

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: June 5, 2012

☒ Consent ☐ Regular
☐ Workshop ☐ Public Hearing

Department:

Submitted By: Department of Airports

Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: Eighth Amendment to Airline Operating and Lease Agreement with Air Canada (R-2009-0081), replacing Exhibit "B" decreasing leasehold for the season, effective May 1, 2012.

Summary: Delegation of authority for execution of the standard County agreement above was approved by the BCC in R-2007-1968. Countywide (AH)

Background and Justification: N/A

Attachments One (1) Standard Agreement for the Department of Airports

Recommended By:  5/3/12
Department Director Date

Approved By:  5/16/12
County Administrator Date

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)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>* see below</u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes X No _____
Budget Account No: Fund 4100 Department 120 Unit 8320/8430 RSource Various
Reporting Category _____

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

- * Airlines pay a variety of fees for use of Airport facilities including terminal rent, baggage facilities, loading bridge systems, apron areas, and runways. Some charges are variable and are dependant on flight operations and passenger traffic. Fees are calculated based on the Airline Use and Lease Agreement, adjusted annually for current operations and maintenance costs and debt service allocations. Airline revenues are budgeted in total by revenue source based on projected activity.

C. Departmental Fiscal Review: CM Summer

III. REVIEW COMMENTS

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

Shirley Suber
OFMB VA
5/10/12 5/9/12
ZS

Dr. J. Jacobson 5/11/12
Contract Dev. and Control
5-14-12 B. Wheeler

B. Legal Sufficiency:

Anne Defrant 5-16-12
Assistant County Attorney

C. Other Department Review:

Department Director

**EIGHTH AMENDMENT TO AIRLINE OPERATING AND LEASE AGREEMENT
BETWEEN PALM BEACH COUNTY AND AIR CANADA**

THIS EIGHTH AMENDMENT TO THE AIRLINE OPERATING AND LEASE AGREEMENT (this "Amendment") is made and entered into this _____ day of _____
APR 23 2012, by and between Palm Beach County, a political subdivision of the State of Florida ("COUNTY"), and Air Canada, a Canadian Corporation, having its offices and principal place of business at 7373 Cote Vertu West, Ville Saint Laurent, Quebec, Canada ("AIRLINE").

WITNESSETH:

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

WHEREAS, pursuant to the Airline Operating and Lease Agreement between COUNTY and AIRLINE dated December 2, 2008 (R-2009-0081), as amended (collectively the "Agreement"), AIRLINE leases various Airport Terminal facilities and equipment in connection with its operations as a commercial air carrier; and

WHEREAS, the Director of the Department has been delegated the authority to execute certain amendments to the Agreement pursuant to County Resolution No. 2007-1968; 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. The parties agree that effective May 1, 2012, Exhibit "B" to the Agreement shall be replaced with the Exhibit "B" to this Amendment.

3. Exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Amendment by such reference.

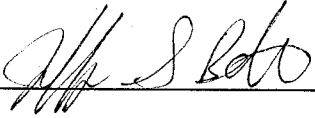
4. Except as specifically modified herein, all of the terms and conditions of the Agreement shall remain unmodified and in full force and effect and are hereby ratified and confirmed by the parties hereto.

5. This Amendment shall become effective when signed by both the parties hereto and approved by the Palm Beach County Board of County Commissioners.

(Remainder of page intentionally left blank)

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

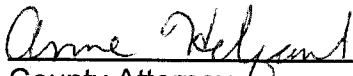
Signed, sealed and delivered in the presence of two (2) witnesses for COUNTY:


Signature
Jeffrey S. Bolton


Print Name

Debra Reese
Signature
Debra Reese
Print Name


APPROVED AS TO FORM & LEGAL SUFFICIENCY:


County Attorney

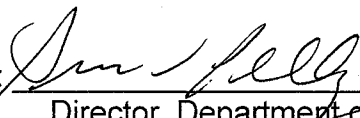
Signed, sealed and delivered in the presence of two (2) witnesses for AIR CANADA:


Signature
Rosa DiLallo


Print Name


Signature
LORRAINE MURRAY
Print Name

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

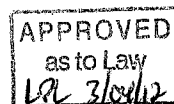
BY: 
Director, Department of Airports

AIR CANADA:

By: 
SAL CIOTTI
Typed or printed name of Corporate Officer

Title: SR DIR CORP. REAL EST. - CORP. DEV.

(Seal)



JP

Carolyn M. Hadovic
Corporate Secretary

EXHIBIT "B"

EXHIBIT "B" to Eighth Amendment to Airline Operating and Lease Agreement
AIR CANADA
EXCLUSIVE & PREFERENTIAL USE PREMISES (Terminal Areas)
First Level Plan – Palm Beach International Airport

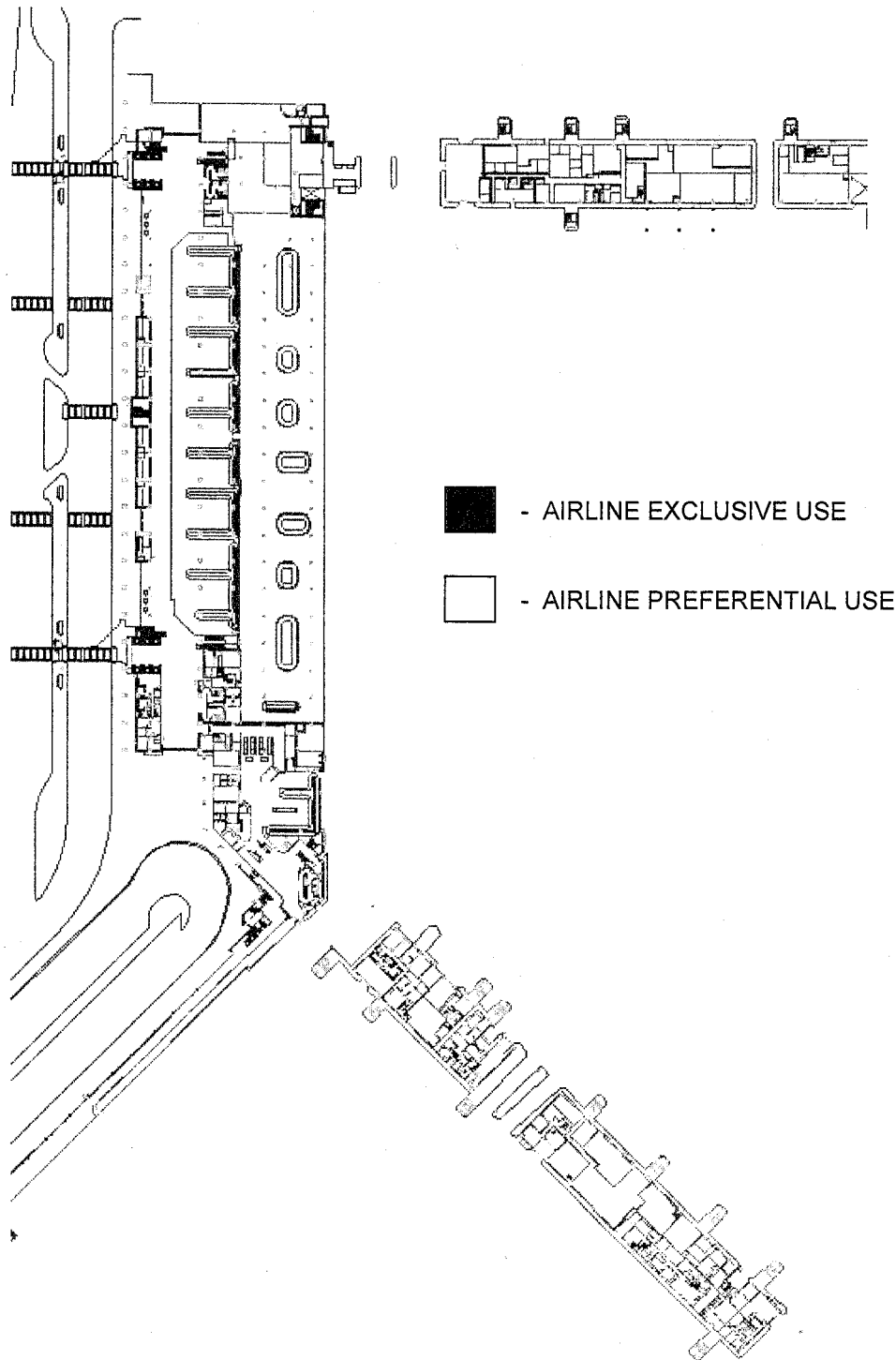


EXHIBIT "B" to Eighth Amendment to Airline Operating and Lease Agreement

AIR CANADA

EXCLUSIVE & PREFERENTIAL USE PREMISES (Terminal Areas)

Second Level Plan – Palm Beach International Airport

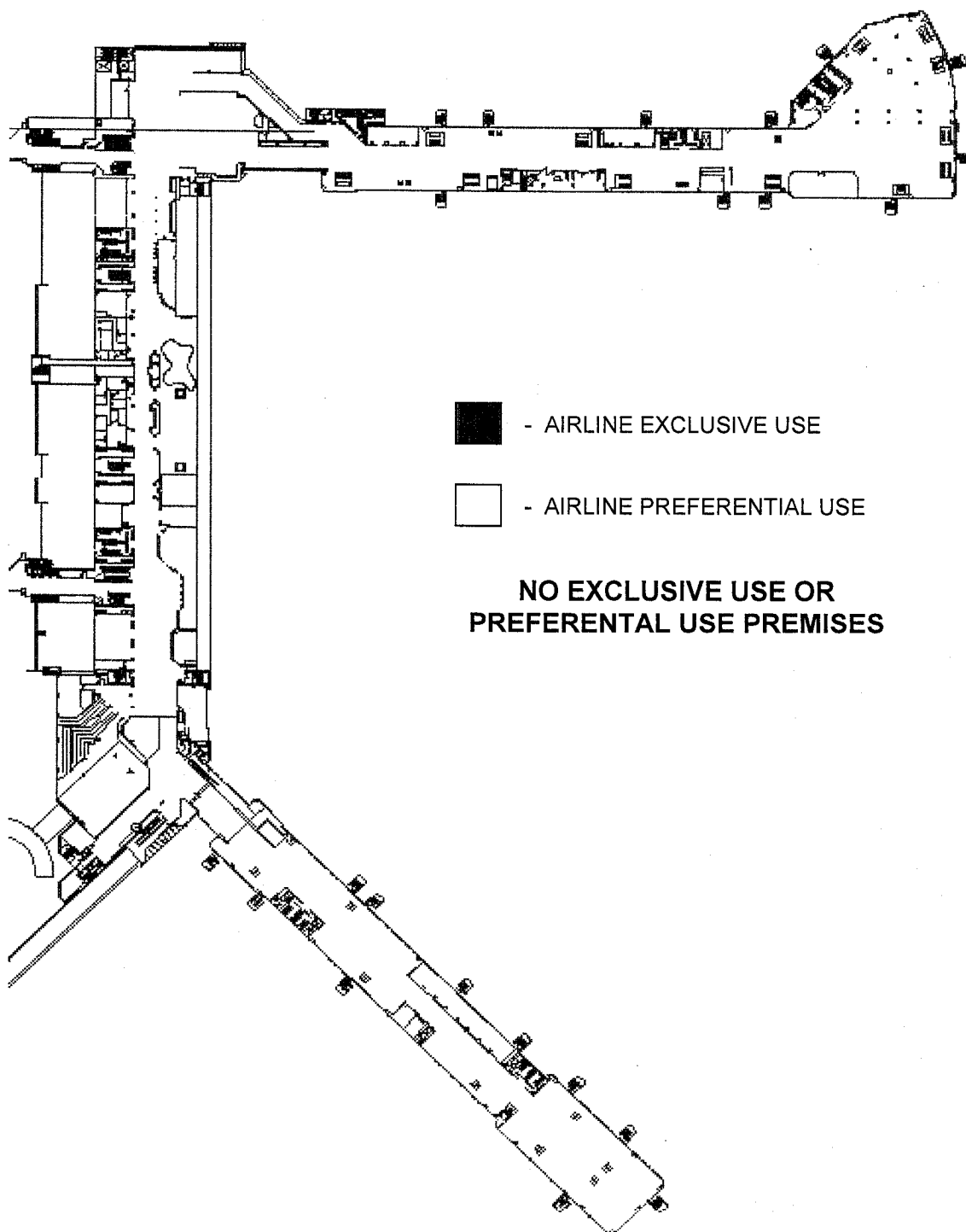
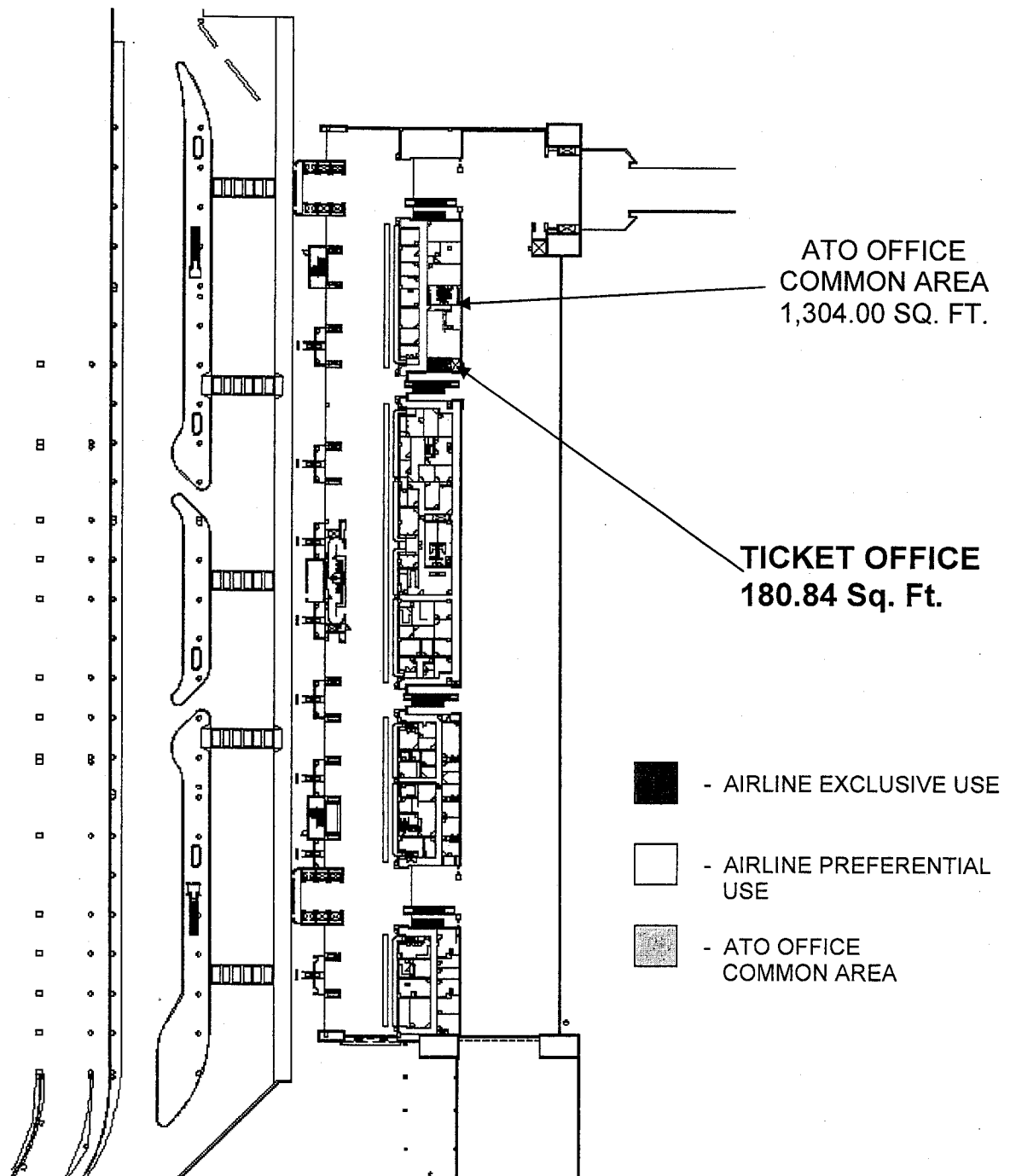


EXHIBIT "B" to Eighth Amendment to Airline Operating and Lease Agreement

AIR CANADA

EXCLUSIVE & PREFERENTIAL USE PREMISES (Terminal Areas)

Third Level Plan – Palm Beach International Airport





Alaster Burpitt
Senior Vice President

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Alaster.Burpitt@marsh.com
www.marsh.ca www.marsh.com

CERTIFICATE OF INSURANCE

TO: PALM BEACH COUNTY
DEPARTMENT OF AIRPORTS
Building 846
Palm Beach International Airport
West Palm Beach, Florida 33406

Certificate No. AC-AU104511/210

Date: December 15, 2011

This is to certify that the Policy(ies) of insurance listed below have been issued to the Named Insured identified below for the policy period(s) indicated. This Certificate is issued as a matter of information only and confers no rights upon the Certificate Holder named below other than those provided by the Policy(ies). Notwithstanding any requirement, term or condition of any contract or any other document with respect to which the Certificate may be issued or may pertain, the insurance afforded by the Policy(ies) is subject to all the terms, conditions and exclusions of such Policy(ies). This Certificate does not amend, extend or alter the coverage afforded by the Policy(ies). Limits shown are intended to address contractual obligations of the Named Insured. Limits may have been reduced since policy effective date(s) as a result of a claim or claims.

THIS IS TO CERTIFY that as Insurance Brokers we have effected insurance with UNDERWRITERS AT LLOYD'S and CERTAIN INSURANCE COMPANIES on behalf of

Named Insured: AIR CANADA

Address of Insured: Air Canada Center, Zip 1238, P.O. Box 14000,
Station Airport, Dorval, Quebec H4Y 1H4

Period of Insurance: This Insurance is for a period of 12 months which expires at Noon
Eastern Standard Time December 15, 2012.

Reference: Operating and Lease Agreement between Air Canada and Palm Beach
County Department of Airports with respect to Airline Business at Palm
Beach International Airport.

Coverage: Commercial General Liability Insurance, Aircraft Liability Insurance
including :

- 1) Premises and Operations Liability.
- 2) Bodily Injury and Property Damage
- 3) Personal Injury
- 4) Contractual Liability
- 5) Products and Completed Operations
- 6) Airside Automobile Liability
- 7) Automobile Liability, covering owned, hired or non-owned
vehicles in excess of any specific primary insurance effected by
the Named Insured

Limit(s) of Liability: U.S.\$25,000,000., any one occurrence and annual Aggregate for
Personal Injury and Products and Completed Operations.

Territorial Limits: Worldwide.

Special Conditions:

In accordance with the Operating and Lease Agreement between Air Canada and Palm Beach County Department of Airports, the following insurance provisions apply:

1. Palm Beach County Board of County Commissioners, a political subdivision of the State of Florida, its Officers, Employees and Agents, is included as an additional Insured for their respective rights and interests and will receive protection from the policy in the same manner as if there were a separate policy covering each Insured (subject always to the policy limit of liability).
2. To the extent that it falls within the scope and period of the insurance evidenced above, liability assumed by the Named Insured pursuant to Article 10 (Indemnities) of the Agreement is covered hereunder.
3. Insurers agree to waive their rights of recovery to the extent the Insured has waived its rights of recovery. Upon payment of any loss or claim, the Insurers shall to the extent and in respect of such payment be thereupon subrogated to all legal and equitable rights of parties indemnified hereby.
4. Should any of the policies described herein be cancelled before the expiration date thereof, the insurer affording coverage will endeavour to mail 30 days' written notice to the Certificate Holder named herein, except in the case of War Risks, for which the notice period shall be 7 days, but failure to mail such notice shall impose no obligation or liability of any kind upon the insurer affording coverage, its agents or representatives, or the issuer of this certificate. Such notice will NOT, however, be given at normal expiry date of the insurances or any endorsement.


Policy is subject to Aviation Date Recognition Exclusion Clause AVN2000A amended by Date Recognition Limited Coverages Clauses AVN2001A and AVN 2002A.

THE ABOVE DESCRIBED COVERAGES ARE SUBJECT TO POLICY TERMS, CONDITIONS, LIMITATIONS AND EXCLUSIONS.

SEVERAL LIABILITY NOTICE

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

MARSH CANADA LIMITED

By: 
Alaster Burpitt

AIR CANADA



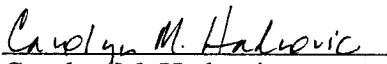
CERTIFICATE

I, Carolyn M. Hadrovic, Corporate Secretary of Air Canada (the "Corporation"), hereby certify that pursuant to a resolution adopted by the Board of Directors of the Corporation on February 6, 2008 under By-Law No. 1 and to the delegated authorities thereunder, Sal Ciotti, Senior Director Corporate Real Estate / Corporate Development is authorized to execute on behalf of the Corporation the Eighth Amendment to Airline Operating and Lease Agreement between the Corporation and Palm Beach County effective as of May 1, 2012.

I further certify that this authority has not been revoked and is in full force.

Dated at Montreal, Quebec, this 5th day of April, 2012.

AIR CANADA


Carolyn M. Hadrovic
Corporate Secretary

A STAR ALLIANCE MEMBER 
MEMBRE DU RÉSEAU STAR ALLIANCE