

AGENDA ITEM SUMMARY

☐ Consent ☐ Regular
☐ Workshop ☐ Public Hearing

Submitted By: Department of Airports

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840.

Motion and Title: Staff recommends motion to adopt: a Resolution authorizing the County Administrator or his designee to execute a standard form Airport Facilities Use Agreement and becoming effective upon adoption.

facilities on an as-needed basis for individual flights. **Countywide (AH)**

Attachments:

- _____

Date _____

Date _____

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

| Fiscal Years | 2010 | 2011 | 2012 | 2013 | 2013 |
|-------------------------|------|-------------|------|------|------|
| Capital Expenditures | | | | | |
| Operating Costs | | | | | |
| Operating Revenues | | | | | |
| Program Income (County) | | | | | |
| In-Kind Match (County) | | | | | |
| NET FISCAL IMPACT | | * See below | | | |
| # ADDITIONAL FTE | | | | | |
| POSITIONS (Cumulative) | | | | | |

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

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

* No fiscal impact.

C. Departmental Fiscal Review: CM Simms

III. REVIEW COMMENTS

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

NO SLL 11/3/09
OFMB VA 10/26/09 CN 10/23/09

An S. Jacobson 11/4/09
Contract Dev. and Control 11/4/09

B. Legal Sufficiency:

Anne Delgent 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; AUTHORIZING THE COUNTY ADMINISTRATOR OR HIS DESIGNEE TO EXECUTE THE AIRPORT FACILITIES USE AGREEMENT ON BEHALF OF THE COUNTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

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

WHEREAS, certain aircraft operators and airline service providers require use of ticket counter space and aircraft gates at the Airport's passenger terminal building from time-to-time on a per use basis for flights departing or arriving at the Airport; and

WHEREAS, the delegation to the County Administrator or his designee of the authority to execute the standard form agreements will eliminate delays caused by requiring such items to be brought before the Board of County Commissioners for approval and would therefore be consistent with the goal of the Board of County Commissioners to streamline the agenda process; and

WHEREAS, the Board of County Commissioners desires to authorize the County Administrator or his designee to execute a new standard form Airport Facilities Use Agreement on behalf of the Board of County Commissioners.

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 are expressly incorporated herein by reference.

2. **Standard Form Document.** The Board of County Commissioners hereby authorizes the County Administrator or his designee to execute the standard form Airport Facilities Use Agreement, attached hereto and incorporated herein by reference as Attachment "A" ("Airport Facilities Use Agreement"), on behalf of the Board of County Commissioners. The County Administrator or his designee shall also be authorized to make non-material changes to the Airport Facilities Use Agreement. For purposes of this Resolution, "non-material changes" mean 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 Airport Facilities Use Agreement upon the advice of the Risk Management Department to establish insurance 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.** Should any section, paragraph, sentence, clause, or word of this Resolution be held unconstitutional, inoperative, or void, such holding should not affect the validity of the remainder of this Resolution.

4. **Effective Date.** The provisions of this Resolution shall be effective immediately upon adoption.

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

The Chairperson 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"
AIRPORT FACILITIES USE AGREEMENT

AIRPORT FACILITIES USE AGREEMENT

THIS AIRPORT FACILITIES AGREEMENT (this "**Agreement**") made and entered into this ____ day of _____, 20__, by and between Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as ("**County**") and _____, whose principal place of business is located at _____, hereinafter referred to as ("**Licensee**").

WITNESSETH:

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

WHEREAS, County is willing to grant Licensee a revocable license to use certain Airport facilities on a per use basis in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth on the part of the Licensee to be observed and performed, the County hereby grants the Licensee a non-exclusive, revocable license to use the Premises (as hereinafter defined) upon the following terms and conditions:

ARTICLE 1 BASIC PROVISIONS

1.01 Recitals. The foregoing recitals are true and correct and incorporated herein.

1.02 Premises. Licensee shall provide the Department with no less than fifteen (15) days prior written notice of Licensee's need to use airline ticket counter(s) and/or gate(s) at the Airport's passenger terminal on a Per Use (as hereinafter defined) basis. The notice provided to the Department by Licensee shall be in a form and substance acceptable to the Department and shall identify the date(s) and time(s) Licensee shall require use of ticket counter and/or gate locations on a Per Use basis; the air carriers to be handled by Licensee from the Premises; aircraft type(s) and the aircraft flight numbers (if applicable). Licensee shall only be permitted to use those ticket counter and/or gate locations designated by the Department in writing for Licensee's operations (the "**Premises**"). Licensee acknowledges and agrees that usage of ticket counter and/or gate locations shall be subject to availability of ticket counters and/or gates designated by the Department, in its sole discretion, for use on a Per Use basis.

ARTICLE 2 LENGTH OF TERM AND COMMENCEMENT DATE

This Agreement shall commence on _____, 20__, and shall terminate on the 30th day of September, 20__ (the "**Commencement Date**"), and shall automatically be extended on a year-to-year basis (October 1st through September 30th), unless either party hereto, with the Department acting on behalf of County, shall advise, by at least five (5) days prior written notice, the other party of its intent to terminate this Agreement.

ARTICLE 3 LICENSE FEE

3.01 License Fee. Licensee shall pay the then current Per Use Ticket Counter Charge and/or Per Use Gate Charge ("**Per Use Charge**") established in accordance with the Airline-Airport Use and Lease Agreement (R-_____), as such agreement and/or rate(s) may be amended from time to time, for the use and occupancy of the Premises on a Per Use basis. "Per Use" shall be defined as a flight resulting in usage of the Premises for a period of two (2) hours or less. Usage of the Premises for a period of more than two (2) hours shall result in additional Per Use Charges. No later than the tenth (10th) calendar day of each and every month, Licensee shall deliver payment of Per Use Charges incurred by Licensee during the preceding month with the Activity Report (as hereinafter defined).

3.02 Activity Report. No later than the tenth (10th) calendar day of each and every month,

Licensee shall file an accurate and complete report (the "**Activity Report**") with the Department, detailing Licensee's activities for the preceding month, including the dates and times the Premises was used by Licensee during the preceding month, the duration of each use, air carriers handled by Licensee from the Premises, aircraft type and aircraft flight numbers (if applicable), in a form and substance acceptable to the Department. In the event Licensee fails to provide the Activity Report, within the time period specified herein, or if the data contained in the Activity Report appears to be inaccurate, the Department may estimate Licensee's activity for the preceding month and issue invoices based on the Department's estimation. Licensee shall be liable to County for any deficiencies in payments based upon such estimates. The Department may require the Activity Report to be submitted electronically.

3.03 Security Deposit. Prior to the Effective Date of this Agreement, Licensee shall deliver a security deposit in the amount of _____ Dollars (\$_____) (the "**Security Deposit**") to County. The Security Deposit shall be maintained throughout the term of this Agreement and shall secure the faithful performance and observance by Licensee of the terms, conditions, covenants and provisions of this Agreement. The Security Deposit may be in the form of cash, surety bond or clean, irrevocable letter of credit. Surety bonds and letters of credit shall be in a form and substance acceptable to the Department. A cash Security Deposit may be commingled with other funds of County, and County shall have no liability for the accrual or payment of any interest thereon. In the event of the failure of Licensee to keep and perform any of the terms, covenants and conditions of this Agreement to be kept and performed by Licensee, County, at its option, may draw upon the Security Deposit to compensate the County for all loss or damage sustained or suffered by County due to such default or failure on the part of Licensee.

3.04 Place of Payments. All payments required to be made by the Licensee under this Agreement shall be made payable to "Palm Beach County," and shall be paid 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 substituted therefor.

3.05 Unpaid Fees. In the event Licensee fails to make payment of any fees or charges when due and payable in accordance with the terms of this Agreement, interest at the rate of one and one-half percent [1½%] per month shall accrue against the delinquent payments from the date due until the date payment is received by the Department. Notwithstanding the foregoing, County shall not be prevented from terminating this Agreement for default in payment due to County pursuant to this Agreement or from exercising any other remedies contained herein or implied by law.

3.06 Audit. Licensee shall maintain and keep books, ledgers, accounts, or other records (the "**Records**"), accurately recording the information required to be reported to County hereunder for a period of three (3) years. County or its duly authorized representative(s) may examine any and all Records during reasonable business hours, in Licensee's offices or such other place as mutually agreed to between Licensee and the Department. Upon County's written request for examination of the Records, Licensee shall produce such items in Palm Beach County within ten (10) business days or pay all reasonable expenses, including, but not limited to, transportation, food, and lodging for County's Internal Auditor or his representative(s) to audit the Records outside of Palm Beach County. Any underpayment of amounts due County, which are disclosed as a result of an audit, including interest computed from the original due date of each such amount due shall be paid to County within thirty (30) days of the date of County's invoice.

3.07 Accord and Satisfaction. In the event Licensee pays any amount that is less than the amount stipulated to be paid under this Agreement, such payment shall be considered to be made only on account of the stipulated amount. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. County may accept any check or payment without prejudice to County's right to recover the balance due or to pursue any other remedy available to County pursuant to this Agreement or under the law.

ARTICLE 4

CONDUCT OF BUSINESS AND USE OF PREMISES BY LICENSEE

4.01 Use of Premises. Licensee shall use the Premises solely and exclusively for the handling, check in and servicing of aircraft utilizing the Airport's passenger terminal. Licensee shall not use, permit or suffer the use of the Premises for any other business or purpose whatsoever.

4.02 Improvements & Signage. Licensee shall make no improvements, alterations or additions to the Premises whatsoever, without the prior written consent of the Department, which may be granted or withheld in the Department's sole and absolute discretion. The Department may require Licensee to provide appropriate temporary signage to be displayed at the Premises, designating the air carrier being handled at the Premises, while the Premises are being used by Licensee for its operations hereunder. Temporary signage shall be made of high quality materials and professionally manufactured. Licensee shall not post handwritten signage or other similar signage within the Premises. Licensee shall not be permitted to install or display permanent signage within the Premises. All signage shall be subject to prior written approval of the Department.

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

4.04 Waste or Nuisance. Licensee shall not commit or suffer to be committed any waste upon the Premises or any nuisance or other act or thing which may result in damage or depreciation of value of the Premises.

4.05 Compliance with Laws. Licensee shall, at its sole cost and expense, secure any and all required licenses and permits and shall comply with all local, state, and federal laws pertaining to Licensee or its use of the Premises. Licensee shall ensure that its invitees, guests and all other persons entering the Premises with or without Licensee's consent or knowledge comply with all applicable laws on the Premises. Licensee shall indemnify, defend and save County harmless from any and all penalties, fines, costs, expenses, suits, claims, or damages resulting from Licensee's failure to perform its obligations specified in this Section. The foregoing indemnification agreement shall survive the expiration or earlier termination of this Agreement.

4.06 Non-Discrimination. Licensee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree (a) that no person on the grounds of race, creed, color, national origin, sex, sexual orientation, religion, marital status, age, or disability shall be excluded from participation in or denied the use of the Premises, (b) that in the construction of any improvements on, over, or under such Premises and the furnishing of services, no person on the grounds of race, creed, color, national origin, sex, sexual orientation, religion, marital status, age, or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (c) that Licensee shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended from time to time. In the event of the breach of any of the foregoing non-discrimination covenants, County shall have the right to terminate this Agreement and to reenter and repossess the Premises and the facilities hereon, and hold the same as if the Agreement had never been made or issued. This cancellation provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21, are followed and completed including exercise or expiration of appeal rights.

4.07 County's Right to Enter. County shall have the right to enter the Premises at any time, without notice, for any purpose whatsoever. County agrees to exercise reasonable efforts to minimize interference with or disruption of Licensee's operations on the Premises; provided, however, County shall not be required to expend additional sums of money in order to comply with the foregoing requirement. In the event that a County work activity must take place within the Premises during Licensee's operating hours, which will disrupt or interfere with the Licensee's operations, County will endeavor to provide prior notice to Licensee. The notice requirements provided under Section 10.04 shall not apply to this Section.

ARTICLE 5

REPAIRS AND MAINTENANCE OF PREMISES/SECURITY

5.01 Repairs & Maintenance. County shall not be obligated to make or conduct any maintenance or repairs whatsoever to the Premises. The Premises shall be surrendered by

Licensee in the same condition as they were accepted. Licensee shall cause all waste, garbage and rubbish resulting from Licensee's use of the Premises to be removed from the Premises. Licensee shall be responsible for repairing all damage to the Premises caused by Licensee or its employees, contractors, agents or invitees at Licensee's sole cost and expense. Notwithstanding the foregoing, County may elect to complete the necessary repairs to the Premises and Licensee shall reimburse County for all expenses incurred by County, plus a twenty five percent (25%) administrative overhead, within fifteen (15) days after written request for reimbursement from County.

5.02 Security of Premises. During Licensee's use of the Premises, Licensee shall be responsible for the security and protection of the Premises and for the prevention of unauthorized access to the Premises. Licensee fully understands that the police security protection provided by County is limited to that provided to any other business situated in Palm Beach County by the Palm Beach County Sheriff's Office and expressly acknowledges that any special security measures deemed necessary or desirable for additional protection of the Premises, shall be the sole responsibility of Licensee and shall involve no additional cost to County.

5.03 Airport Security. Licensee shall observe all security regulations and other requirements of any agency of the Federal government, including, but not limited to, the Federal Aviation Administration ("FAA") and Transportation Security Administration ("TSA"), applicable to Licensee, as such regulations or requirements have been or may be amended. Licensee agrees to comply with the Airport Security Program and the Air Operations Area ("AOA") Vehicle Access Program, and amendments thereto, and to comply with such other rules and regulations as may be reasonably prescribed by County, and to take such steps as may be necessary or directed by County to insure that employees, invitees and guests observe these requirements. Licensee shall conduct background checks of its employees to the extent required by any Federal, State or local law or as required by the Department or County. The Department shall have the right to require the removal or replacement of any employee of Licensee at the Airport that the Department has reasonably determined may present a risk to public safety or the security of the Airport. If as a result of the acts or omissions of Licensee, its employees, invitees or guests, 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, Licensee shall pay to County all such costs and expenses, including all administrative proceeding costs, court costs, attorneys fees and all other costs incurred by County in enforcing this provision. Licensee further agrees to rectify any security deficiency or other deficiency as may be determined by County, the FAA or TSA. In the event Licensee fails to remedy any such deficiency, County may do so at the cost and expense of Licensee. Licensee 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 6 INSURANCE

Licensee shall maintain, on a primary basis and at its sole expense, at all times during the term of this Agreement, and any extension thereof, the insurance coverages and limits set forth in Exhibit "A", attached hereto and incorporated herein. The requirements contained herein, as well as County's review or acceptance of insurance maintained by Licensee is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Licensee under this Agreement.

ARTICLE 7 INDEMNIFICATION

Licensee shall protect, defend, reimburse, indemnify and hold the County and its agents, employees and elected officers and each of them, free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages (including attorney fees at trial and appellate levels) and causes of action of every kind and character against, or in which the County is named or joined, arising out of this Agreement or Licensee's use or occupancy of the Premises, including, without limitation those arising by reason 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 or incident to or in connection with Licensee's acts, omissions or operations hereunder, or the performance, non-performance or purported

performance of Licensee or any breach of the terms of this Agreement; provided, however, Licensee shall not be responsible to the County for damages resulting out of bodily injury (including death) or damages to property which are judicially determined to be solely attributable to the negligence of the County its respective agents, servants, employees and officers. Licensee further agrees to hold harmless and indemnify the County for any fines, citations, court judgments, insurance claims, restoration costs or other liability resulting from or in any way arising out of or due to Licensee's activities or operations or use of the Premises whether or not Licensee 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 be extended to include all deliverers, suppliers, furnishers of material, or anyone acting for, on behalf of or at the request of Licensee. Licensee recognizes the broad nature of this indemnification and hold-harmless provision, and acknowledges that the County would not enter into this Agreement 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 the County in support of this indemnification in accordance with laws of the State of Florida. The obligations arising under this Article shall survive the expiration or termination of this Agreement.

ARTICLE 8 ASSIGNMENT

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

ARTICLE 9 REVOCATION OF LICENSE/DEFAULT

9.01 Revocation of License. Notwithstanding any provision of this Agreement to the contrary, the rights granted to Licensee hereunder amount only to a non-exclusive license to use the Premises on a Per Use basis as provided for herein, which license is expressly revocable by County for any reason whatsoever upon written notice to Licensee. Upon notice from County of the revocation of the license granted hereby, this Agreement shall terminate and County shall be relieved of all further obligations hereunder accruing subsequent to the date of such termination.

9.02 Termination for Convenience by Licensee. Licensee may terminate this Agreement for convenience upon five (5) days prior written notice to County, 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 Agreement.

9.03 Default. Failure to pay any amount due hereunder to County when due shall be a default of this Agreement. Failure to perform or observe any other agreements, covenants, or conditions contained in this Agreement to be performed or observed by such party upon five (5) days prior written notice shall constitute a default of this Agreement.

ARTICLE 10 MISCELLANEOUS

10.01 Subordination to Bond Resolution. This Agreement and all rights granted to Licensee hereunder are expressly subordinated and subject to the lien and provisions of the pledge, transfer, hypothecation or assignment made by County in the Bond Resolution, and County and Licensee agree that to the extent permitted by authorizing legislation, the holders of the Bonds or their designated representatives shall exercise any and all rights of County hereunder to the extent such possession, enjoyment and exercise are necessary to insure compliance by Licensee and County with the terms and provisions of this Agreement and the Bond Resolution.

10.02 Subordination to State/Federal Agreements. This Agreement shall be subject and subordinate to all the terms and conditions of any instrument and documents under which the County acquired the land or improvements thereon, of which the Premises are a part, and shall be given only such effect as will not conflict with nor be inconsistent with such terms and conditions. Licensee understands and agrees that this Agreement shall be subordinate to the provisions of any existing or future agreement between County and the United States of America, the State of Florida or any of their respective agencies, relative to the operation or

maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

10.03 Entire Agreement. The parties agree that this Agreement sets forth the entire agreement between the parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered except by written instrument executed by the parties hereto.

10.04 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 the Licensee at:

Fax: _____

Either party may from time to time change the address to which notice under this Agreement shall be given such party, upon three (3) days prior written notice to the other party.

10.05 Consent or Action. In the event this Agreement 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 Agreement 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 Department Director or his designee. If Licensee requests the County or Department’s consent or approval pursuant to any provision of the Agreement and County or Department fails or refuses to give such consent, Licensee shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable.

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

10.07 Waiver of Jury Trial. The parties hereto waive trial by jury in connection with proceedings or counterclaims brought by either of the parties hereto against the other, in connection with this Agreement.

10.08 Governing Law and Venue. This Agreement shall be governed by and interpreted according to the laws of the State of Florida and venue shall be in Palm Beach County.

10.09 Time of Essence. Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.

10.10 Captions. The captions and section designations set forth herein are for convenience

only and shall have no substantive meaning.

10.11 Severability. In the event that any section, paragraph, sentence, clause, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

10.12 Waiver. No waiver of any provision of this Agreement shall be effective against any party hereto unless it is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

10.13 Effective Date. This Agreement shall become effective when executed by the parties hereto (the "Effective Date").

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, County and Licensee have executed this Agreement, or have caused the same to be executed as of the day and year first above written.

WITNESSES:
POLITICAL

Signature

Typed or Printed Name

Signature

Typed or Printed Name

PALM BEACH COUNTY, A
SUBDIVISION OF THE STATE OF
FLORIDA

By: _____
Director, Department of Airports

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
County Attorney

WITNESSES:

Signature

Typed or Printed Name

Signature

Typed or Printed Name

LICENSEE:

By: _____
Signature

Typed or Printed Name

Title: _____

(Corporate Seal)

EXHIBIT "A"

INSURANCE

Commercial General Liability. Licensee shall maintain 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, Personal Injury, Product/Completed Operations, Contractual Liability, Severability of Interests or Cross Liability. Coverage shall be provided on a primary basis.

Business Automobile Liability. Licensee shall maintain Business Automobile Liability Insurance at a limit of liability of not less than _____ Dollars (\$ _____) each occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event the Licensee does not own automobiles, Licensee agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy. Coverage shall be provided on a primary basis.

Additional Insured. Licensee shall endorse the County as an Additional Insured with a "CG026 Additional Insured - Designated Person or Organization" endorsement to the Commercial General Liability policy. The additional insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents." Coverage shall be provided on a primary basis.

Waiver of Subrogation. Licensee agrees by entering into this Agreement to a Waiver of Subrogation for each policy required herein. When required by the insurer, or should a policy condition not permit Licensee to enter into any pre-loss agreement to waive subrogation without an endorsement, then Licensee agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Licensee enter into such an agreement on a pre-loss basis.

Certificate(s) of Insurance. Licensee shall provide the County with Certificate(s) of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect. The Certificate(s) of Insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation (ten (10) days for nonpayment of a premium) or non-renewal of coverage. The Certificate Holder address shall read: Palm Beach County Board of County Commissioners, c/o Palm Beach County Department of Airports, 846 Palm Beach International Airport, West Palm Beach, Florida 33406.

Deductibles, Coinsurance, & Self-Insured Retention. Licensee 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 a policy.

Right to Review or Reject Insurance. County's Risk Management Department may review, modify, reject or accept any required policies of insurance, including, but not limited to, limits, coverages or endorsements, required by this Exhibit "A" from time to time throughout the term of this Agreement. County may also reject any insurer or self-insurance plan providing coverage because of poor financial condition or failure to operate legally. In such event, County shall provide Licensee a written notice of rejection, and Licensee shall comply within thirty (30) days of receipt of the notice.

No Representation of Coverage Adequacy. Licensee acknowledges the limits, coverages and endorsements required by this Exhibit "A" are intended to minimize liability for County. Licensee agrees that it will not rely upon the requirements of this Exhibit "A" when assessing the extent or determining appropriate types or limits of insurance coverage to protect Licensee against any loss exposures, whether as a result of this Agreement or otherwise.