

Date \_\_\_\_\_

## II. FISCAL IMPACT ANALYSIS

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

Fiscal Years	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>
Capital Expenditures					
Operating Costs					
Operating Revenues					
External Revenues (Grants)					
In-Kind Match (County)					
Operating Costs					
NET FISCAL IMPACT					
# ADDITIONAL FTE					
POSITIONS (Cumulative)					

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

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

X The Agreement provides for payments based on a percentage of gross revenues from the rental and sale of DVDs and video games. No historical information regarding sales is available since this is a new concession being tested as a pilot program.

**C. Departmental Fiscal Review:** 

### III. REVIEW COMMENTS

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

✱ The fiscal impact is indeterminable at this time.

Legal Sufficiency: *N. Diaz* 11/30/2010  
OFMB VA 11/29/10 11/29/10  
*De*

*Dr. J. Jones* 12/11/10  
Contract Dev. and Control  
*2011/11/30/10*  
This Contract complies with our  
contract review requirements

### B. Legal Sufficiency:

Anne Delzend 12/7/10  
Assistant County Attorney

**C. Other Department Review:**

**Department Director**

**KIOSK OPERATING AGREEMENT****Summary Page**

**Client:** Palm Beach County

**Primary Client Contact:** Laura Beebe, Deputy Director, Airport Business Affairs

**Form of Organization:** Political Subdivision of the State of Florida

**Client Addresses:** Palm Beach County Department of Airports  
846 Palm Beach International Airport  
West Palm Beach, Florida 33406-1470

**For Notices:** Same

**Redbox Addresses:** Redbox Automated Retail, LLC  
One Tower Lane  
Suite 1200  
Oakbrook Terrace, IL 60181  
Same with attention to General Counsel

**Effective Date:** The date upon which Redbox and Client have both executed this contract and this contract has been approved by the Palm Beach County Board of County Commissioners

**Initial Term:** One (1) year beginning on January 1, 2011 and expiring on December 31, 2011 (the "Term")

**Placements:** ☒ Indoor ☐ Outdoor

**Commission:** Redbox will pay Client 15% of Gross Revenues (as hereinafter defined Section 7.4(b)) up to \$60,000. In the event Gross Revenues exceed \$60,000, Redbox will pay Client an additional 2% for all Gross Revenues above \$60,000.

**Products:** ☒ DVD Rental  
☒ DVD Sell Through  
☒ DVD Previously-Viewed Sell Through  
☐ Video Game Rental  
☐ Video Game Sell Through  
☐ Video Game Previously-Viewed Sell Through

**Issuance of Commission Payments:** Monthly

RECEIVED  
2010 NOV -3 AM 10:27  
DEPT. OF AIRPORTS  
BLDG. 846. PBIA

APPROVED BY  
REDBOX LEGAL  
F.S.

# KIOSK OPERATING AGREEMENT

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This Kiosk Operating Agreement (this "contract") is entered into between **Palm Beach County**, a political subdivision of the State of Florida ("you," "your" or "Client") with its principal offices at 301 North Olive Avenue, West Palm Beach, Florida 33401 and **Redbox Automated Retail, LLC**, a Delaware limited liability company ("we," "our" or "Redbox"), with its principal offices at One Tower Lane, Suite 1200, Oakbrook Terrace, Illinois 60181. The term "us" refers to both Client and Redbox. The contract consists of the Summary Page, the following terms and conditions, and the exhibits to the contract.

## Terms and Conditions

### 1. Definitions

"**Airport**" means the Palm Beach International Airport.

"**Department**" means the Palm Beach County Department of Airports.

"**Commissions**" refers to the sums payable to you under this contract, as detailed in the Section entitled "Commission Payments."

"**Gross Revenues**" has the meaning set forth in Section 7.4(b) of this contract.

"**Kiosk**" means a Redbox® branded machine that vends Media (a) selected by a customer on the Kiosk's touch screen monitor (b) after the presentment of a valid payment card accepted by Redbox. The Kiosk also has a card reader, a lighted panel for displaying Media cover art that is mounted on the side of the Kiosk, and may have a flat screen video monitor mounted above the Kiosk to play promotional or advertising materials. The Kiosk specifications substantially similar to those displayed on Exhibit "A."

"**Media**" means DVD movies and video games.

"**Premises**" or "**Sites**" means the two (2) Kiosk locations, measuring approximately three (3) feet by seven (7) feet identified in the attached Exhibit "B", together with non-exclusive access rights over, upon and across those areas designated by Client and Redbox for the installation,

operation, maintenance and repair of the Kiosks.

### 2. Nature of Our Agreement

**2.1 Kiosk Deployment.** Redbox operates automated Kiosks offering customers a convenient way to rent or buy Media, and an efficient way for you to generate income from your Premises. Redbox has requested, and Client has agreed, that Redbox will install and operate Kiosks at the Airport. You grant Redbox the exclusive right to install and operate automated Media rental and sale machines at the Airport, and the nonexclusive right to sell Media, at the Airport. In return, Redbox will pay you the Commissions detailed in the Section entitled "Commission Payments." If specific product(s) are not "checked" on the Summary Page, then Redbox will have the right but not the immediate obligation to offer those products (e.g. game rentals) during the term.

**2.2 Access to Sites.** Subject to the requirements of Section 5.3, you grant Redbox (for its use and the use of its employees and agents) a limited license over your Sites when the Sites are open to the public for business. This license allows Redbox to enter and exit the Sites, and to perform any necessary installation, service, maintenance, repair, relocation and removal of the Kiosks. You will not cause or permit any unreasonable interference to or from the Kiosks.

**2.3 Ownership of Kiosks and Media.** As between the two of us, you acknowledge that we own all right, title and interest in the Kiosks and the Media. You will not interfere

with our ownership.

### 3. Identification of Sites and Premises

**3.1 Site Identification.** The parties have previously identified the Sites. The location of the Sites is identified in the attached Exhibit B. The parties will work cooperatively to determine the order in which the Kiosks will be installed at the Sites.

**3.2 Permits.** At our expense, Redbox will obtain any necessary permits, licenses or other governmental authorizations.

**3.3 Installation and Access Authority.** Subject to applicable law or regulation, you represent and warrant that you have the authority (a) to grant Redbox the right to install and operate Kiosks at the Airport, and (b) to grant access to Redbox, and its invitees, from and to the Kiosks so we can perform our obligations under this contract.

### 4. Kiosk Installation

**4.1 Our Installation Responsibilities.** We will install Kiosks at the Sites according to a mutually agreed deployment schedule. Kiosk specifications are substantially similar to those described in Exhibit A. We will try to minimize disturbances to your Site operations during our installation of the Kiosks.

**4.2 Your Preparation of the Premises.** Before the scheduled date of Kiosk delivery, you will prepare the Premises for installation by removing any structures, machinery, or displays located on the Premises.

**4.3 Utilities.** With the exception of electrical power, our Kiosks normally have "plug and play" capability. Before the scheduled date of Kiosk delivery, Redbox will provide two (2) electrical outlets from a dedicated circuit providing 120 volt, 20 Amp A.C. electrical power service to operate the Kiosk. The cost associated with providing said outlets and dedicated circuit shall be acceptable to Redbox in its reasonable discretion. We are responsible for communication or data connectivity.

### 5. Kiosk Operation and Maintenance

**5.1 Our Responsibilities.** We have exclusive rights over the operation, use and control of the Kiosks, including, but not limited to, their hardware and software. Your personnel have only the same limited right of access to the Kiosks as are granted to the general public. We will provide all hardware and software support, maintenance and repairs for the Kiosks. We will maintain the Kiosks in an attractive and good state of repair, and in proper working order. If there is a Kiosk malfunction, we will promptly initiate diagnostic and repair services after receiving notice of the malfunction. The Redbox personnel assigned to perform Redbox's obligations under this contract will be qualified for the services they are assigned to perform. They will perform Redbox's obligations with promptness and diligence, and in a good and workmanlike manner.

**5.2 Your Responsibilities.** You will maintain the area immediately surrounding the Premises in a neat, clean and good condition, so as to provide an attractive and suitable environment for the use of the Kiosks by customers. You will provide all electrical service as well as heating and air conditioning services. Client shall have no liability whatsoever for interruption in electrical service or heating or air conditioning services.

**5.3 Security.** Each of us will take reasonable precautions to ensure safe working procedures and conditions during and in connection with our operations at a Site. Redbox shall observe all security regulations and other requirements of Client and any agency of the Federal government, including, but not limited to, the FAA and TSA, applicable to Redbox's operations at the Airport, as such regulations or requirements have been or may be amended, including, without limitation, Title 14, Part 139 of the Code of Federal Regulations and Title 49, Part 1500 of the Code of Federal Regulations, et. seq. Redbox 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 Client, and to take such steps as may be necessary or directed by Client to insure that subcontractors, employees, invitees and guests observe these requirements. Redbox 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 Client. The Department shall have the right to require the removal or replacement of any employee of Redbox 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 Redbox, its subcontractors, employees, invitees or guests, Client 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 Client; or any expense in enforcing the Airport Security Program, then Redbox agrees to pay to Client all such costs and expenses, including all costs of administrative proceeding, court costs, and attorneys fees and all costs incurred by Client in enforcing this provision. Redbox further agrees to rectify any security deficiency or other deficiency as may be determined by Client, the FAA or TSA which is communicated to Redbox. In the event Redbox fails to remedy any such deficiency within ten (10) business days of notice as per Section 13.1, Client may do so at the cost and expense of Redbox. Redbox acknowledges and agrees that Client may take whatever action is necessary to rectify any security deficiency or any other deficiency identified by Client, the FAA or TSA.

**5.4 Customer Service.** We will maintain a toll free customer service phone number. We will handle all customer calls and other issues relating to the operation of the Kiosks, providing not less than seventy (70) hours of live phone coverage across seven (7) days/week, excluding holidays, and 24 x 7 voice mail coverage.

## 6. Kiosk Relocation, Removal and Re-Installation

We understand that, under certain circumstances, a Kiosk may need to be moved or relocated. This Section details the procedures governing movement and relocation of a Kiosk.

**6.1 Movement of a Kiosk.** It is critical that only Redbox – and not you – physically moves a Kiosk. Redbox needs to handle any move for several reasons, including: (a) the Kiosk is our property; (b) the Kiosk contains sensitive electronic equipment and precision machinery; (c) the Kiosk needs to remain powered and have consistent internet connectivity to conduct transactions, monitor inventory and status, and to receive programming updates; (d) due to its size, weight, and various components, the Kiosk requires specialized equipment for handling by trained personnel to prevent damage to and shifting of contents, personal injury, unnecessary service calls and lost revenue; and (e) because a sub-optimal location may result in less revenue, the new location must be mutually agreed upon between us. You agree to communicate these points to your personnel.

**6.2 Process for Movement, Relocation and Reinstallation of a Kiosk.** The agreed-upon process for relocation, removal or reinstallation ("3R") of Kiosks is as follows:

(a) You must request in writing the relocation, removal or reinstallation of any Kiosk by submitting a written request to our deployment team no less than five (5) business days prior to the requested relocation, removal or reinstallation date.

(b) Because Kiosk location is by mutual agreement, we will promptly respond with our agreement or disagreement as to the proposed Premises. Any relocated placement must be similar to the original location. In the unlikely event that the parties cannot agree on new Premises at a Site, then either party may terminate this contract with respect to that Site.

(c) Once the parties reach agreement on relocation, removal or reinstallation, we will coordinate with your representative at the Site and will mutually determine the schedule (date and time) for it to take place. We – and not you – are responsible for the relocation, removal or reinstallation of the Kiosk.

(d) The costs associated with any relocation, removal or reinstallation of the Kiosk made at your request will be at your sole cost and expense (i) if the request is made within the sixty (60) days after the Kiosk has been initially installed at the Site, or (ii) within sixty (60) days after any prior relocation, removal or reinstallation of the Kiosk made at your request.

(e) Your responsibility for the costs associated with a relocation, removal or reinstallation of the Kiosk are limited to the relocation of the utility lines, which include any electrical lines and any other necessary utilities to the Kiosk.

(f) Notwithstanding any provision of this Section 6 to the contrary, Redbox acknowledges and agrees that Client will be replacing flooring throughout the Airport, including at the

Sites, and may be required to temporarily relocate the Kiosks for a period not to exceed fifteen (15) business days. Client shall not be required to provide an alternative location for reinstallation of the Kiosks. The temporary relocation shall be at Redbox's expense, unless the period of relocation is more than fifteen (15) business days in which event Client shall reimburse Redbox for the actual costs of relocation. Reimbursement shall be in the form of a credit against any future payments due to County hereunder. Redbox shall provide Client with evidence of the costs incurred by Redbox reasonably satisfactory to Client, including copies of invoices.

**6.3 Disclaimer of Liability.** We are not liable, and disclaim all assumption of loss, for any damages, personal or otherwise, should you or any of your agents take it upon themselves to relocate, remove, or re-install a Kiosk. If you move a Kiosk at a Site without following the procedures set forth in Section 6.2, we may immediately terminate this contract with respect to that Site.

**6.4 Remodels and Rebuilds.** Should your operations continue during any period of remodeling or rebuilding of a Site, reasonable accommodations will be made to attempt to keep the Kiosk operating at the Site during that period. However, we may remove a Kiosk from a Site or suspend service at a Kiosk during that period if, in our reasonable opinion, the remodeling or rebuilding would have a material adverse effect upon (a) the number of customer transactions conducted at the Kiosk or (b) the Kiosk's condition.

**6.5 Vandalism or Burglary.** Either party may request approval of the other party for the exclusion of any Site from these obligations if the Kiosk has repeatedly been vandalized or burglarized. The other party's approval of this request will not be unreasonably withheld, conditioned or delayed.

**6.6 Removal for Failure to Generate Income.** If a Kiosk fails to generate Gross Revenues in excess of five hundred dollars (\$500.00) per week for any four (4) consecutive weeks occurring eight (8) weeks or more after the initial installation of a Kiosk at the Site, we may remove the Kiosk. Upon removal of the Kiosk, this contract automatically terminates with respect to that Site.

**6.7 Surrender of Premises; Transitional Operation.** Upon the expiration or the termination of this contract, in whole or with respect to any individual Site, we will (a) remove the Kiosks, (b) surrender possession of the Premises, and (c) return the Premises in good clean condition, subject to normal and reasonable wear and tear related to the installation, use, operation and removal of the Kiosks. We will consult with you to mutually agree upon a reasonable schedule to accomplish these tasks, which should not exceed thirty (30) days from expiration or termination. Unless we terminate this contract for your breach, we will continue to operate the Kiosks and pay you commissions upon the same terms and conditions until removal of the Kiosks is complete.

## 7. Commission Payments

**7.1 Rental Commissions.** We offer Media in the Kiosks for rental by end-customers. We will pay you a commission based on a percentage of the Gross Revenues as set forth on the Summary Page received by Redbox from both the rental of Media and from the failure by customers to return Media.

**7.2 Sell Through Commissions.** We may offer new Media for direct sale from the Kiosks. We will pay you a commission based on a percentage of the earned margin for Media sold. Margin is calculated as sale price less cost. Redbox will determine the sale price of Media.

**7.3 Previously-Viewed Sell Through Commissions.** We may offer previously-viewed Media for direct sale from the Kiosks. We will pay you a commission based on a percentage of the difference between the price at which we sell the Media to the end-customer, and what we would have received for the Media by selling it back to our distributor. We reserve the right to determine the selection and pricing for previously-viewed Media. The initial pricing and residual-value vary by title, which directly affects the amounts of the previously-viewed sell through commissions generated.

**7.4 Commission Calculation and Payment.** For all Kiosks installed and operating at the Sites, we will pay you your commissions on or before the twentieth (20th) day of each month for the preceding month. Commission payments will:

(a) be calculated in accordance with generally accepted accounting principles;

(b) include all gross revenues from paid rentals or sales of Media (as the case may be) and from the failure by customers to return rented Media, subject to the provisions of Sections 7.2 and 7.3, less customer refunds, credit card charge backs, declined transactions, promotional discounts, rental taxes and sales taxes ("Gross Revenues"); and

(c) be accompanied by a written report in a form reasonably acceptable to the Department which itemizes Gross Revenues by Kiosk and identifies any exclusion from Gross Revenues. Client may require the report to be submitted electronically.

(d) be made payable to "Palm Beach County" and delivered to the Finance Division, Department of Airports, 846 Palm Beach International Airport, West Palm Beach, Florida 33406-1470, or to such other office or address as may be substituted therefor.

**7.5 Inspection of Records.** It is your right to inspect our accounts and reports relating to the calculation of that commission. Inspections can occur at reasonable intervals upon reasonable advance written notice, and during our regular business hours.

**7.6 Audit.** Redbox shall keep, throughout the term of this contract, all books of accounts and records customarily used in this type of operation, and as from time to time may be required by Client, in accordance with Generally Accepted Accounting Principals prescribed by the American Institute of Certified Public Accountants or any successor agency

thereto. Such books of accounts and records shall be retained and be available for three (3) years from the end of the contract. Client shall have the right to audit and examine during normal business hours all such books of accounts and records relating to Redbox's operations hereunder. If the books of accounts and records are kept at locations other than the Airport, Redbox shall, at its sole cost and expense, arrange for them to be brought to a location convenient to the auditors for Client in order for Client to conduct the audits and inspections as set forth in this Section. Redbox may satisfy its obligation to bring records to Client's auditors by tendering documents in electronic form.

**7.7 Confidential Records.** Except as otherwise required by law or a court of competent jurisdiction, Client will endeavor not to disclose any records provided by Redbox hereunder that are confidential and exempt under Florida Public Records Law to third parties; provided that Redbox has prominently identified the confidential and exempt information contained in such records, including the specific statutory exemptions relied upon by Redbox. Notwithstanding the foregoing, the parties acknowledge and agree that this contract and the information submitted to Client pursuant to Section 7.4 are not considered confidential and shall be subject to disclosure by Client.

## 8. Marketing

**8.1 Point of Purchase Merchandising.** We reserve the right to use a digital merchandising screen for point of purchase merchandising within the Sites. The screen would be directly attached and secured to the Kiosks, and would have a visual component as well as an audio component. Any audio shall be kept at a volume so as not to disturb or annoy Airport users, passengers or tenants as determined by Client. The screen may display (but not be limited to displaying):

☒ Cover art from the currently offered Media;

☒ Movie trailers from new movie releases and upcoming releases; and

☒ External advertising.

**8.2 Other.** Client and Redbox may develop mutually agreed upon marketing promotions from time to time.

## 9. Term and Termination

### 9.1 Term.

This contract goes into effect on the "Effective Date," which is identified on the Summary Page. The term of this contract expires at 11:59 p.m. (Central time) on the date identified on the Summary Page.

**9.2 Termination for Cause.** Either of us may terminate this contract as a result of a material breach by the other party of any of its obligations. The termination will be effective upon the breaching party's receipt of notice of the breach, subject to a thirty (30) business day cure period. If the breaching party fails to cure or to initiate a plan to cure the breach within thirty (30) business days after its receipt of

the notice, the non-breaching party may terminate the contract.

**9.3 Immediate Termination.** Notwithstanding the foregoing paragraph, either of us may terminate this contract immediately upon written notice if any of the following events occur: (a) the other party ceases or is likely to cease to carry on all or any principal part of its business; (b) the other party is unable to pay its debts as and when they become due; (c) due to an encumbrance, a third party takes possession of all or any part of the business, property or asset of the other party, or any liquidator or receiver is appointed in respect thereof; (d) the other party makes a general assignment for the benefit of its creditors; or (e) any order has been made or any resolution has been passed for the winding up of the other party.

**9.4 Termination for Convenience.** Either of us may terminate this contract upon ninety (90) days prior written notice to the other party, whereupon the parties shall be relieved of all further obligations hereunder with the exception of those obligations accruing prior to the date of such termination and those obligations which expressly survive termination of this contract.

## 10. Assumption of Loss; Insurance

**10.1 Damage to Premises.** Redbox shall be responsible for repairing, at its sole cost and expense, any damage to the Premises or Airport caused by Redbox or its employees, contractors or agents. If we fail to repair the Premises or Airport within thirty (30) days, Client shall have the right to perform the necessary repairs, and we agree that we shall fully assume and be liable to Client for payment of the reasonable costs incurred by Client. Such restoration cost, shall be due and payable within thirty (30) days from date of the Client's billing.

**10.2 Assumption of Loss.** Except as otherwise stated in this contract and except for the intentional or grossly negligent acts of you, your employees or agents, we will assume responsibility for all physical loss or damage to the Kiosks, their contents, signs and other personal property.

### 10.3 Insurance Coverages.

(a) Redbox shall maintain Commercial General Liability Insurance at a limit of liability of not less than One Million Dollars (\$1,000,000) each occurrence. Coverage shall include Premises/Operations, Damage to Rented Property, Personal Injury, Product/Completed Operations, Contractual Liability, Severability of Interests or Cross Liability. Redbox shall maintain Workers' Compensation & Employers Liability insurance in accordance with applicable law.

(b) Redbox shall endorse the Client as an Additional Insured with a CG 2026 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.

(c) Redbox agrees by entering into this Contract to a Waiver of Subrogation for each policy required herein. When required by the insurer, or should a policy condition not permit Redbox to enter into any pre-loss agreement to waive subrogation without an endorsement, then Redbox 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 Redbox enter into such an agreement on a pre-loss basis.

(d) Redbox shall provide the Client 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.

**10.4 Claims Cooperation.** You agree to (a) promptly notify Redbox in writing of any claim or loss after any potentially insurable loss is discovered, and (b) cooperate in the investigation and adjustment of any such loss.

## 11. Indemnification

**11.1 Third-Party Claims.** Redbox will indemnify and defend County, its officers, affiliates, employees and agents, against and hold them harmless from, without limitation, any and all liabilities, injury, death, penalties, losses, costs, damages, claims, expenses, attorneys' fees, expenses of litigation, suits, judgments, liens and encumbrances brought, suffered or incurred by County or third parties (collectively, "Claims") attributable to the respective acts or omissions of Redbox, its officers, affiliates, employees, agents or subcontractors, while engaged in its business or in the performance of their duties under this contract. Redbox will have no obligations under this paragraph to the extent a Claim relates to or arises from the intentional acts or omissions of County, its officers, employees, affiliates, subcontractors, or agents.

## 12. Limitations of Liability

**12.1 Disclaimer of Warranties.** EXCEPT AS EXPRESSLY STATED IN THIS CONTRACT, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND TO THE OTHER PARTY, AND DISCLAIMS ALL WARRANTIES, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

### 13. Miscellaneous

**13.1 Notices.** Notices, authorizations, and requests in connection with this contract must be sent by personal delivery, certified mail (return receipt requested), or express courier to the addresses listed in this contract. Notices will be treated as delivered on the date shown on the return receipt or on the courier confirmation of delivery. Notices sent to Redbox must be separately copied and sent to the "Legal Department." Notices sent to Client must be separately copied and sent to the attention of the "Airport Attorney" at the Palm Beach County Attorney's Office, 301 North Olive Avenue, Suite 601, West Palm Beach, Florida 33401.

**13.2 Non-Discrimination.** Redbox 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, gender identity or expression, familial status, religion, marital status, age, or disability shall be excluded from participation in or denied the use of the Kiosks, (b) that in the construction of any improvements on, over, or under such Sites and the furnishing of services, no person on the grounds of race, creed, color, national origin, sex, sexual orientation, gender identity or expression, familial status, 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 Redbox shall use the Sites 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, Client shall have the right to terminate this contract and to reenter and repossess the Sites and the facilities hereon, and hold the same as if this contract 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.

**13.3 DBE/Affirmative Action.** Redbox acknowledges that the provisions of Title 49, Part 23 of the Code of Federal Regulations, Disadvantaged Business Enterprises (DBE), and Title 14, Part 152 of the Code of Federal Regulations, Affirmative Action Employment Programs, are applicable to the activities of Redbox under the terms of this contract, unless exempted by said regulations, and shall comply with said regulations, as now or hereafter amended or any successor regulations, and all requirements of the Department, the FAA and the U.S. Department of Transportation, in reference thereto. These requirements include, but are not limited to, the compliance with DBE and/or Employment Affirmative Action participation goals, the keeping of certain records of good faith compliance efforts, which would be subject to review by the various agencies and the submission of various reports. Failure to comply with

these requirements shall be grounds for default and termination of this contract, subject to Section 9.2. Redbox shall not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award of performance of any agreement covered by Title 49, Part 23, of the Code of Federal Regulations, as now or hereafter amended or any successor regulation. Redbox shall include the preceding statement in any subsequent concession agreements that it enters and cause those businesses to similarly include the statement in further agreements. Any termination pursuant to this Section shall not be effective until the procedures specified in said federal regulations or established by Client are completed, including exercise or expiration of any appeal rights.

**13.4 DBE Participation.** In the event Redbox utilizes certified DBEs for the purchase of products, goods and services used in the operation of this contract, Redbox shall provide a report to client as to the percentage of purchases made from certified DBEs during the Term of this contract within thirty (30) days from the expiration or earlier termination of this contract.

**13.5 Subordination to Bond Resolution.** This contract and all rights granted to Redbox hereunder are expressly subordinated and subject to the lien and provisions of the pledge, transfer, hypothecation or assignment made by Client in Palm Beach County Airport System Revenue Bond Resolution dated April 3, 1984 (R-84-427), as amended and supplemented, which is hereby incorporated herein by reference and made a part hereof (the "Bond Resolution"), and the parties 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 Client hereunder to the extent such possession, enjoyment and exercise are necessary to insure compliance by Redbox and Client with the terms and provisions of this contract and Bond Resolution.

**13.6 Subordination to State/Federal Agreements.** This contract shall be subject and subordinate to all the terms and conditions of any instrument and documents under which the Client 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. Redbox understands and agrees that this contract shall be subordinate to the provisions of any existing or future agreement between Client 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.

**13.7 Governing Law.** This contract shall be governed by and interpreted according to the laws of the State of Florida and venue shall be in Palm Beach County.

**13.8 Jury Waiver.** Each party knowingly, voluntarily and intentionally waives the right it may have to a trial by jury in

respect of any litigation based upon this contract, or arising out of, under or in connection with this contract, or any course of dealing, statements, whether verbal or written, or action of or by a party or any of their respective affiliates to the fullest extent permitted by law. This provision is a material inducement for the parties to enter into this contract.

**13.9 Independent Contractors.** Redbox acts as an independent contractor, and will be responsible for any and all social security, unemployment, workers' compensation and other withholding taxes for all of its employees. Nothing in this contract will be deemed to establish a partnership, joint venture, employment, agency or other legal relationship other than that of independent contractors.

**13.10 Subcontracting.** We may subcontract certain of our obligations under this contract, including but not limited to, installation, maintenance, supplying, servicing, relocation or removal of our Kiosks. However, we will remain primarily liable to you for any and all such subcontracted services.

**13.11 Assignment.** This contract cannot be assigned without the express written consent of the other party, which consent may be granted or withheld in the other party's sole and absolute discretion for any reason or no reason at all.

**13.12 Entire Agreement.** This contract and all exhibits contain the entire agreement between the parties with respect to the subject matter of this contract, and supersede any previous understandings or agreements, whether written or oral, in respect of such subject matter.

**13.13 Interpretation.** If a court holds any provision of this contract to be illegal, invalid or unenforceable, the rest of the document will remain in effect and this contract will be amended to give effect to the eliminated provision to the maximum extent possible. The term "may" indicates that something is permissive and optional in a party's discretion, not mandatory or automatic. The language used in this contract has been mutually chosen by the parties to express their intent, and no rule of strict construction will be used against either party.

**13.14 Modification; Waiver.** No amendment, change, waiver or discharge of this contract is valid unless it is set forth in writing and signed by an authorized representative of the party (which in the case of Redbox is a Vice President) against whom the amendment, change, waiver or discharge is sought to be enforced.

**13.15 Third Party Beneficiaries.** There are no third-party beneficiaries who are intended to benefit in any way from this contract.

**13.16 Force Majeure.** Neither of us will be liable to each other for any loss, damage, delay or failure of performance that is attributable to acts of God, armed conflicts, war, insurrection, acts of terrorism or acts committed in furtherance of terrorism, riots, earthquakes, hurricanes, floods, unusually severe weather, conditions or events of nature that cannot be predicted, civil disturbances, power or communications failures, strikes, fire, the acts of any governmental authority, or other causes beyond a party's reasonable control. A party's performance will be excused during the pendency of any such event, but that party will

take all steps reasonable, practical and necessary to effect prompt resumption of its obligations under this contract in full or in part.

**13.17 Public Entity Crimes.** As provided in Section 287.132-133, Florida Statutes by entering into this contract or performing any work in furtherance hereof, Redbox certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the Effective Date. This notice is required by Section 287.133(3)(a), Florida Statutes.

**13.18 Consent or Action.** In the event this contract is silent as to the standard for any consent, approval, determination, or similar discretionary action, the standard shall be the implied standard of good faith, fairness or reasonableness. Wherever this Contract requires the Client or Department's consent or approval or permits the Client or Department to act, such consent, approval or action may be given or performed by the Airport Director.

**13.19 Survival.** Provisions regarding payment of commissions, indemnification, obligations on termination or expiration and the other provisions in this Section entitled "Miscellaneous" survive termination or expiration of this contract.

**13.20 Execution.** This contract is effective when it is signed in "pen and ink" by authorized representatives of each party and approved by the Palm Beach County Board of County Commissioners. The contract may be executed in one or more counterparts, each of which will constitute an original agreement, but is not enforceable until delivery and exchange of the executed counterparts.

(Remainder of Page Intentionally Left Blank.)

**CLIENT**

Palm Beach County, a political subdivision of the  
State of Florida, by its Board of County Commissioners

By: \_\_\_\_\_  
Chair

Attest:  
Sharon R. Bock, Clerk & Comptroller

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

Approved as to Terms & Conditions:

By: \_\_\_\_\_

Approved as to Form & Legal Sufficiency

By: \_\_\_\_\_

**REDBOX AUTOMATED RETAIL, LLC**

By: \_\_\_\_\_

Name: Brian Brady

Title: V.P. Finance

Date: 11/5/2010

APPROVED BY  
REDBOX LEGAL  
F.S.

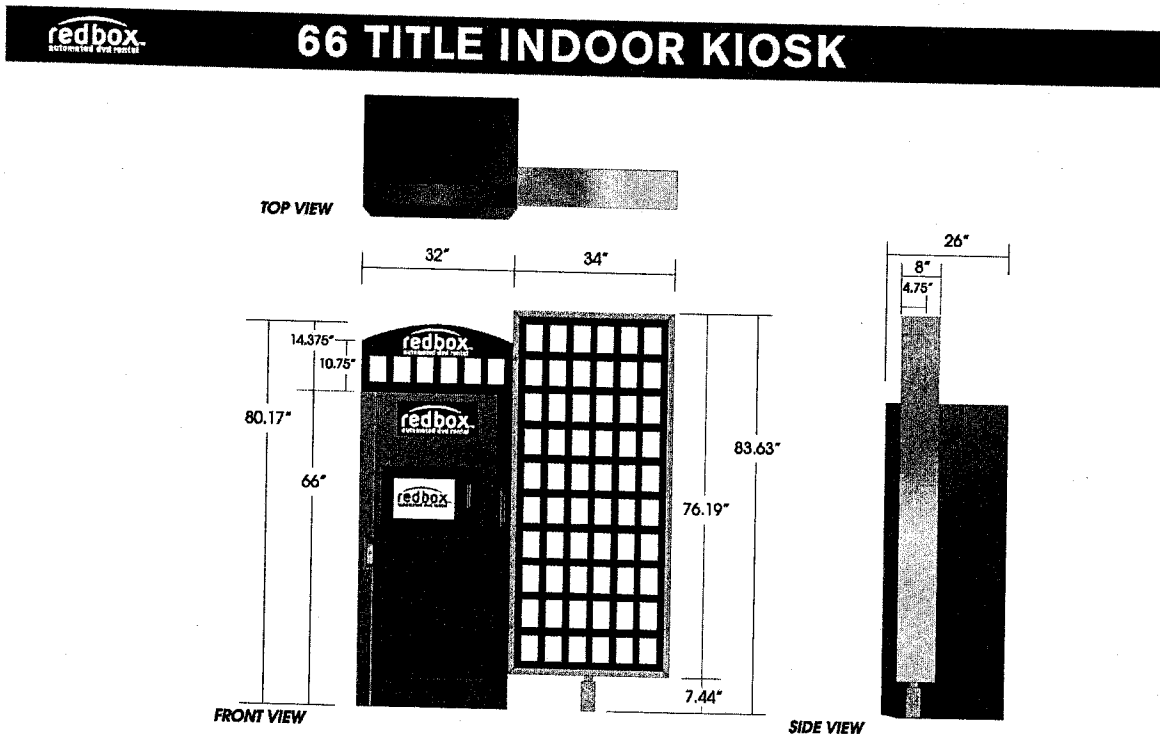
## EXHIBIT A

### Redbox Physical/Technology Overview

#### Physical Specifications

#### 1. Electricity Connection Interior Kiosk

1. Power – 120v. 20 amp **dedicated electric line**
2. The light box and the header that sits on top of the machine has a total electric load of 1.2 amps. The machine has a total electric load of 4.9 amps for a total connected load of 6.1 amps.



**EXHIBIT B  
SITE LOCATIONS**

**Palm Beach International Airport – Level 2**

**Page 1 of 2**

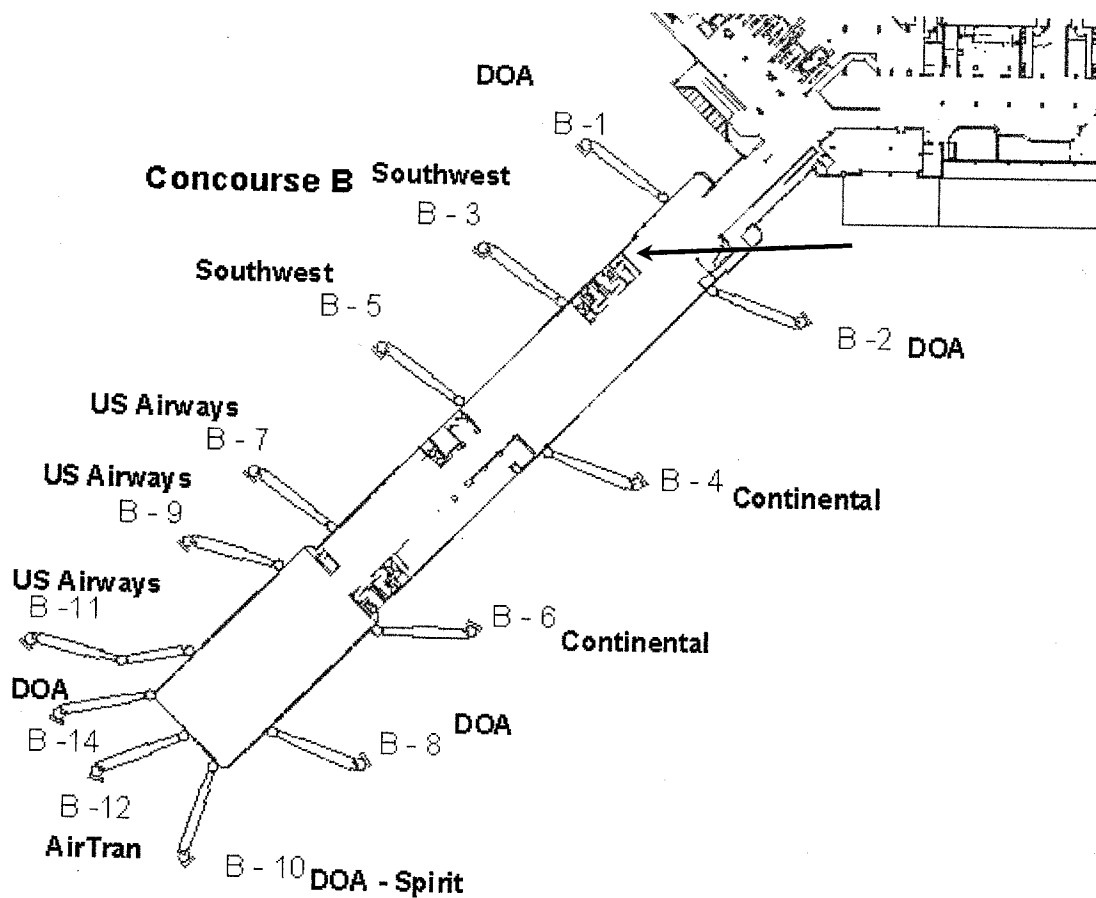
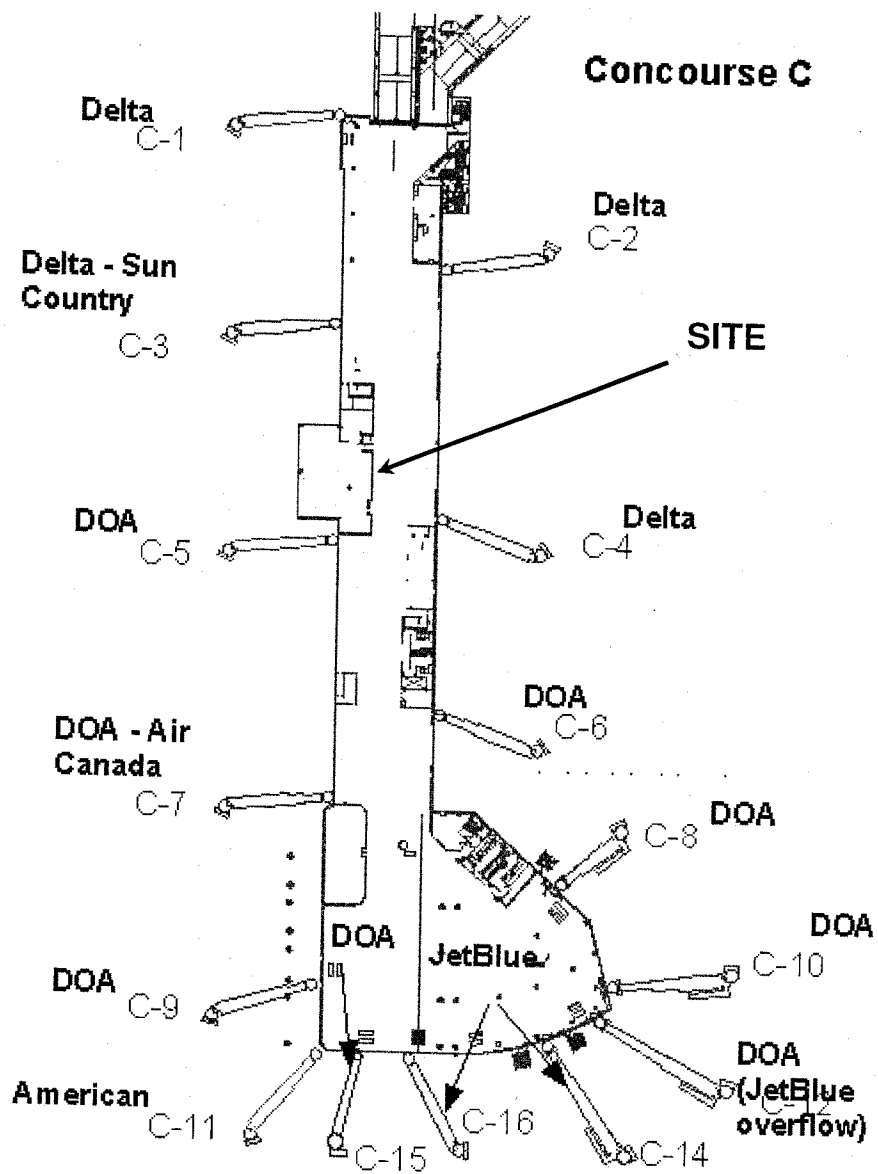


EXHIBIT B  
SITE LOCATIONS

Palm Beach International Airport – Level 2

Page 2 of 2



**AFFIDAVIT OF LIMITED LIABILITY COMPANY**

STATE OF Illinois  
COUNTY OF DuPage

BEFORE ME, the undersigned authority, personally appeared, the undersigned who by me being first duly sworn, depose(s) and say(s) that:

1. The undersigned is the VP of Finance of Redbox Automated Retail, LLC, a limited liability company organized and existing under the laws of the State of Delaware ("Company").
2. Articles of Organization of the Company have been filed, and are on-file with, the Florida Department of State and such articles are incorporated herein by reference.
3. The Company is in good standing and is authorized to transact business in the State of Florida as of the date hereof.
4. The Company is manager managed limited liability company.
5. Brian Rady, Vice President of Finance of the Company, has been authorized by majority vote of the managing members to act on behalf of the Company.
6. Brian Rady, Vice President of Finance of the Company, has the right and authority to enter into that certain Kiosk Operating Agreement between Palm Beach County, a political subdivision of the State of Florida and the Company (the "Agreement"), which is incorporated herein by reference and made a part hereof, and such other instruments as may be necessary and appropriate for the Company to fulfill its obligations under such Agreement, including amendment(s) and termination of such Agreement.
7. Upon execution and delivery of such Agreement and documents by Brian Rady, Vice President of Finance of the Company, the aforesaid Agreement shall be a valid agreement of and be binding upon the Company.
8. The transactions contemplated herein will not violate any of the terms and conditions of the Company's member agreement, operating agreement certificate of organization or of any other agreement and amendments thereto of whatever kind between the Company and any third person.

9. The undersigned acknowledges that affiant is familiar with the nature of an oath and the penalties provided by the laws of the State of Florida and that this Affidavit is being given to induce Palm Beach County to enter into the Agreement.

FURTHER AFFIANT SAYETH NAUGHT,

[Signature], Individually and as  
[select one: Manager or Member]  
officer of the Company.

SWORN TO AND SUBSCRIBED before me on this 8<sup>th</sup> day of November, 2010 by  
Brian Rudy, Manager/Member of Redbox Automated  
Retail, LLC, on behalf of the Company who is personally known to me ~~OR who~~  
~~produced~~ \_\_\_\_\_, as ~~identification~~ and who did take an oath.

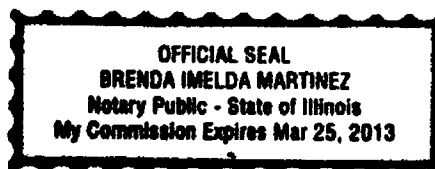
[Signature]  
Notary Signature  
Brenda Imelda Martinez  
Print Notary Name

NOTARY PUBLIC

State of Illinois at large

My Commission Expires:

March 25, 2013





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
11/10/2010

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Marsh USA, Inc. 1301 5th Avenue, Suite 1900 Seattle, WA 98101 Attn: Diane Zinsli (206) 214-3001 150582-RB-CAS-10-11 REDBO	<b>CONTACT NAME:</b> <b>PHONE (A/C, No, Ext):</b> <b>E-MAIL ADDRESS:</b> <b>PRODUCER CUSTOMER ID #:</b> <b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> National Union Fire Insurance Company <b>INSURER B:</b> N/A <b>INSURER C:</b> N/A <b>INSURER D:</b> N/A <b>INSURER E:</b> <b>INSURER F:</b>	<b>NAIC #</b> N/A N/A N/A N/A
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**COVERAGES**      **CERTIFICATE NUMBER:** SEA-001881231-01      **REVISION NUMBER:** 3

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC			GL4573292	09/01/2010	09/01/2011	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE  DEDUCTIBLE \$ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES** (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents are included as additional insured where required by written contract. Waiver of subrogation is applicable where required by written contract.

**CERTIFICATE HOLDER**

**CANCELLATION**

Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees, and Agents. C/O Palm Beach Co Dept of Airports Palm Beach, FL 33406	<b>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</b>  <b>AUTHORIZED REPRESENTATIVE</b> of Marsh USA Inc.  Diane Zinsli
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