, OR INJURY TO THE IMPROVEMENTS OR PERSONAL PROPERTY OF PERMITTEE OR PERMITTEE'S BUSINESS INVITEES THAT MIGHT BE LOCATED OR STORED ON THE AIRPORT, UNLESS SUCH LOSS, DAMAGE, OR INJURY IS CAUSED SOLELY BY COUNTY'S SOLE NEGLIGENCE. THE PARTIES 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 ASSIGNMENT OF THE AIRPORT TO PERMITTEE PURSUANT TO THIS PERMIT. PERMITTEE ACKNOWLEDGES AND AGREES THAT COUNTY SHALL HAVE NO LIABILITY WHATSOEVER AND PERMITTEE COVENANTS AND AGREES TO HOLD HARMLESS COUNTY FROM ANY AND ALL LIABILITY RELATING TO ANY INFORMATION PROVIDED BY COUNTY RELATING TO THIS PERMIT. FURTHERMORE, PERMITTEE 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 PERMIT, WAS AT ITS SOLE RISK.

ARTICLE 13
NOTICES

All notices 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 overnight mail, telecopied or faxed (provided in each case a receipt is obtained), 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 overnight mail, or on the date of transmission with confirmed answer back if by telecopier or fax if transmitted before 5PM on a business day and on the next business day if transmitted after 5PM or on a non-business day, 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
Fax: (561) 471-7427

(b) If to Permittee at:

Fax: _____

Either party may change the address to which notices under this Permit shall be given, upon three (3) days' prior written notice to the other party. Permittee shall maintain a current address, telephone number, and name of a contact person with the Department.

ARTICLE 14
NON-DISCRIMINATION

Permittee hereby agrees and covenants: (a) that no person on the grounds of race, creed, color, national origin, sex, gender identity or expression, age, or handicap shall be excluded from participation in or denied the use of Permittee's services, (b) that in the furnishing of services, no person on the grounds of race, creed, color, national origin, sex, sex, gender identity or expression, age, or handicap shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (c) that Permittee shall use the Airport in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulation, Department of Transportation, Subtitle A, Office of 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 have been or may be amended. In the event of the breach of any of the foregoing non-discrimination covenants, County shall have the right to terminate this Permit. This cancellation provision shall not be effective until the procedures of Title 49, Code of Federal Regulation, Part 21, are followed and completed including exercise or expiration of appeal rights.

ARTICLE 15
MISCELLANEOUS

- 15.01 County Not Liable. County shall not be responsible or liable to Permittee for any claims for compensation or any losses, damages or injury sustained by Permittee resulting from: (a) cessation for any reason of air carrier operations on the Airport, or (b) diversion of passenger traffic to any other facility. County shall not be responsible or liable to Permittee for any claims for compensation or any losses, damages or injury whatsoever sustained by Permittee including, but not limited to, those resulting from an act of God, state of war, terrorism, civilian commotion or riot or any cause beyond the control of County.
- 15.02 Authorized Uses Only. Notwithstanding anything to the contrary herein, Permittee shall not use or permit the use of the Airport for any illegal or improper purpose or for any purpose that would invalidate any insurance policies mentioned herein, existing now or hereafter. Permittee shall not use or permit the use of the Airport in any manner that would interfere with or adversely affect the operation or maintenance of the Airport, or would otherwise constitute a hazard.

- 15.03 Waivers. County's failure to insist on a strict performance of any of the agreements, terms, covenants and conditions herein shall not be deemed a waiver of any rights or remedies that County may have for any subsequent breach, default, or non-performance. County's right to insist on strict performance of this Permit shall not be affected by any previous waiver or course of dealing.
- 15.04 Subordination to Bond Resolution. This Permit and all rights granted to Permittee herein are expressly subordinated and subject to the lien and provisions of the pledge, transfer, hypothecation or assignment made by County in the Bond Resolution. County and Permittee 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 ensure compliance by County and Permittee with the terms and provisions of this Permit and Bond Resolution.
- 15.05 Subordination to State/Federal Agreements. This Permit shall be subject and subordinate to all the terms and conditions of any instrument and documents under which the County acquired the Airport or improvements thereon, 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 Permit 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.
- 15.06 County's Governmental Authority. Nothing in this Permit shall be construed to waive or limit County's governmental authority as a political subdivision of the State of Florida to regulate Permittee or its operations.
- 15.07 Consent or Action. In the event this Permit is silent as to the standard for any consent, approval, determination, or similar discretionary action, the standard shall be at the sole, absolute and unfettered discretion of the County or Department, rather than any implied standard of good faith, fairness or reasonableness. Wherever this Permit requires the County or Department's consent or approval or permits the County or Department to act, such consent, approval or action may be given or performed by the Airport Director. If Concessionaire requests the County or Department's consent or approval pursuant to any provision of this Permit and County or Department fails or refuses to give such consent, Permittee shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable.
- 15.08 County's Right to Develop. County reserves the right to develop or improve the Airport and any and all part thereof as it sees fit, regardless of the desires or views of Permittee and without interference or hindrance.
- 15.09 Rights Reserved to County. All rights not specifically granted Permittee by this Permit are reserved to County.
- 15.10 Invalidity of Clauses. The invalidity of any portion, article, paragraph, provision, clause, or any portion thereof of this Permit shall have no affect upon the validity of any other part or portion hereof.

- 15.11 Venue. To the extent allowed by law, the venue for any action arising from this Permit shall be in Palm Beach County, Florida.
- 15.12 Governing Law. This Permit shall be governed by and in accordance with the laws of the State of Florida.
- 15.13 Remedies Cumulative. The rights and remedies of the parties with respect to any of the terms and conditions of this Permit shall be cumulative and not exclusive, and shall be in addition to all other rights and remedies of the parties.
- 15.14 Paragraph Headings. The headings of the various articles and sections of this Permit 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 Permit or any part(s) of this Permit.
- 15.15 Performance. The parties expressly agree that time is of the essence in this Permit and the failure by Permittee to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall, at the option of County without liability, in addition to any other rights or remedies, relieve County of any obligation to accept such performance.
- 15.16 Public Entity Crimes. As provided in Section 287.132-133, Florida Statutes, by entering into this Permit or performing any work in furtherance hereof, Permittee 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. This notice is required by Section 287.133(3)(a), Florida Statutes.
- 15.17 Entirety of Permit. The parties agree that this Permit sets forth the entire understanding between the parties and that there are no other promises or understandings apart from those stated herein. None of the provisions, terms and conditions contained in this Permit may be added to, modified, superseded or otherwise altered except by written instrument executed by the parties hereto.
- 15.18 Survival. Upon termination or expiration of this Permit, Permittee shall remain liable for all obligations and liabilities that have accrued prior to the date of termination or expiration. Notwithstanding any provision of this Permit to the contrary, no obligation that accrued but has not been satisfied under any prior agreement between the parties, shall terminate or be considered cancelled upon execution of this Permit. Rather, such obligation shall continue as if it had accrued under this Permit until the obligation is satisfied.

{Remainder of page intentionally left blank}

IN WITNESS WHEREOF, the parties hereto have duly executed this Permit as of the day and year first above written.

PALM BEACH COUNTY,
a political subdivision of the State of Florida,
by its Department of Airports

By: _____
Director

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: _____
County Attorney

**Signed, sealed and delivered in
the presence of two witnesses
for Permittee:**

PERMITTEE

Witness

By: _____

Typed or printed name

Typed or printed name

Witness

Title: _____

Typed or printed name

(Seal)