

AGENDA ITEM SUMMARY



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

Submitted By: Department of Airports

I. EXECUTIVE BRIEF

Summary: The Resolution establishes a new standard form Permit for use with automobile transport operators at the Palm Beach International Airport (PBIA), and authorizes the County Administrator or his designee to execute the standard form Permit on behalf of the Board. Automobile transport operators engage in the business of transporting privately-owned vehicles to and from out-of-state locations. Because their customers often fly to and from out-of-state, it is convenient for automobile transport operators' customers to park at PBIA. Automobile transport operators will park their transport vehicles in a designated location on PBIA, pick up their customers' vehicles from the Park & Ride Lot and load the vehicles onto the transport vehicles at the designated location. **Countywide (AH)**

Attachments:

- Recommended By:  10/19/09
Department Director Date
- Approved By:  11/9/09
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	<u>(2,520)</u>	<u>(2,000)</u>	<u>(2,000)</u>	<u>(2,000)</u>	<u>(2,000)</u>
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>(2,520)</u>	<u>(2,000)</u>	<u>(2,000)</u>	<u>(2,000)</u>	<u>(2,000)</u>
# ADDITIONAL FTE	_____	_____	_____	_____	_____
POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No x
 Budget Account No: Fund 4100 Department 120 Unit 8340 RSource 6999
 Reporting Category _____

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

The Department estimates two auto transport companies will execute the Permit. Operating revenues are estimated above using Permit fees only. Auto parking fees are not included in this analysis.

C. Departmental Fiscal Review: CM Simon

III. REVIEW COMMENTS

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

[Signature] 11/3/09
 OFMB VA 10/26/09 CN 10/23/09

[Signature] 11/4/09
 Contract Dev. and Control
 E. Jones 11/4/09

B. Legal Sufficiency:

Anne Delgado 11/6/09
 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 AUTOMOBILE TRANSPORT OPERATOR
PERMIT; AUTHORIZING THE COUNTY ADMINISTRATOR OR HIS
DESIGNEE TO EXECUTE A STANDARD FORM AUTOMOBILE
TRANSPORT OPERATOR PERMIT; 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, County has determined that the security of the public on the Airport requires automobile transport operators to obtain an Automobile Transport Operator Permit ("Permit"), in the form attached hereto and incorporated herein as Attachment "A", and operate according to its terms and conditions; and

WHEREAS, Section 9-1-1 of the Palm Beach County Airport Rules and Regulations (the "Rules") prohibits commercial enterprises from operating at the Airport without a license, permit, lease or contract with the County; and

WHEREAS, automobile transport operators require specially designated parking areas for the loading and unloading of vehicles at the Airport; 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 automobile transport operators desiring access to the Airport; and

WHEREAS, it is in the public interest to allow automobile transport 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 establish 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. **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.
4. **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:

District 1: Commissioner Karen T. Marcus	-
District 2: Commissioner John F. Koons	-
District 3: Commissioner Shelley Vana	-
District 4: Commissioner Steven L. Abrams	-
District 5: Commissioner Burt Aaronson	-
District 6: Commissioner Jess R. Santamaria	-
District 7: Commissioner Priscilla A. Taylor	-

The Chair 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
AUTOMOBILE TRANSPORT OPERATOR PERMIT**

**PALM BEACH INTERNATIONAL AIRPORT
AUTOMOBILE TRANSPORT OPERATOR PERMIT**

THIS AUTOMOBILE TRANSPORT OPERATOR 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 _____.

W I T N E S S E T H:

WHEREAS, County, by and through its Department of Airports (the "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 the 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 automobile transport operations on the Airport; and

WHEREAS, Permittee engages in automobile shipping and transport activities that include the pick-up and delivery of automobiles and other vehicles at the Airport.

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 “Automobile Transport Operation” means the commercial practice of shipping, transfer or transport of cars, trucks, motorcycles and other vehicles owned by others, to or from the Airport. “Automobile Transport Operations” do not include towing operations and similar activities to retrieve disabled, derelict or unauthorized vehicles from the Airport, and whose primary operation is to transport such vehicles to another location for repair or impound.
- 2.03 “Automobile Transport Operator” means a person, company or entity engaged in Automobile Transport Operations.
- 2.04 “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.
- 2.05 “Commencement Date” has the meaning set forth in Article 3.
- 2.06 “Department” means the Palm Beach County Department of Airports.
- 2.07 “Director” means the Director of the Department, or his designee.
- 2.08 “FAA” means the Federal Aviation Administration or any successor agency.
- 2.09 “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.
- 2.10 “Permit Fee” has the meaning set forth in Section 5.02.
- 2.11 “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.
- 2.12 “Permittee” means {*name of Permittee*}, and includes any company, owner-operator, independent contractor, or individual operating Automobile Transport Operations by, through, under, or in cooperation with the Permittee on an occasional, supplemental or incidental basis, and previously registered with the Department (“Subcontractor”). The Department reserves the right to require a Subcontractor to obtain its own permit if the Department, in its sole and absolute discretion, determines that the nature, frequency or volume of a Subcontractor’s Automobile Transport Operations is more than supplemental or incidental to Permittee’s Automobile Transport Operations as a whole.

- 2.13 "Term" means the Initial Term and any Renewal Term(s).
- 2.14 "Terminal" means the passenger terminal building located at the Airport.
- 2.15 "Transport Vehicle" means any vehicle, including, but not limited to, a truck, tractor-trailer, flatbed or tow truck, with or without a trailer, owned by, or under the contractual control of, Permittee, and registered with the Department, used to transport or tow vehicles between the Airport and off-airport location(s).
- 2.16 "TSA" means the Transportation Security Administration or any successor agency.

ARTICLE 3

TERM

This Permit shall be effective on the ____ day of _____, 20____, (the "Commencement Date") and shall terminate on September 30th, 20____, except as otherwise provided for herein (the "Initial Term"). 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) (the "Renewal Term"), unless either party hereto, with the 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 conduct Automobile Transport Operations at the Airport, including the non-exclusive right to operate its Transport Vehicles on the Airport's access roadways and other paved areas as authorized by the Department, by the most direct authorized route. Transport Vehicles shall not be operated on the Airport's Terminal access roadways and parking garages, and other areas prohibited by the Department. Automobile Transport Operations at the Airport shall be limited to the transportation of only those vehicles owned by customers who have made prior, written, arrangements for the shipping, transfer or transport of the customer's vehicle between the Airport and an off-airport location(s).
- 4.02 Operational Standards.
- A. Permittee shall operate on the Airport in a clean, orderly and safe fashion. Permittee shall keep its Transport Vehicles clean and well maintained. Permittee shall operate only those Transport Vehicles owned by, or under the contractual control of, Permittee, and registered with the Department.

- B. Permittee shall load and unload vehicles on its Transport Vehicles only in those areas designated by the Department. Permittee shall load and unload its Transport Vehicles as quickly and efficiently as possible under the circumstances to ensure the availability of the designated areas for use by other Airport users. Transport Vehicles shall not be permitted to park overnight or for extended periods, or to loiter on the Airport. Transport Vehicle drivers shall remain in the Transport Vehicle except to load or unload vehicles, or to deliver or retrieve vehicles to or from a parking area to a staging area designated by the Department.
 - 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. The Department shall have the right to resolve all such disputes or conflicts, and its determinations shall be binding upon Permittee.
 - D. In addition to terms, conditions and limitations of this Permit, Automobile Transport Operations shall be subject to such reasonable temporary or permanent operational restrictions, limitations and requirements as may be imposed by the Department from time to time, at the Department's sole and absolute discretion, and which shall be effective upon written notice to 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 Automobile Transport Operation services. All services shall be provided on a pre-arranged basis only.
- 4.04 Business Operations. Permittee shall not conduct any Automobile Transport Operations or operate any Transport Vehicles, or conduct 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 the 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 contract for, 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 the 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), including the vehicle description and its parking location.

- 4.07 Airport Decal. Upon issuance of this Permit, and upon annual renewal of this Permit as provided in Article 3 above, the Department may issue to Permittee one (1) windshield decal per Transport Vehicle intended to be used by Permittee on the Airport. Permittee shall affix one (1) decal to the windshield of each of its Transport 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 the Department for each decal issued. Permittee shall not operate any Transport Vehicle on the Airport without properly displaying the required decal and may be required to remove any Transport Vehicle that is not in compliance with the requirements of this Permit. The Department may limit the number of Transport 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 Transport 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 Transport Vehicles. All Transport 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 Transport 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, including, but not limited to, the cargo or contents of vehicles being transported.
- 4.10 Gate Access Card. The Department may require each of Permittee's Transport Vehicles to possess a gate access card, issued by Department of Airports' Security Office, upon payment of activation fees and deposits established by the Department of Airports' Security Office. Permittee acknowledges and agrees that fees and charges payable hereunder may be modified from time to time by the Department of Airports' Security Office and Permittee shall be responsible for payment of such modified fees without formal amendment to this Permit.
- 4.11 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.
- 4.12 Access. For security reasons or as required by the TSA or the Palm Beach County Sheriff's Department, the Department may at any time deny Permittee access on the Airport, or direct Permittee's Transport Vehicles to take alternate routes on the Airport.

ARTICLE 5
PERMIT FEES

- 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 Annual Permit Fee. Permittee shall pay County, for the Permit issued herein, a non-refundable annual permit fee, for the Initial Term and for each Renewal Term, in the amount of One Thousand Dollars (\$1,000.00) (the "Permit Fee"), together with applicable sales taxes thereon. The Permit Fee shall be payable in advance, without demand and without any deduction, holdback or set off whatsoever, on or before the Commencement Date, and on or before October 1 prior to each Renewal Term throughout the Term of this Permit. The Permit Fee shall be made payable to the Palm Beach County Board of County Commissioners and shall be mailed or hand delivered to the Palm Beach County Department of Airports, ATTN: Fiscal Department, 846 Palm Beach International Airport, West Palm Beach, Florida, 33406-1470. The Permit Fee shall be in addition to parking fees and charges incurred as the result of parking a customer's vehicle in the County's parking lots.
- 5.03 Activity Statement. Upon written request by Department, Permittee shall submit to Department, an activity statement certified by an authorized officer of Permittee, in a form and detail satisfactory to Department, which includes the quantity and revenue associated with the transport of vehicles to, or from the Airport during the reporting period specified in the Department's written notice.
- 5.04 Adjustment of Permit Fees. Permittee acknowledges and agrees that Department may modify the amount of Permit Fees, or establish new fees and charges during the Term of this Permit, upon thirty (30) days written notice by County to Permittee, without formal amendment to this Permit.
- 5.05 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, any amount that purports to be a fee, surcharge, tax or any other charge imposed on the customer by County or the 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 5.05.

ARTICLE 6
INSURANCE

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 as set forth in Exhibit "A" attached hereto and made a part hereof. The liabilities and obligations assumed by Permittee under this Permit shall not be in any manner limited or qualified by the requirements set forth in Exhibit "A" or County's review and acceptance of any policies of insurance.

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 the 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 the 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 Termination for Convenience. Either party may terminate this Permit for convenience upon five (5) days prior written notice to the other party, whereupon the parties shall be relieved of all further obligations hereunder with the exception of those obligations accruing prior to the date of such termination and those obligations which expressly survive termination of this Permit.
- 10.05 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 the Department, Permittee shall provide to the Department certified copies of any and all permits and licenses that the 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 the 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 with such rules and regulations as may be reasonably prescribed by County and 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 JUDICIALLY DETERMINED TO HAVE BEEN CAUSED 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. Permittee 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 the 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 the Department to act, such consent, approval or action may be given or performed by the Airport Director. If Permittee requests the County or Department's consent or approval pursuant to any provision of this Permit and County or the 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: _____
Assistant County Attorney

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

Witness

Typed or printed name

Witness

Typed or printed name

(Seal)

PERMITTEE

By: _____

Typed or printed name

Title: _____

EXHIBIT "A"
INSURANCE REQUIREMENTS

- A. Commercial General Liability Insurance. Permittee shall maintain in full force and effect throughout the Term of this Permit Commercial General Liability Insurance at a limit of liability of not less than _____ Dollars (\$_____) each occurrence. Coverage shall not contain any endorsement(s) excluding or limiting Premises/Operations, Damage to Rented Property, Personal Injury, Product/Completed Operations, Contractual Liability, Severability of Interests or Cross Liability. Coverage shall be provided on a primary basis.
- B. Business Automobile Insurance. Permittee shall maintain 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 _____ Dollars (\$_____).
- C. 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.
- D. Additional Insured Endorsement. Permittee shall endorse County as an additional insured on the Permittee's general liability and automobile liability insurance policies. 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."
- E. 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.
- F. Waiver of Subrogation. Permittee hereby waives its right of subrogation for each of the insurance policies required by this Exhibit "A" 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.

- G. 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.
- H. 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 Exhibit "A". 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.
- I. No Representation of Coverage Adequacy. Permittee acknowledges that the limits, coverages and endorsements stated in and required by this Exhibit "A" are intended to minimize liability for County. Permittee shall not rely upon the insurance requirements set forth in this Exhibit "A" when determining the appropriate types, extent or limits of insurance coverage to protect Permittee against loss.