

4A-1

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: October 5, 2010

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

Department:

Submitted By: Department of Airports

Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

(A) Approve an Agreement for Purchase and Sale for the following property at a total cost of \$110,000 by a supermajority vote. Said property is located West of Runway 10L at Palm Beach International Airport (PBIA):

Danny F. Roberts

Karen Roberts

172 Pine Road

West Palm Beach, FL 33415

Sales Price

Replacement Housing

Parcel W – 156

\$ 110,000

\$ N/A

(B) Accept a Memorandum of Agreement to be recorded in the public records to provide notice of this Agreement; and

(C) Approve a short term Residential Lease Agreement with Danny F. Roberts and Karen Roberts for a period not to exceed 90 days.

**Summary:** The above property is being acquired in accordance with Palm Beach International Airport's approved Part 150 Noise Compatibility Study, which recommended the acquisition of property. An offer to purchase was presented to the Roberts on August 9, 2010 in the amount of \$85,000 and accompanying the offer was a notice of their Price Differential Payment eligibility of up to \$31,900 for total package of \$116,900. This settlement of \$110,000 is \$6,900 less than the total package of \$116,900. It should also be noted that in addition to the \$85,000 fair market value and the Price Differential of \$31,900, the Roberts family would have also been eligible to claim incidental expenses on their replacement dwelling and moving costs, however, they are not planning on purchasing a replacement property as they own another property that they are planning to relocate to. This agreement would be considered an Administrative Settlement under the FAA ORDER 5100.37B Chapter 3; Section 2. All purchases, sales and exchanges of real estate must be approved by a supermajority vote (5 Commissioners) pursuant to recent amendments to the PREM Ordinance. Countywide (HJF)

**Background and Policy Issues:** On January 21, 1997 Board Item 3F2 approved by the BCC authorized the purchase of property located West of Runway 9L at PBIA. On June 20, 2000 Board Item 3F2 (R-2000-0830) approved by the BCC authorized the acquisition of approximately 70 additional parcels in the same area.

**Attachments:**

- 1. Three (3) Original Agreements for Purchase and Sale w/Memorandum of Agreement
- 2. Three (3) Original Residential Lease Agreements
- 3. Correspondence (Parcel W-156)

Recommended By:

*[Signature]*

Department Director

9/2/10

Date

Approved By:

*[Signature]*

County Administrator

9/2/10

Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2011	2012	2013	2014	2015
Capital Expenditures	\$ 110,000				
Operating Costs					
External Revenues (Grants)					
Program Income (County)					
In-Kind Match (County)					
<b>NET FISCAL IMPACT</b>	<b>\$110,000</b>				
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included in Current Budget? Yes X No \_\_\_\_\_  
 Budget Account No: Fund 4114 Department 121 Unit A187 Object 6101  
 Reporting Category \_\_\_\_\_

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

Funds are available in the above referenced account.

C. Departmental Fiscal Review: CM Simms

**III. REVIEW COMMENTS**

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

[Signature]  
 OFMB VA 9/17/10 9/22/10  
[Signature]  
 Contract Dev. and Control 9/14/10

**B. Legal Sufficiency:**  
[Signature] 9/20/10  
 Assistant County Attorney

**C. Other Department Review:**  
 \_\_\_\_\_  
 Department Director

## AGREEMENT FOR PURCHASE AND SALE

This Agreement for Purchase and Sale is made and entered into \_\_\_\_\_, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida (hereinafter referred to as the "County") and Danny F. Roberts joined by Karen Roberts, his wife (hereinafter referred to as the "Seller").

### WITNESSETH:

1. **DEFINITIONS.** The following terms as used herein shall have the following meanings:

1.1 **"Agreement"** - this instrument, together with all exhibits, addenda, and proper amendments hereto.

1.2 **"Closing and Closing Date"** - the consummation of the transaction contemplated hereby which shall be held upon the date reflected in Section 10.2 of this Agreement, unless extended by the terms of this Agreement, or by mutual consent of the parties.

1.3 **"Current Funds"** - Palm Beach County warrant drawn against a public banking institution located in Palm Beach County, Florida.

1.4 **"Effective Date"** - the Effective Date of this Agreement shall be the date upon which the Palm Beach County Board of County Commissioners approves this Agreement at a formal meeting of the Board.

1.5 **"Inspection Period"** - that certain period of time commencing upon the Effective Date and terminating sixty (60) days thereafter.

1.6 **"Permitted Exceptions"** - those exceptions to the title of the Property as may be accepted in writing by the County.

1.7 **"Personal Property"** - all additional items of personal property located upon the Real Property at Closing. Any items of personal property remaining upon the property at Closing shall, at the option of County, become the property of County and may be retained by or disposed of by County at its sole discretion.

1.8 **"Property"** - the Real Property and Personal Property.

1.9 **"Purchase Price"** - the price set forth in or determined in accordance with Section 3.1 of this Agreement

1.10 **"Real Property"** - the Real Property legally described in Exhibit "A" attached hereto and made a part hereof, together with all improvements situate thereon.

1.11 **"Uniform Act"** has the meaning ascribed to it in Section 35 of this Agreement.

2. **SALE AND PURCHASE** In consideration of the mutual covenants herein contained, and various other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller agrees to sell and convey to County and County agrees to purchase from Seller, on the terms, covenants, and conditions hereinafter set forth, the Property, together with all improvements located thereon, if any, and all right, title, interest, privileges, estates, tenements, hereditaments, and appurtenances appertaining to the Real Property, including, without limitation, any and all streets, roads, highways, easements, accesses, and rights of way appurtenant thereto.

3. **PURCHASE PRICE AND METHOD OF PAYMENT.**

3.1 **Purchase Price.** The purchase price of the Property shall be One Hundred Ten Thousand and 00/100 Dollars (\$110,000.00).

3.2 **Payment of Purchase Price.** On the Closing Date, County shall pay the total amount of the Purchase Price of the Property in Current Funds, subject to any adjustments, credits, prorations, and fees as herein provided.

4. **ACKNOWLEDGMENTS, REPRESENTATIONS AND WARRANTIES OF SELLER.** As a material inducement to County to enter into this Agreement, Seller hereby acknowledges, represents, and warrants to County as follows:

4.1 Seller is indefeasibly seized of marketable, fee simple title to the Property, and is the sole owner of and has good right, title, and authority to convey and transfer the Property free and clear of all liens and encumbrances, excepting only the Permitted Exceptions.

4.2 There are no unrecorded leases, licenses, contracts or other agreements or claim of rights, written or unwritten, that affect occupancy, possession or use of the Property by anyone other than Seller except the following: NONE.

4.3 The Property abuts a public roadway to which access is not limited or restricted.

4.4 There is no litigation, investigation, or proceeding pending, or to the knowledge of Seller threatened, which relates to or adversely affects Seller's ability to perform its obligations under this Agreement.

4.5 There are no judicial or administrative actions, suits, or judgments affecting the Property pending, or to the knowledge of Seller threatened, which relate to or adversely affect Seller's ability to perform its obligations under this Agreement, including, without limitation, those relating to any laws, ordinances, rules, or regulations of any governmental authority having jurisdiction over the Property.

4.6 There are no existing or pending general or special assessments affecting the Property, which are or may be assessed by any governmental authority, water or sewer authority, school district, drainage district, or any other special taxing district.

4.7 INTENTIONALLY DELETED.

4.8 There are no condemnation, environmental, zoning, or other land-use regulation proceedings, either instituted or planned to be instituted, with regard to the Property.

4.9 On the Closing Date there will be no outstanding contracts made by Seller for any improvements to the Property which have not been fully paid for, and Seller shall cause to be discharged all mechanics' or construction liens arising from any labor or materials furnished to the Property prior to the time of Closing.

4.10 All documents executed or to be executed by Seller which are to be delivered to County at Closing will be legal, valid, and binding obligations of Seller.

4.11 There are no service contracts affecting the Property which will survive Closing.

4.12 That all ad valorem and non-ad valorem taxes for the Property have been fully paid or will be paid at or prior to Closing in accordance with Section 12 hereof, for the year of Closing and all prior years.

4.13 Seller has entered into no other contracts for the sale of any portion of the Property which remain in force.

4.14 There are no facts known to Seller affecting the value of the Property which have not been disclosed in writing to County.

4.15 Seller has complied and shall comply from the date hereof until Closing with all applicable Federal, State, County and municipal regulations, rules, ordinances, statutes and other requirements and regulations pertaining to the Property.

4.16 Seller has not used, is not currently using and will not in the future (for so long as Seller owns the same) use the Property for the handling, storage, transportation or disposal of hazardous materials and, to the best of Seller's knowledge, the Property has not in the past been so used.

In the event that any of Seller's acknowledgments, representations and warranties shall prove to be materially untrue, the same shall be considered a default for which the County shall have the rights and remedies identified in Section 17.1 hereof.

5. **INSPECTION OF PROPERTY.** During the Inspection Period, County and its engineers, surveyors, agents and representatives shall have unrestricted access to the Property for purposes of survey, testing and inspection thereof. All surveys, testing and inspections shall be conducted by County at its expense, and shall be performed by licensed persons or firms dealing in the respective areas or matters tested. All testing shall be done in the least intrusive manner reasonably practical. In the event County elects not to close upon its purchase of the Property, County shall restore the Property to the condition in which it existed prior to such inspections, using materials of like kind and quality. Nothing contained herein shall be construed to prohibit County from disclosing the results of said inspections as may be required by applicable law. In the event that such inspections shall reveal a deficiency in the Property, as determined by County in its sole and absolute discretion, County shall have the right to terminate this Agreement at any time during the Inspection Period by giving written notice thereof to Seller, whereupon the parties shall be relieved of all further obligations hereunder.

6. **EVIDENCE OF TITLE.**

6.1 During the Inspection Period, County may obtain an owner's title insurance commitment, together with legible copies of all exceptions to coverage reflected therein, issued by a title insurance company acceptable to County, agreeing to issue to the County upon the recording of the Warranty Deed to the Real Property, an owner's title insurance policy in the amount of the Purchase Price, insuring the marketability of the fee title of the County to the Real Property, subject only to the Permitted Exceptions.

The County shall have until the end of the Inspection Period in which to review same. In the event the title insurance commitment shall show as an exception any matter other than the Permitted Exceptions, County shall notify Seller of County's objection thereto, and Seller shall act with reasonable effort, including bringing suit, to remove such exception(s), which exceptions shall be deemed to constitute title defects. The Seller shall be entitled to ninety (90) days from the date of notification by County (with adjournment of the Closing Date, if necessary) within which to cure such defects or to make arrangements with the title insurer for deletion of any such title defects from the title insurance commitment without the inclusion of any additional exceptions to coverage. Notwithstanding the foregoing, Seller shall have the option of discharging any

such matters at closing with the closing proceeds. If the defect(s) shall not have been so cured or removed from the title insurance commitment by endorsement thereto at the termination of the said ninety (90) day period, County shall have the option of: (a) accepting title to the Property as it then exists; or (b) terminating this Agreement, by giving written notice thereof to Seller, provided, however, County shall not thereby waive any rights or remedies available to County due to such default by Seller, including an action for damages.

6.2 County may request, prior to the Closing, an endorsement of the title insurance commitment making it effective to within fifteen (15) days of the Closing Date. At Closing, Seller shall cause the title insurance commitment to be endorsed to remove, without the inclusion of any additional exceptions to coverage, any and all requirements or preconditions to the issuance of an owner's title insurance policy, and to delete any exceptions for: (a) any rights or claims of parties in possession not shown by the public records; (b) encroachments, overlaps, boundary line disputes and any other matters which would be disclosed by an accurate survey and inspection of the Property (provided County obtains a survey in accordance with Section 7 hereof); (c) easements or claims of easement not shown by the public records (provided County obtains a survey in accordance with Section 7 hereof); (d) any lien, or right to a lien, for services, labor or material heretofore or hereinafter furnished, imposed by law and not shown by the public records; (e) taxes for the year of Closing and all prior years, and taxes or special assessments which are not shown as existing liens by the public records; (f) matters arising or attaching subsequent to the effective date of the title insurance commitment but before the acquisition of record of title to the Property by the County; and (g) any general or specific title exceptions other than the Permitted Exceptions.

6.3 From and after the Effective Date of this Agreement, Seller shall take no action which would impair or otherwise affect title to any portion of the Property, and shall record no documents in the Public Records which would affect title to the Real Property, without the prior written consent of the County.

7. **SURVEY.** County shall have the right, within the time period provided in Section 6 for delivery and examination of title, to obtain a current survey of the Real Property and all improvements thereon. If the survey reveals any encroachments, overlaps, boundary disputes, or other defects, or any matters other than the Permitted Exceptions, the same shall be treated as title defects as described in Section 6 of this Agreement, and County shall have the same rights and remedies as set forth therein.

8. **MAINTENANCE.** Between the Effective Date and Closing, Seller shall maintain the Property in the condition in which it existed as of the Effective Date. Notwithstanding the foregoing, Seller shall deliver the Property at Closing free of any trash, refuse or other debris, and in full compliance with all governmental regulations. Seller shall bear the risk of any loss, damage or casualty to the Property prior to Closing. County shall have access to the Property at any reasonable time prior to Closing to verify Seller's compliance herewith.

9. **CONDITION PRECEDENT TO CLOSING.** The following are conditions precedent to County's obligation to close upon its purchase of the Property: (1) Seller shall have performed all of the covenants and obligations under this Agreement that it is obligated to perform at or prior to Closing, on or prior to the dates such performance is required hereby; (2) Seller's representations and warranties identified in this Agreement shall be true and correct; (3) there shall have been no change in the condition of the Property or the status of title to the Property, other than as specifically permitted by this Agreement. The foregoing conditions precedent are for the exclusive benefit of County and may be unilaterally waived by the County.

10. **CLOSING.** The parties agree that the Closing upon the Property shall be consummated as follows:

10.1 **Place of Closing.** The Closing shall be held at the County's Property and Real Estate Management Division office, 2633 Vista Parkway, West Palm Beach, Florida.

10.2 **Closing Date.** The Closing shall take place within thirty (30) days after expiration of the Inspection Period, or at such earlier date as is mutually agreed upon by the parties, unless extended by mutual agreement or as otherwise provided for in this Agreement.

10.3 **Closing Documents.** County shall be responsible for preparation of the following Closing documents, which Seller shall deliver, or cause to be delivered to County, at Closing, each fully executed and acknowledged as required.

10.3.1 **Statutory Warranty Deed.** A Statutory Warranty Deed conveying good and marketable fee simple title to the property, subject only to the Permitted Exceptions.

10.3.2 **Seller's Disclosure of Beneficial Interests.** A Seller's Disclosure of Beneficial Interests if required by Section 286.23, Florida Statutes, or County policy, which accurately discloses the name and address of any person or entity having a 5% or greater beneficial interest in the ownership of the Property as of the date of Closing. The foregoing shall be in addition to any Disclosure or notice of change thereto previously provided to County, and in the same form as previously provided to County.

10.3.3 **Affidavit of Seller.** A Seller's Affidavit stating that the Property is free and clear of all encumbrances, mortgages, liens, leases, licenses, contracts or claim of rights in a form sufficient to permit the title insurer to delete the "Gap" and "Standard Exceptions" from the title insurance policy and insure County's title to the Property in accordance with Section 6 of this Agreement, subject only to the Permitted Exceptions.

10.3.4 **Non-Foreign Affidavit.** Seller represents and warrants to County that Seller is not a "foreign person" as defined by the Federal Foreign Investment in Real Property Tax Act (the "Act"). At Closing, the Seller shall execute and deliver to County a "Non-Foreign Affidavit," as required by the Act. Seller acknowledges that in the event Seller fails to deliver the Non-Foreign Affidavit, County shall be authorized to withhold from the closing proceeds an amount equal to ten percent (10%) of the gross amount of the purchase price, and to remit same to the Internal Revenue Service, as required by the Act.

10.3.5 **Closing Statement.** A Closing Statement prepared in accordance with the terms hereof.

10.3.6 **Additional Documents.** Seller shall also deliver and/or execute such other instruments as are necessary or reasonably required to consummate the transactions herein contemplated including, without limitation, if applicable, such documents as County or the title company may require evidencing Seller's existence, good standing, power and authority to enter into and consummate the transaction herein contemplated, and a Receipt of Real Estate Brokerage Commission and Release ("Broker's Release") in a form acceptable to County.

10.4 **Lease**. As of the Effective Date, the parties acknowledge that the Property is occupied by Danny F. Roberts and Karen Roberts ("Tenant"). The parties acknowledge that Tenant may remain in possession of the Property after Closing subject to a separate lease agreement between County and Tenant in the form attached hereto as Exhibit "C" (the "Lease"). County shall have the option, in its sole discretion, to delay the Closing Date in the event County and Tenant have not entered into the Lease prior to the Closing Date. Any rental collected by Seller prior to Closing shall not be prorated between the parties.

10.5 **County's Obligations**. At Closing, County shall deliver, or cause to be delivered, to Seller the following:

10.5.1 **Cash due at Closing**. The required payment due in Current Funds as provided elsewhere herein.

11. **EXPENSES**.

11.1 County shall pay the following expenses at Closing.

11.1.1 The cost of recording the deed of conveyance.

11.1.2 Documentary Stamps required to be affixed to the deed of conveyance.

11.1.3 All costs and premiums for the owner's title insurance commitment and policy.

11.1.4 Any amount due to defray costs of the Office of the Inspector General in accordance with Ordinance R2009-049. Refer to Section 34 for more information.

11.2 Seller shall pay the following expenses at Closing:

11.2.1 All costs necessary to cure title defect(s) or encumbrances, other than the Permitted Exceptions, and to satisfy or release of record all existing mortgages and liens upon the Property.

11.3 The Seller and County shall each pay their own attorney's fees.

12. **PRORATIONS**.

12.1 **Taxes**. On or before the Closing Date, Seller shall establish an escrow fund with the Palm Beach County Tax Collector pursuant to Florida Statutes Section 196.295, and shall pay into such escrow Seller's prorata portion of ad valorem and non-ad valorem real property taxes and assessments for the year of Closing and any prior years as determined by the Tax Collector. Seller's prorata share of all taxes and assessments shall include the day of Closing.

12.2 **Assessments**. If as of the Closing Date, assessments or charges have been imposed against the Property or any part thereof which are, or which may become payable in annual installments, the first installment of which is then a charge or lien, or has been paid, then for the purposes of this Agreement, all of the unpaid installments of any such assessments, including those which become due and payable after the Closing Date, shall be deemed to be due and payable and to be a lien upon the premises affected thereby, and shall be paid and discharged by the Seller on or before the Closing Date. Any other assessments not deemed to be due and payable as aforesaid which burden County owned property shall be deemed to be payable on a calendar year basis in arrears and prorated accordingly.



13. **CONDEMNATION.** In the event that all or any part of the Property shall be acquired or condemned for any public or quasi-public use or purpose, or if any acquisition or condemnation proceedings shall be threatened or begun prior to Closing, County shall have the option to either terminate this Agreement, and the obligations of all parties hereunder shall cease, or to proceed, subject to all other terms, covenants, conditions, representations, and warranties of this Agreement, to Closing, receiving, however, any and all damages, awards, or other compensation arising from or attributable to such acquisition or condemnation proceedings. County shall have the right to participate in any such proceedings.

14. **REAL ESTATE BROKER.** Seller represents and warrants to County that it has not dealt with any broker, salesman, agent or finder in connection with this transaction, except O.R. Colan Associates, Inc. ("Broker") whose commissions and fees shall be payable by County pursuant to separate written agreement. Without limiting the effect of the foregoing, Seller agrees to indemnify, defend and save the County harmless from the claims and demands of any real estate broker, salesman, agent or finder, other than Broker, claiming to have dealt with Seller. Such indemnity shall include, without limitation, the payment of all costs, expenses and attorneys fees incurred or expended in defense of such claims or demands. In the event Seller's warranties and representations under this Section 14 shall prove to be untrue, County shall, in addition to any other remedy provided for herein, have the right to require Seller to provide a brokerage release, in a form and substance acceptable to County, prior to Closing. The terms of this Section 14 shall survive the Closing or termination of this Agreement.

15. **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 national overnight delivery service, telecopied or faxed, 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 national overnight delivery service, 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:

15.1 County:

Palm Beach County  
Property & Real Estate Management Division  
Attention: Director  
2633 Vista Parkway  
West Palm Beach, Florida 33411-5605

With a copy to:

County Attorney's Office  
Attention: Airport Real Estate Attorney  
301 North Olive Avenue, Suite 601  
West Palm Beach, Florida 33401-4791

15.2 Seller:

Danny F. Roberts and Karen Roberts  
172 Pine Road  
West Palm Beach, FL 33415

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

16. **ASSIGNMENT.** Neither County nor Seller may assign this Agreement or any interest herein without the prior written consent of the other party, which may be granted or withheld at such other party's sole and absolute discretion. Any attempted assignment, mortgage, pledge, encumbrance or subletting without such consent shall be null and void, without legal effect and shall constitute a breach of this Agreement. This provision shall be construed to include a prohibition against any assignment, by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary.

17. **DEFAULT.**

17.1 **Defaults by Seller.** In the event Seller fails, neglects or refuses to perform any term, covenant, or condition of this Agreement for which a specific remedy is not set forth in this Agreement, County shall have the right to (1) terminate this Agreement by written notice to Seller, in which event the parties shall be released from all obligations hereunder other than those which specifically survive termination of this Agreement; (2) grant Seller a reasonable period of time within which to cure such default during which time Seller shall utilize Seller's best efforts, including bringing suit, to remedy such default; or (3) seek specific performance of the terms of this Agreement. In the event County elects option number two (2) set forth hereinabove and Seller fails or is unable to cure such default within the applicable time period, County shall have the rights identified in option numbers one (1) and three (3) set forth hereinabove. In the event County elects option number three (3) and County is unable to obtain specific performance of this Agreement for any reason, County shall have the right to terminate this Agreement and pursue damages.

17.2 **Defaults by County.** In the event County fails or refuses to perform any term, covenant, or condition of this Agreement for which a specific remedy is not set forth in this Agreement, Seller shall have the right to (1) terminate this Agreement at any time prior to Closing by written notice to County, in which event the parties shall be released from all obligations hereunder other than those which specifically survive termination of this Agreement; (2) grant County a reasonable period of time within which to cure such default during which time County shall utilize County's best efforts, including bringing suit, to remedy such default; or (3) seek specific performance of the terms hereof. In the event Seller elects option number two (2) set forth hereinabove and County fails or is unable to cure such default within the applicable time period, Seller shall have the rights identified in option numbers one (1) and three (3) set forth hereinabove. In the event Seller elects option number three (3) and Seller is unable to obtain specific performance of this Agreement for any reason, Seller shall have the right to terminate this Agreement and pursue damages.

18. **GOVERNING LAW & VENUE.** This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Florida. Venue in any action, suit or proceeding in connection with this Agreement shall be in a state court of competent jurisdiction in Palm Beach County, Florida.

19. **BINDING EFFECT.** This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective legal representatives, successors, and assigns.

20. **MEMORANDUM OF AGREEMENT.** County shall be entitled to record the Memorandum of Agreement attached hereto as Exhibit "B" in the Public Records of Palm Beach County, Florida. In the event County exercises its right to terminate this Agreement, County shall deliver a termination of such Memorandum of Agreement to Seller within sixty (60) days of such termination.

21. **TIME OF ESSENCE.** Time is of the essence with respect to the performance of each and every provision of this Agreement where a time is specified for performance.

22. **INTEGRATION.** This Agreement constitutes the entire understanding and Agreement between the parties with respect to the subject matter hereof, and may not be modified or amended, except in a writing signed by all of the parties hereto.

23. **EFFECTIVE DATE OF AGREEMENT.** This Agreement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners, and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners.

24. **HEADINGS.** The paragraph headings or captions appearing in this Agreement are for convenience only, are not part of this Agreement, and are not to be considered in interpreting this Agreement.

25. **NON-DISCRIMINATION.** The parties agree that no person shall, on the grounds of race, color, sex, age, national origin, disability, religion, ancestry, marital status, sexual orientation, or gender identity or expression, be excluded from the benefits of, or be subjected to any form of discrimination under any activity carried out by the performance of this Agreement.

26. **CONSTRUCTION.** No party shall be considered the author of this Agreement since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final Agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof be 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.

27. **ENTIRE UNDERSTANDING.** This Agreement represents the entire understanding between the parties, and supersedes all other negotiations, representations, or agreements, written or oral, relating to this Agreement.

28. **SURVIVAL.** The parties' warranties, agreements, covenants and representations set forth in this Agreement shall not be merged and shall survive consummation of the transaction contemplated by this Agreement.

29. **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.

30. **AMENDMENT.** This Agreement may be modified and amended only by written instrument executed by the parties hereto.

31. **INCORPORATION BY REFERENCE.** Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

32. **TIME COMPUTATION.** Any references in this Agreement to time periods of less than six (6) days shall, in the computation thereof, exclude Saturdays, Sundays, and federal or state legal holidays; any time period provided for in this Agreement that shall end on a Saturday, Sunday, or federal or state legal holiday shall extend to 5:00 p.m. (EST) of the next day that is not a Saturday, Sunday, or federal or state legal holiday.

33. **RADON GAS.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon testing may be obtained from your County public health unit.

34. **OFFICE OF THE INSPECTOR GENERAL.** The County has established the Office of the Inspector General, Ordinance R2009-049, which is authorized and empowered to review past, present and proposed County contracts, transactions, accounts and records. All parties doing business with the County and receiving County funds shall fully cooperate with the Inspector General including providing access to records relating to this Agreement. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and audit, investigate, monitor, and inspect the activities of the Seller, its officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. Any cost of the Inspector General's Office applicable to this transaction shall be paid by the County.

35. **UNIFORM ACT.** The parties recognize that the transaction contemplated herein may be subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (84 Stat. 1894; 42 U.S.C. 4602 et seq.; Pub. L. 91-646), and amendments thereto (the "Uniform Act"). Seller acknowledges County's responsibilities under the Uniform Act, including, but not limited to, the obligation to provide certain advance written notices and other benefits to "Displaced Persons" (as that term is defined in the Uniform Act). Seller agrees to cooperate with County, and its authorized agents, in County's administration of the Uniform Act, which cooperation may include, but not be limited to, access to the Property and its occupants (including tenants, if any), and extension of the Closing Date, if necessary, to facilitate relocation of Displaced Persons.

**(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their respective names on the dates set forth below.

Signed, sealed, and delivered in the presence of:

Date of Execution by Seller:

As to Seller:

September 17, 2010  
SELLER:  
Danny Roberts

Donna L. Neeley  
Witness Signature

Donna L. Neeley  
Print Witness Name

Danny F Roberts  
Print Name

Meredith Jensen  
Witness Signature

Meredith Jensen  
Print Witness Name

Karen Roberts

Karen Roberts  
Print Name

Date of Execution by County:

\_\_\_\_\_, 20\_\_

ATTEST:

SHARON R. BOCK  
CLERK & COMPROLLER

PALM BEACH COUNTY, a political  
subdivision of the State of Florida

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Burt Aaronson, Chair

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND  
CONDITIONS

By: [Signature]  
County Attorney

By: \_\_\_\_\_  
Department Director

**SCHEDULE OF EXHIBITS**

EXHIBIT "A" - LEGAL DESCRIPTION

EXHIBIT "B" - MEMORANDUM OF AGREEMENT

EXHIBIT "C" - LEASE

EXHIBIT "A"

LEGAL DESCRIPTION OF REAL PROPERTY

Lots 11 and 12, FERRIS PARK, FIRST ADDITION, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 24, Page 12.

**EXHIBIT "B"**

**MEMORANDUM OF AGREEMENT**



Prepared By/Return To:  
David Kuzmenko  
Palm Beach County  
Property & Real Estate  
Management Division  
2633 Vista Parkway  
West Palm Beach, FL 33411-5605

**MEMORANDUM OF AGREEMENT**

This is a MEMORANDUM OF AGREEMENT regarding that certain Agreement for Purchase and Sale, dated \_\_\_\_\_ (Resolution No. \_\_\_\_\_) (the "Agreement"), by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, with an address of 301 North Olive Avenue, Administration, 11<sup>th</sup> Floor, West Palm Beach, Florida 33401, ("County"), and Danny F. Roberts joined by Karen Roberts, his wife, whose address is 172 Pine Road, West Palm Beach, FL 33415.

**WITNESSETH:**

**WHEREAS**, County and Seller have entered into the Agreement pursuant to which Seller has agreed to sell to County and County has agreed to purchase from Seller the Real Property located in Palm Beach County legally described in Exhibit "A" attached hereto and made a part hereof (the "Property"); and

**WHEREAS**, Seller has executed this Memorandum of Agreement for the purpose of giving public notice of the existence of the Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller hereby acknowledges, and gives notice of, the existence of the Agreement.

This Memorandum of Agreement is not a complete summary of the Agreement. Provisions of this Memorandum shall not be used to interpret the provisions of the Agreement, and, in the event of a conflict between this Memorandum and the Agreement, the Agreement shall control.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, Seller has caused this Memorandum of Agreement to be executed on the date set forth below.

Signed and delivered in the presence of two witnesses for Seller:

Donna L. Neeley  
Witness Signature

Donna L. Neeley  
Print Witness Name

Maud Fessenden  
Witness Signature

Maud Fessenden  
Print Witness Name

Danny Roberts  
"SELLER"

Danny R. Roberts  
Print "Sellers" Name

Karen Roberts  
"SELLER"

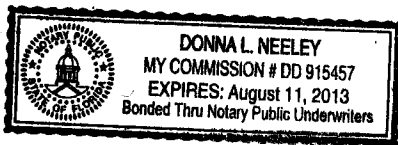
Karen Roberts  
Print "Sellers" Name

STATE OF FLORIDA ]  
COUNTY OF PALM BEACH ]

SS:

The foregoing Memorandum of Agreement was acknowledged before me this 17 day of September, 20 10, by Danny F. Roberts and Karen Roberts, who is personally known to me OR who produced FL DL as identification and who did X take an oath.

Donna L. Neeley  
Notary Public  
Donna L. Neeley  
Print Notary Name



NOTARY PUBLIC  
State of Florida at Large  
My Commission Expires: 8/11/2013

EXHIBIT "A"

LEGAL DESCRIPTION OF REAL PROPERTY

Lots 11 and 12, FERRIS PARK, FIRST ADDITION, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 24, Page 12.

**EXHIBIT "C"**

**LEASE**

**DEPARTMENT OF AIRPORTS**  
**RESIDENTIAL LEASE AGREEMENT**

LEASE AGREEMENT

between

PALM BEACH COUNTY

A POLITICAL SUBDIVISION OF THE

STATE OF FLORIDA

(Landlord)

and

DANNY F. ROBERTS AND KAREN ROBERTS

(Tenant)

## LEASE AGREEMENT

THIS LEASE is made and entered into \_\_\_\_\_, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "County" and Danny F. Roberts and Karen Roberts, hereinafter referred to as "Tenant".

### ARTICLE I BASIC LEASE PROVISIONS

#### **Section 1.01 Premises.**

In consideration of the rents, covenants and agreements hereafter reserved and contained on the part of the Tenant to be observed and performed, the County demises and leases to the Tenant, and Tenant rents from County, the residence located at 172 Pine Road, West Palm Beach, Palm Beach County, Florida, 33415 (the "Premises").

#### **Section 1.02 Length of Term and Commencement Date.**

The term of this Lease shall commence on the closing of the transaction contemplated by that certain Agreement for Purchase and Sale by and between County and Danny F. Roberts joined by Karen Roberts, his wife, ("Purchase Agreement"), for sale of the Premises to County (the "Commencement Date"), and terminate ninety (90) days thereafter (the "Term"), unless sooner terminated pursuant to the provisions of this Lease. In the event Purchase Agreement is terminated or the closing does not occur within the time frame specified therein, the Director of the Department of Airports may terminate this Lease, on behalf of County, upon prior written notice to Tenant.

#### **Section 1.03 Termination by Tenant.**

Tenant may terminate this Lease upon two (2) business days prior written notice to County, whereupon the parties shall be relieved of all further obligations under this Lease with the exception of those obligations that expressly survive termination of this Lease. Upon termination of this Lease, Tenant shall surrender possession of the Premises to County in accordance with Section 4.05 and shall promptly return all keys to the Premises to County.

### ARTICLE II RENT

#### **Section 2.01 Rent.**

Tenant shall occupy the Premises at no cost during the Term of this Lease. If Tenant remains in possession of the Premises upon expiration or termination of this Lease without written consent from the County, Tenant agrees to pay County double the monthly rental set forth immediately hereinafter. In the event Tenant receives written consent from the County to remain in occupancy of the Premises at the expiration of the Term, Tenant shall pay rent to County equal to Six Hundred Thirty-Seven and 50/100 Dollars (\$637.50) per month together with any sales tax due thereon, payable on the first day of the expiration of the Term and on the same day every month thereafter at such place as designated by the County.

#### **Section 2.02 Assessments and Personal Property Taxes.**

Tenant shall pay before delinquency all ad valorem taxes, assessments, whether general or special, and all other personal property taxes and assessments of any kind or nature which may be levied by any governmental authority against the Premises, this Lease and/or Tenant's personal property located on the Premises.

**ARTICLE III  
CONDITION OF LEASED PREMISES**

**Section 3.01 Waiver of Warranties.**

Tenant hereby acknowledges that Tenant has been in possession of the premises, accepts the premises "as is" and expressly waives and releases the County from any and all warranties expressed or implied, including, but not limited to any or all warranties of habitability with respect to the premises, and any and all defects, latent or patent, or any dangerous or unsafe conditions, which may presently exist or may hereafter arise in the Premises. Tenant further hereby releases and relieves County from any continuing duty to exercise reasonable care to repair any dangerous or defective conditions in the Premises, whether or not notice of their existence is given to the County.

Tenant acknowledges that this Lease is for the purpose of permitting Tenant to relocate Tenant's residence as a result of the County's purchase of the Premises for Airport purposes, and therefore, agrees that County shall not be obligated to comply with Chapter 83, F.S., including but not limited to, providing Tenant with Notice of Termination.

**ARTICLE IV  
CONDUCT OF BUSINESS AND USE OF PREMISES BY TENANT**

**Section 4.01 Use.**

Tenant shall use and occupy the Premises solely and exclusively for residential purposes only. No more than 3 adults and 0 children may reside therein. Tenant shall not use the Premises for illegal or improper purposes.

**Section 4.02 Waste or Nuisance**

Tenant shall not commit or suffer to be committed any waste upon the Premises, commit or permit the maintenance or commission of any nuisance or other act or thing which may result in damage or depreciation of value of the Premises or which may affect County's fee interest in the Premises. Tenant shall not use, maintain, store, or dispose of any contaminants including, but not limited to, hazardous or toxic substances, chemicals, or other agents on the Premises or any adjacent land in any manner not permitted by law.

**Section 4.03 Governmental Regulations.**

Tenant shall, at Tenant's sole cost and expense, comply with all ordinances, laws, statutes, and regulations of all county, municipal, state, federal, and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to Tenant or its use of the Premises, or the Premises generally. Tenant shall indemnify, defend, and save County harmless from any and all penalties, fines, costs, expenses, suits, claims, or damages resulting from Tenant's failure to perform its obligations in this Section.

**Section 4.04 Non-Discrimination.**

Tenant shall assure and certify that it will comply with the Title IV of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R92-13, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, sexual orientation, gender identity or expression, or disability with respect to any activity occurring on the Premises or under this Agreement.

**Section 4.05 Surrender of Premises.**

Upon termination or expiration of this Lease, Tenant shall promptly remove Tenant's personal property and removable fixtures and equipment from the Premises and shall surrender the Premises to the County in the same condition the Premises were in as of the Commencement Date of this Lease, reasonable wear and tear excepted. Upon surrender of the Premises, title to any and all remaining personal property shall revert to County and the same shall be deemed to have been abandoned. Tenant shall deliver the Premises to County free of any trash, refuse or other debris, and in full compliance with all governmental regulations. County shall have access to the Property at any reasonable time prior to the termination or expiration of this Lease to verify Tenant's compliance herewith.

**ARTICLE V  
REPAIRS AND MAINTENANCE OF PREMISES**

**Section 5.01 Responsibility of County and Tenant.**

County shall not be obligated or required to make or conduct any maintenance or repairs whatsoever to the Premises. All portions of the Premises shall be maintained and kept in good repair and condition by Tenant at Tenant's sole cost and expense. Tenant shall not make any improvements, additions, modifications or alterations to the Premises.

**Section 5.02 Construction Liens**

The interest of the County in the Premises shall not be subject to liens for work performed by or on behalf of Tenant. Tenant shall notify every contractor performing work upon the Premises of the provision set forth in the preceding sentence. In the event that a construction lien is filed against the Premises in connection with any work performed by or on behalf of the Tenant, the Tenant shall satisfy such claim, or shall transfer same to security, within ten (10) days from the date of filing. In the event that the Tenant fails to satisfy or transfer such claim within said ten (10) day period, the County may do so and thereafter charge the Tenant, and the Tenant shall promptly pay to County all sums paid by County in connection with the satisfaction or transfer of such claim, including attorneys' fees. Further, the Tenant agrees to indemnify, defend, and save the County harmless from and against any damage or loss incurred by the County as a result of any such construction lien.

**Section 5.03 County's Right to Inspect.**

The County or the County's agents shall have the right upon reasonable prior notice to the Tenant (except that no notice need be given in case of emergency) to enter the Premises for the purpose of inspection of the Premises. Any such entrance into the Premises shall be conducted by County in a manner calculated to minimize interference with or disruption of Tenant's use of the Premises.

**ARTICLE VI  
UTILITIES**

**Section 6.01**

Tenant shall be solely responsible for and promptly pay directly to the utility company or the provider of such service all charges and assessments for water, gas, electricity, trash collection and removal, or any other utility used or consumed on the Premises. In no event shall County be liable for an interruption or failure in the supply of any such utility to the Premises.



## ARTICLE VII INSURANCE AND INDEMNITY

### **Section 7.01 Liability Insurance.**

Tenant shall, during the Term hereof, keep in full force and effect, General Liability Insurance in an amount not less than One Hundred Thousand Dollars (\$100,000) per occurrence combined single limit bodily injury and property damage liability. Such policy shall name the County as an Additional Insured.

### **Section 7.02 Insurance Policies.**

The insurance required hereunder shall be primary over any other collectible amount of insurance under the County's Self-Insurance Plan. Tenant shall be responsible for paying all costs and expenses relating to such insurance, including, without limitation, all insurance premiums and any deductibles or self-insured retentions as a result of losses not covered by such insurance. The insurance required hereunder shall be issued by an insurance company licensed to do business in the State of Florida and subject to the approval of the County. The Certificate of Insurance evidencing such insurance coverage shall be provided to the County prior to the Commencement Date. Such Certificate shall require at least thirty (30) days prior written notice of cancellation or adverse material change in coverage. In no event shall the limits of said insurance policies be considered as limiting the liability of Tenant under this Lease. Tenant shall obtain and deliver to the County, from the insurer under each policy of such insurance, an agreement whereby such insurer waives subrogation of any claim against the County for loss or damage within the scope of the insurance, and the Tenant, for itself and its insurers, waives all such insured claims against the County. In the event that Tenant shall fail to obtain or maintain in full force and effect the insurance coverage required to be obtained by Tenant under this Lease, County may procure the same from such insurance carriers as County may deem proper, and Tenant shall pay as Additional Rent, upon demand of County, any and all premiums, costs, charges, and expenses incurred or expended by County in obtaining such insurance. Notwithstanding the foregoing, Tenant shall nevertheless hold County harmless from any loss or damage incurred or suffered by County due to Tenant's failure to maintain such insurance.

### **Section 7.03 Indemnification of County.**

Tenant shall, to the extent permitted by law, indemnify, defend, and save harmless the County from and against any and all claims, suits, actions, damages, and/or causes of action arising as a result of or relating to this Lease or the Tenant's occupancy of the Premises for any personal injury, loss of life, and/or damage to property sustained in or about the Premises including, without limitation, by reason or as a result of the use and occupancy of the Premises by the Tenant, its agents, employees, licensees, invitees, any sublessee, and the general public, and from and against any orders, judgments, and/or decrees which may be entered thereon, and from and against all costs, attorney fees, expenses, and liabilities incurred in and about the defense of any such claim. In the event County shall be made a party to any litigation commenced against the Tenant or by the Tenant against any third party, then Tenant shall protect and hold County harmless and pay all costs and attorney fees incurred by County in connection with such litigation, and any appeals thereof.

### **Section 7.04 Disclaimer of Liability.**

County hereby disclaims, and Tenant 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 Tenant, its family members, guests, or invitees during the term of this Lease, including, but not limited to, loss, damage, or injury to the improvements or personal property of Tenant, Tenant's family members, guests, or invitees that might be located or stored on the Leased Premises, unless such loss, damage, or injury is caused by County's sole negligence or unintentional acts. The parties hereto 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 leasing of the Premises pursuant to this Lease.

**ARTICLE VIII  
DESTRUCTION OF PREMISES**

**Section 8.01 Damage or Destruction by Fire, War, or Act of God.**

In the event the Premises shall be destroyed or so damaged or injured by fire or other casualty during the Term of this Lease or any extension thereof, whereby the same shall be rendered untenable, in whole or in part, this Lease shall terminate, whereupon the parties shall be relieved of all obligations hereunder.

**ARTICLE IX  
ASSIGNMENT AND SUBLETTING**

**Section 9.01 Consent Required.**

Tenant may not assign, mortgage, pledge, or encumber this Lease in whole or in part, nor sublet all or any portion of the Premises. This provision shall be construed to include a prohibition against any assignment, mortgage, pledge, encumbrance, or sublease, by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary.

**ARTICLE X  
DEFAULT OF TENANT**

**Section 10.01 Events of Default.**

The occurrence of any one or more of the following shall constitute an Event of Default by Tenant under this Lease: (i) Tenant's failure to perform or observe any of the agreements, covenants, or conditions contained in the Lease on Tenant's part to be performed or observed and such failure shall continue for more than five (5) days after notice from County; (ii) Tenant's vacating or abandoning the Premises; or (iii) Tenant's leasehold estate being taken by execution, attachment, or process of law. If any Event of Default occurs, then at any time thereafter while the Event of Default continues, County shall have the right to give Tenant notice that County intends to terminate this Lease upon a specified date not less than three (3) days after the date notice is received by Tenant, and this Lease shall then expire on the date specified as if that date had been originally fixed as the expiration date of the Term of this Lease. If, however, the default is cured within the three (3) day period and the County is so notified, this Lease will continue.

**ARTICLE XI  
QUIET ENJOYMENT**

**Section 11.01 County's Covenant.**

Upon payment by the Tenant of the Rent and other charges herein provided, and upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term hereby demised without hindrance or interruption by County or any other persons or persons lawfully or equitably claiming by, through, or under the County, subject, nevertheless, to the terms and conditions of this Lease.

**ARTICLE XII  
MISCELLANEOUS**

**Section 12.01 Entire Agreement.**

This Lease and any Exhibits attached hereto and forming a part thereof as if fully set forth herein, constitute all agreements, conditions, and understandings between County and Tenant concerning the Premises. All representations, either oral or written, shall be deemed to be merged into this Lease. Except as herein otherwise provided, no subsequent alteration, waiver, change, or addition to this Lease shall be binding upon County or Tenant unless reduced to writing and signed by them.

### **Section 12.02 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 national overnight delivery service, telecopied or faxed, 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 national overnight delivery service, 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:

Department of Airports  
846 Palm Beach International Airport  
West Palm Beach, Florida, 33406  
Attn: Deputy Director, Airports Business Affairs

with a copy to:

Palm Beach County Attorney's Office  
301 North Olive Avenue, Suite 601  
West Palm Beach, Florida 33401  
ATTN: Airport Attorney

- (b) If to the Tenant at:

Danny F. Roberts and Karen Roberts  
172 Pine Road  
West Palm Beach, FL 33415

Either party hereto may change the address for service of notices required or permitted hereunder upon ten (10) days prior written notice. All notices given hereunder shall be effective and deemed to have been duly given only upon receipt by the party to which notice is being given, said receipt being deemed to have occurred upon such date as the postal authorities shall show the notice to have been delivered, refused, or undeliverable, as evidenced by the return receipt.

### **Section 12.03 Severability.**

If any term of this Lease or the application thereof to any person or circumstances, shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Lease shall be valid and enforceable to the fullest extent permitted by law.

### **Section 12.04 Recording.**

Tenant shall not record this Lease, or any memorandum or short form thereof.

### **Section 12.05 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 LEASE.

**Section 12.06 Governing Law.**

This Lease shall be governed by, construed and enforced in accordance with, the laws of the State of Florida. Venue in any action, suit or proceeding in connection with this Agreement shall be filed and held in a State court of competent jurisdiction located in Palm Beach County, Florida.

**Section 12.07 Radon.**

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from County's public health unit.

**Section 12.08 Time of Essence.**

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

**Section 12.09 Construction.**

No party shall be considered the author of this Lease since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final Lease. Thus, the terms of this Lease shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Lease and the same shall remain in full force and effect.

**Section 12.10 Binding Effect.**

This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective legal representatives, successors, and assigns.

**Section 12.11 Effective Date of Agreement.**

This Lease is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners, and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners.

**Section 12.12 Headings.**

The paragraph headings or captions appearing in this Lease are for convenience only, are not part of this Agreement, and are not to be considered in interpreting this Lease.

**Section 12.13 Waiver.**

No waiver of any provision of this Lease shall be effective against any party hereto unless it in writing and signed by the party(s) 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. The waiver by County of any default of any term, condition, or covenant herein contained shall not be a waiver of such term, condition, or covenant, or any subsequent default of the same or any other term, condition, or covenant herein contained. The consent or approval by County to or of any act by Tenant requiring County's consent or approval shall not be deemed to waive or render unnecessary County's consent to or approval of any subsequent similar act by Tenant.

**Section 12.14 Amendment.**

This Lease may be modified and amended only by written instrument executed by the parties hereto.

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

WITNESS:

Donna L. Neeley  
Donna L. Neeley  
(Print Witness Name)

Maud Fessenden  
Maud Fessenden  
(Print Witness Name)

Donna L. Neeley  
Donna L. Neeley  
(Print Witness Name)

Maud Fessenden  
Maud Fessenden  
(Print Witness Name)

TENANT:

Danny F. Roberts  
Danny F. Roberts  
(Print Name)

Karen Roberts  
Karen Roberts  
(Print Name)

ATTEST:

Sharon R. Bock, Clerk & Comptroller

PALM BEACH COUNTY, A  
POLITICAL SUBDIVISION OF THE  
STATE OF FLORIDA

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Burt Aaronson, Chair

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

APPROVED AS TO TERMS AND  
CONDITIONS:

By: [Signature]  
County Attorney

By: \_\_\_\_\_  
Director of Airports



August 31, 2010

Jerry L. Allen, AAE  
Deputy Director Planning and Community Affairs  
Palm Beach County Department of Airports  
846 Palm Beach International Airport  
West Palm Beach, FL 33406-1470

**RE: Runway 9L-West**  
Transmittal of Agreement For Purchase and Sale  
Parcel: W-156, Roberts

Dear Mr. Allen:

Enclosed please find three (3) executed copies of the Agreement for Purchase and Sale, a copy of the offer letter, replacement housing payment calculation and the review appraisal statement for the above parcel. The Agreements have been signed at the negotiated amount of \$110,000.

These Agreements are being submitted for approval by the Board of County Commissioners of Palm Beach County at their October 5, 2010 meeting. Should you have any questions, please contact our office.

Sincerely,

Donna L. Neeley  
Right of Way Agent

Attachments

RECEIVED  
2010 AUG 31 AM 11:12  
PLM. DMS. PBIA

MEMORANDUM

TO: Bruce V. Pelly  
Director, Palm Beach County Department of Airports

FROM: Donna L. Neeley  
O. R. Colan Associates

DATE: August 31, 2010

SUBJECT: Runway 9L-West  
Recommendation For Administrative Settlement  
Parcel: W-156, Roberts

An Agreement for Purchase and Sale in the amount of \$110,000 has been signed by Danny and Karen Roberts, the owners of Parcel W-156 on the above-referenced project. This agreement is a lump sum agreement and includes any and all relocation benefits and moving costs the owner may have been eligible to claim under the guidelines provided for in the FAA ORDER 5100.37B. Mr. and Mrs. Roberts were fully informed of their relocation benefits but requested a settlement that would be all inclusive.


An offer to purchase was presented to the Roberts on August 9, 2010 in the amount of \$85,000 and accompanying the offer was a notice of their Price Differential Payment eligibility of up to \$31,900 for total package of \$116,900. This settlement of \$110,000 is \$6,900 less than the total package of \$116,900. It should also be noted that in addition to the \$85,000 fair market value and the Price Differential of \$31,900, the Roberts family would have also been eligible to claim incidental expenses on their replacement dwelling and moving costs. The estimated incidental expenses for a home costing \$116,900 (#1 Comparable) are \$3,000. The estimated moving cost would have been about \$2,500 so the total compensation package available to the Roberts could have been \$122,400. In this scenario the counteroffer of \$110,000 is less than total estimated package of \$122,400 which results in a savings to the County of approximately \$12,400.

Should the County decide that \$110,000 is a reasonable and justified amount, this agreement would be considered an Administrative Settlement under the FAA ORDER 5100.37B Chapter 3.; Section 2. The FAA lists many items to be considered when entering into an Administrative Settlement. Our office will summarize the situation of the potential settlement and offer our recommendation to the County.

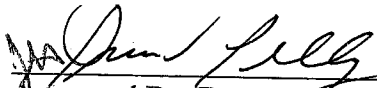
The subject property is improved with a one story concrete block structure containing 945 square feet of living area. It is located on the east side of Pine Road just south of Wallis Road, with the property address of 172 Pine Road. The subject site contains approximately 0.26 acres or 11,258 square feet of land and is zoned RM with a land use designation of UT/5. The comparables used in determining the fair market value have an unadjusted range of \$70,000 to \$115,000. The counteroffer of \$110,000 is within the range of value.

Over the past several years the Department of Airports had made previous offers to purchase the property from Mr. and Mrs. Roberts. Until now, the owners would not agree to sell the property to the County. Mr. Roberts is terminally ill and the family has decided that they want to sell the property and are not planning on purchasing a replacement property. Mr. Roberts owns another property that they are planning to relocate to. The counteroffer of \$110,000 was a result of ongoing negotiations with the property owner for several years. Based on the aforementioned items, it is our recommendation for the County to accept the counteroffer of \$110,000 for the purchase of Parcel W-156.

If the County does not purchase the property now from a willing seller and decides at some future point to acquire the property, the costs may be significantly higher and the County may be exposed to additional professional fees and costs. Based on the aforementioned information it is our recommendation that the County accepts this counteroffer of \$110,000 for the purchase of Parcel W-156.

  
\_\_\_\_\_  
Recommended By: Donna L. Neeley, Right of Way Agent  
O. R. Colan Associates

DATE: 8/31/10

  
\_\_\_\_\_  
Approved By: Bruce V. Pelly, Director of Airports

DATE: 8/31/10



PALM BEACH COUNTY  
BOARD OF COUNTY  
COMMISSIONERS  
Burt Aaronson, Chair  
Karen T. Marcus, Vice Chair  
Jeff Koons  
Shelley Vana  
Steven L. Abrams  
Jess R. Santamaria  
Priscilla A. Taylor

COUNTY ADMINISTRATOR  
Robert Weisman  
DEPARTMENT OF AIRPORTS



August 9, 2010

Danny and Karen Roberts  
172 Pine Road  
West Palm Beach, FL 33415

Subject: Palm Beach International Airport  
Runway 9L - West  
Offer to Purchase  
Parcel W-156

Dear Mr. and Mrs. Roberts:

This letter is to inform you of the intent of the Palm Beach County Department of Airports to offer to acquire your property, the compensation you may expect to receive for its purchase, and certain supplemental benefits for which you may qualify under the Departments Relocation Assistance Program, should you decide to sell your property.

With respect to the offer to purchase your property, you will be offered compensation in an amount not less than the approved fair market value, which is based on an appraisal using current market data obtained by a qualified real estate appraiser and that has been reviewed and checked by another appraiser. The appraisal does not reflect any decrease or increase in the fair market value caused by the project for which your property is being acquired. Agreements are subject to final approval by the Palm Beach County Board of County Commissioners. This opportunity for you to sell your property is limited to ninety (90) days from the date of this letter unless you express a desire not to sell your property.

The Department has reviewed the appraisal in detail and has determined that the fair market value of the property to be acquired is \$85,000.00.

In addition to compensation for your real property, you may be entitled to reimbursement of the cost of moving your personal property to a new location. Also, you may be entitled to a maximum additional sum of \$ 31,900.00 based on the difference between the amount you are paid as the fair market value of your present residential property and the estimated cost of purchasing an approved available suitable replacement dwelling in your area, provided your eligibility is established as described in the Relocation Assistance Program Brochure and applicable federal law and regulations.

846 PALM BEACH INTERNATIONAL AIRPORT  
West Palm Beach, Florida 33406-1470  
(561) 471-7412 FAX: (561) 471-7427 www.pbia.org

PALM BEACH COUNTY GLADES AIRPORT  
Pahokee

PALM BEACH COUNTY PARK AIRPORT  
Lantana

NORTH COUNTY GENERAL AVIATION AIRPORT  
Palm Beach Gardens

"An Equal Opportunity-Affirmative Action Employer"

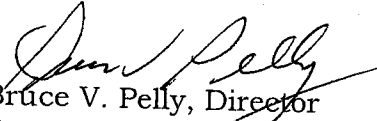
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As explained in the brochure, this supplemental payment is subject to an adjustment based on the actual amount you subsequently pay for a replacement dwelling. Your relocation counselor will be available to discuss these matters in more detail at any time you require assistance. We do caution not to move or purchase a replacement residence until you have it approved by the Department in advance, or you may lose your rights to eligibility.

You have the right to full payment of the fair market value of your property prior to surrendering possession, provided title is clear. After the Department has acquired your property (date of closing), you will be allowed up to ninety (90) days rent free before you must vacate.

It is the intent of the Department to assist you in every way possible in conveying your property to the Department and in relocating to a suitable replacement site if you so desire. If you have questions, please feel free to contact a representative from O.R. Colan Associates, at (561)478-7210.

Sincerely,

  
Bruce V. Pelly, Director  
Department of Airports

BVP/dn

cc: Jerry L. Allen, AAE Dept. of Airports  
O.R. Colan Associates, Inc.  
Parcel File

**PALM BEACH COUNTY DEPARTMENT OF AIRPORTS**  
**Price Differential Determination**  
**Owner Occupied Conventional Dwelling**

**Owner:** Danny Roberts and Karen Roberts

**Project:** Runway 9L-West

**Address:** 172 Pine Road, West Palm Beach, FL 33415

**Parcel:** W-156

**Acquisition:** \$85,000.00

I certify that:

(a) I understand that this Price Differential Determination is to be used in connection with the Palm Beach County Department of Airports Runway 9L West Project. (b) I have no direct or indirect, present, or contemplated future personal interest in this property and I do not benefit from the acquisition of the property.

**(c) Description of the Property:**

The subject property is a CBS dwelling, arranged as 4 rooms, with 2 bedrooms and 1 baths, with approximately 945 habitable square feet of living space and 1 car garage. It is approximately 56 years old. It is occupied by 2 adults and 0 children.

**(d) Comparables Used:**

- Comp No. 1** Address 1123 Woodbine Road, West Palm Beach, FL 33417  
with 6 rooms, 3 bedrooms, 2 baths, approximately 1,736 habitable square feet  
2 car garage(s). Asking Price: \$ 116,900.00
- Comp No. 2** Address 1361 Westover Road, West Palm Beach, FL 33417  
with 5 rooms, 3 bedrooms, 2 baths, approximately 1,369 habitable square feet  
1.5 car garage(s). Asking Price: \$ 125,000.00
- Comp No. 3** Address 5418 Club Drive, West Palm Beach, FL 33415  
with 5 rooms, 3 bedrooms, 2 baths, approximately 1,349 habitable square feet  
1.0 car carport(s). Asking Price: \$ 129,000.00

(e) All comparables used appear to be decent, safe and sanitary and are adequate to meet the needs of the displacees. All comparables are functionally equivalent to or better than the subject.

(f) My opinion is that Comparable No. 1 is the most comparable and is functionally equivalent to the subject property. Therefore, the Price Differential Payment is is: \$ 31,900.00.

8/4/2010  
Determination Date:

Donna J. Kelley  
Relocation Agent:

8/4/10  
Approval Date:

JLM. Plata  
Approved By:

PALM BEACH COUNTY DEPARTMENT OF AIRPORTS  
REPLACEMENT HOUSING CALCULATION – PRICE DIFFERENTIAL

PARCEL: W-156

RUNWAY 9L – WEST

O/T: Owner

Owner: Danny Roberts and Karen Roberts

Address: 172 Pine Road

West Palm Beach, FL 33415

The Relocation Agent certifies that:

- (a) This determination of replacement value is to be used in connection with a Federal Aid Project.
- (b) ORC does not have any direct or indirect, present or contemplated future interest in this property and does not benefit from it's acquisition.
- (c) The comparables are representative of the subject property, are available on the private market and meet the criteria of comparable replacement property.
- (d) The comparables are attached to this calculation.

OWNER TO OWNER (180 Day Occupant)

My opinion is that Comparable No. 1 is most comparable and is equal to or better than the subject property; therefore, the indicated replacement housing cost is: \$ 116,900.00.

TENANT TO TENANT OR 90 DAY OWNER TO TENANT

My opinion is that Comparable No. \_\_\_\_\_ is most comparable and is equal to or better than the subject property; therefore, the indicated rental supplement is: \$ \_\_\_\_\_.

TENANT TO OWNER OR 90 DAY OWNER TO OWNER (Down Payment).

\$ \_\_\_\_\_

8/4/2010  
Date

Donna Shelley  
Relocation Agent

8/5/2010  
Date

[Signature]  
Approved for:  
Palm Beach County Department of Airports

**RUNWAY 9L WEST ACQUISITION AND RELOCATION PROGRAM**  
Department of Airports  
Palm Beach County, Florida

**OWNER:** Danny F. Roberts

**PROPERTY ADDRESS:** 172 Pine Road, West Palm Beach

I have completed my review of the above-referenced parcel. My opinion is based on the following.

This value estimate may be used in conjunction with a Federal Aid project.

The intended use of the appraisal review is to form a basis for acquiring the subject property through negotiation or eminent domain. The intended user is O.R. Colan Associates, Inc. as acquisition agents for Palm Beach County Department of Airports. The value reported is the market value of the unencumbered title. Market value is defined in the appraisal report.

As part of the appraisal review, there has been a field inspection of the parcel(s) to be acquired and the comparable sales applicable thereto or the reason for not doing so is stated below.

I have no direct or indirect present or contemplated future personal interest in such property or in any monetary benefit from its acquisition.

My estimate has been reached independently without collaboration or direction and is based on appraisals and other pertinent factual data.

Unless otherwise stated, this value estimate contains no items compensable under state law but not eligible under federal reimbursement. Any non-compensable items are listed below together with their appraised value followed by the notation ("non-compensable").

Unless otherwise stated, the reviewer agrees with the identification or listing of the buildings, structures, and other improvements on the land, as well as the fixtures, which the appraiser considered to be part of the real property to be acquired.

It is my opinion that the market value of the land and improvements appraised, as of July 7, 2010, is \$85,000.

This estimate of market value is based upon an appraisal report prepared by Robert B. Banting, MAI and Michael Brady of Anderson & Carr, Inc. Both appraisers are state certified.

The subject property is a two-bedroom, one-bathroom single-family residence of CBS construction. The residence contains a living area of 945 square feet. The structure, approximately 56 years old, is in average condition.

The subject property is zoned RM, Medium Density Multi-family Residential, by Palm Beach County. The land use designation is UT/5 which is a utility transportation designation allowing up to five units per acre. However, the property is in the airport overlay zone (AZO). Any redevelopment in this area requires a minimum of five acres according to the Palm Beach County Planning Department. The current single-family residence is non-conforming. Its continued use as a residence grandfathered in. Appraiser's opinion is that the highest and best use is to be used as a single-family residence.

**RUNWAY 9L WEST ACQUISITION AND RELOCATION PROGRAM**  
Department of Airports  
Palm Beach County, Florida

**OWNER:** Danny F. Roberts

**PROPERTY ADDRESS:** 172 Pine Road, West Palm Beach

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The Sales Comparison Approach to value is the only approach used in the appraisal. Due to the age of the subject property and the inherent problems of estimating accrued depreciation for a structure of that age, the Cost Approach was not applied. Since the subject neighborhood generally is comprised of single family homes which, typically, are not bought and sold based on their income-producing potential, the Income Approach was not used.

The comparable sales present an unadjusted value range of from \$70,000 to \$115,000. The sales were all small residences ranging from 780 square feet to 1,286 square feet of living area. A variety of adjustments were made for differences in physical features. The most significant adjustments in this case were for physical condition and size of the living area.

Unless otherwise stated in this report, the existence of hazardous substances, including, without limitation, asbestos, polychlorinated biphenyls, petroleum leakage, or agricultural chemicals which may or may not be present on the property, or other environmental conditions, were not called to the attention of the appraiser, nor did the appraiser become aware of such during the appraiser's inspection. The appraiser has no knowledge of the existence of such materials on or in the property unless otherwise stated. However, the appraiser is not qualified to test such substances or conditions. If the presence of such substances as asbestos, ureaformaldehyde foam insulation, or other hazardous substances or environmental conditions may affect the value of the property, the value estimated is predicated on the assumption that there is no such condition on or in the property or in such proximity thereto that it would cause a loss of value. No responsibility is assumed for any such condition or for any expertise or engineering knowledge required to discover them.

After adjustment, the indicated value range is between \$82,175 and \$97,975. The sale that indicated the highest value was clearly superior. The other three sales indicated a value range in the low \$80s. The appraiser correlated to a value of \$85,000.

The appraiser's adjustments are considered well supported. The appraiser's value conclusion is considered appropriate. Therefore, the market value of the subject property is estimated at \$85,000.

July 28, 2010  
Date of Signature



Edward E. Wilson, ASA, State Certified  
General Real Estate Appraiser #0000123, Review Appraiser