



**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<i>*see below</i>	_____	_____	_____	_____
<b># ADDITIONAL FTE</b>	_____	_____	_____	_____	_____
<b>POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes \_\_\_\_\_ No \_\_\_\_\_  
 Budget Account No: Fund 4100 Department 120 Unit 8430 Rsource 4414  
 Reporting Category \_\_\_\_\_

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

\* The fiscal impact of this Amendment cannot be determined at this time. Payments to the County will be based upon a percentage of gross revenues from alcohol sales within the Delta Crown Room. No historical sales information is available since alcohol was previously provided on a complimentary basis only.

C. Departmental Fiscal Review: *CM Sumner*

**III. REVIEW COMMENTS**

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

*John [Signature]*  
 OFMB VA  
 9/29/11  
 10/2/11

*Dr. J. Jacob [Signature]* 1053111  
 Contract Dev. and Control

**B. Legal Sufficiency:**

**This amendment complies with our review requirements.**

*Anne Delaney* 194111  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

**FIFTH AMENDMENT TO AIRLINE--AIRPORT USE AND LEASE AGREEMENT  
BETWEEN PALM BEACH COUNTY AND DELTA AIR LINES, INC.**

**THIS FIFTH AMENDMENT TO THE AIRLINE--AIRPORT USE AND LEASE AGREEMENT** (this "Amendment") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between Palm Beach County, a political subdivision of the State of Florida ("COUNTY"), and Delta Air Lines, Inc., a Delaware Corporation, having its offices and principal place of business at Hartsfield-Jackson International Airport, Atlanta, GA 30320 ("AIRLINE").

**WITNESSETH:**

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

**WHEREAS**, pursuant to the Airline-Airport Use and Lease Agreement between COUNTY and AIRLINE dated January 30, 2007 (R2007-0386), as amended and extended (the "Agreement"), AIRLINE leases various Airport terminal facilities and equipment in connection with its operations as a commercial air carrier; and

**WHEREAS**, the Agreement currently prohibits AIRLINE from selling food or alcoholic beverages to the public, its employees or passengers within the Airport terminal; and

**WHEREAS**, AIRLINE leases space located on the second level of Concourse C of the Airport terminal for use as a VIP Room, which is commonly referred to as the "Delta Sky Club"; and

**WHEREAS**, AIRLINE wishes to sell certain premium brands of alcoholic beverages to its passengers within its VIP Room in addition to providing complimentary food and beverages; and

**WHEREAS**, the parties desire to amend the Agreement as provided for herein.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants herein contained, and for other good and valuable consideration, the receipt of which the parties hereby expressly acknowledge, the parties hereto covenant and agree to the following terms and conditions:

1. The foregoing recitals are true and correct and are hereby incorporated herein by reference and made a part hereof. Terms not defined herein shall have the meaning ascribed to them in the Agreement.

2. Article 4.09 of the Agreement, VIP Room, is hereby deleted in its entirety and replaced with the following:

4.09 VIP Room. AIRLINE may, at its sole cost and expense, install, operate and maintain a kitchen or other facilities within AIRLINE's VIP Room for the purpose of preparing and providing food and beverages to AIRLINE's passengers on a complimentary basis. Except as otherwise provided for herein, AIRLINE shall not have right to sell food or beverages to the public, its employees or its passengers within the Airport terminal. AIRLINE may elect to sell alcoholic beverages to its passengers and employees within the VIP Room, subject to the terms, conditions and limitations as hereinafter set forth. AIRLINE shall report all Gross Revenues (as hereinafter defined) from the sale of alcoholic beverages in its monthly Activity Report and shall pay to COUNTY a percentage of the Gross Revenues from the sale of alcoholic beverages equal to the then current percentage payable by the Airport's food and beverage concessionaire to COUNTY for the privilege of selling alcoholic beverages at the Airport (set at a rate of 15.1% of Gross Revenues as of the Effective Date of this Amendment)

pursuant to that certain Lease and Concession Agreement between COUNTY and Host International, Inc., dated August 18, 1998 (R-98-1293D), as now or hereafter amended ("Concession Agreement"). The term "Gross Revenues" shall have the meaning set forth in Concession Agreement. Payments shall be due on the date provided in Article 6.03(D) of the Agreement. COUNTY shall notify AIRLINE in writing in the event the percentage of Gross Revenues payable by the Airport's food and beverage concessionaire to COUNTY is modified.

3. Except as specifically modified herein, all of the terms and conditions of the Agreement shall remain unmodified and in full force and effect and are hereby ratified and confirmed by the parties hereto.

4. This Amendment shall be considered effective when signed by all parties and approved by the Palm Beach County Board of County Commissioners (the "Effective Date").

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

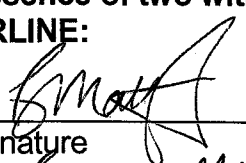
**ATTEST:**  
**Sharon R. Bock, Clerk & Comptroller**  
By: \_\_\_\_\_  
Deputy Clerk

**PALM BEACH COUNTY, a political subdivision of the State of Florida, by its Board of County Commissioners**  
By: \_\_\_\_\_  
Karen T. Marcus, Chair

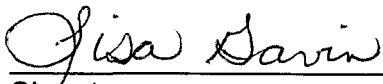
(SEAL)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
By: \_\_\_\_\_  
County Attorney

APPROVED AS TO TERMS AND CONDITIONS  
By: \_\_\_\_\_  
Director, Department of Airports

**ATTEST:**  
**Signed, sealed and delivered in the presence of two witnesses for AIRLINE:**  
  
\_\_\_\_\_  
Signature  
**BRIAN MATTINGLY**  
\_\_\_\_\_  
Name (type or print)

**DELTA AIR LINES, INC., a Delaware Corporation**  
By: \_\_\_\_\_  
**David Hamm**  
**Managing Director- Corporate Real Estate**  
\_\_\_\_\_  
Title

  
\_\_\_\_\_  
Signature  
**Lisa Gavin**  
\_\_\_\_\_  
Name (type or print)

(Seal)

**C E R T I F I C A T E**  
(Corporation)

The undersigned hereby certifies that the following are true and correct statements:

1. That Leslie P. Klemperer is the Secretary of Delta Air Lines, Inc., a corporation organized and existing in good standing under the laws of the State of Delaware, hereinafter referred to as the "Corporation", and that the following Resolutions are true and correct copies of certain Resolutions adopted by the Board of Directors of the Corporation as of the 12<sup>th</sup> day of May, 1967, in accordance with the laws of the State of Delaware, the Articles of Incorporation and the By-laws of the Corporation:

RESOLVED, that the Corporation shall enter into that certain Agreement for Fifth Amendment of the Airline-Airport Use and Lease Agreement between Palm Beach County, a political subdivision of the State of Florida and the Corporation (the "Agreement"), a copy of which is attached hereto; and be it

FURTHER RESOLVED, that David Hamm, the Managing Dir. - CRE of the Corporation, is hereby authorized and instructed to execute such Agreement and such other instruments as may be necessary and appropriate for the Corporation to fulfill its obligations under the Agreement.

2. That the foregoing resolutions have not been modified, amended, rescinded, revoked or otherwise changed and remain in full force and effect as of the date hereof.

3. That the Corporation is in good standing under the laws of the State of Florida, and has qualified, if legally required, to do business in the State of Florida and has the full power and authority to enter into such Agreement.

**IN WITNESS WHEREOF**, the undersigned has set his hand and affixed the Corporate Seal of the Corporation the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Leslie Klemperer  
[Signature]

Corporate Seal

\_\_\_\_\_, Secretary

Leslie P. Klemperer  
Corporate Secretary