

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**AGENDA ITEM SUMMARY**

Meeting Date: March 12, 2013 [ X ] Consent [ ] Regular  
[ ] Ordinance [ ] Public Hearing

Department:  
Submitted By: Department of Airports  
Submitted For: Department of Airports

**I. EXECUTIVE BRIEF**

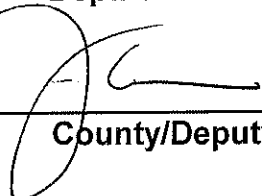
**Motion and Title:** Staff recommends motion to approve: a Development Site Lease Agreement (Lease) with West Palm Beach Plaza, LLC (WPB Plaza), a Florida limited liability company, for the lease and development of approximately 113,211 square feet of unimproved ground as a travel plaza on the Palm Beach International Airport (PBIA) at the Southwest corner of Belvedere Road and Florida Mango Road, commencing on March 12, 2013, and expiring 30 years from the date of beneficial occupancy for an initial annual rental of \$152,848 and payment of a fuel flowage fee of \$0.005 per gallon of fuel sold and a concession fee of 2.5% of gross revenues in excess of \$1 million.

**Summary:** This Lease provides for lease of approximately 113,211 square feet of property to WPB Plaza for the development of an on-airport travel plaza, which will include a gas station, convenience store, car wash, food service facilities and related amenities such as restrooms, free wireless internet access, a flight information display screen and customer loyalty program. WPB Plaza will also construct and maintain a collocated cell phone waiting area adjacent to the site at WPB Plaza's sole cost. The existing cell phone waiting area will be closed upon completion of the project. The Lease provides for a minimum capital expenditure of \$2,882,250 toward the completion of the required improvements. Ground rental will commence on the date of beneficial occupancy, which is defined as the first to occur of: substantial completion of the required improvements, the date WPB Plaza commences its business operations on the property, or April 1, 2015. Payment of the concession and fuel flowage fees will commence two years after the date of beneficial occupancy. Additional zoning approvals may be required to allow the property to be developed as an on-airport travel plaza; therefore, the Lease provides WPB Plaza with the right to terminate the Lease in the event it is unable to obtain the required approvals after exercising best efforts to do so. **Countywide (HJF)**

**Background and Justification:** The existing cell phone waiting area is located on the Southeast corner of Belvedere Road and Florida Mango Road, consisting of a fenced, paved parking area with no available amenities. In an effort to provide enhanced amenities to PBIA customers desiring to use the cell phone waiting area and to generate additional revenue to support the operations of PBIA, the Department of Airports issued Request for Proposals No. 12-11 for the lease and development of the property as an on-airport travel plaza. Airport Plazas Management, LLC, (Airport Plazas) was the sole proposer to submit a responsive, responsible proposal in response to the RFP. Airport Plazas has been awarded similar contracts at airports throughout the United States, including Newark Liberty International, John F. Kennedy International, Southwest Florida International and Indianapolis Airport Authority. WPB Plaza was formed by the owner of Airport Plazas in accordance with its proposal for the operation of the on-airport travel plaza at PBIA.

**Attachments:**  
1. Lease (3)

Recommended By:  2/7/13  
Department Director Date

Approved By:  3/1/13  
County/Deputy/Assistant County Administrator Date

## II. FISCAL IMPACT ANALYSIS

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

| Fiscal Years                                 | <u>2013</u> | <u>2014</u> | <u>2015</u> | <u>2016</u> | <u>2017</u> |
|--|-------------|-------------|-------------|-------------|-------------|
| Capital Expenditures                         | _____       | _____       | _____       | _____       | _____       |
| Rent Credit                                  | _____       | _____       | _____       | _____       | _____       |
| External Revenues                            | _____       | _____       | (\$76,424)  | (\$152,848) | (\$152,848) |
| Program Income (County)                      | _____       | _____       | _____       | _____       | _____       |
| In-Kind Match (County)                       | _____       | _____       | _____       | _____       | _____       |
| <b>NET FISCAL IMPACT</b>                     | _____       | _____       | (\$76,424)  | (\$152,848) | (\$152,848) |
| <br>   |             |             |             |             |             |
| No. ADDITIONAL FTE<br>POSITIONS (Cumulative) | _____       | _____       | _____       | _____       | _____       |

Is Item Included In Current Budget? Yes \_\_\_\_\_ No X  
 Budget Account No.: Fund 4100 Department 120 Unit 8452 RSource 4416  
 Reporting Category \_\_\_\_\_

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

The fiscal impact analysis assumes a beneficial occupancy date of April 1, 2015. Payment of rental commences upon the date of beneficial occupancy. Rental is subject to adjustment pursuant to the terms of the Lease commencing on October 1, 2016, and each three-year anniversary thereof. The fuel flowage and concession fees will commence two years after the date of beneficial occupancy; however, payments to the County cannot be estimated at this time because amounts will be determined by the tenant's fuel sales and gross revenues.

C. Departmental Fiscal Review:     m Simmer    

## III. REVIEW COMMENTS

### A. OFMB Fiscal and/or Contract Dev. and Control Comments:

|  |   |
|--|---|
| <u>    John A. Wheeler    </u> 2/20/13<br>OFMB<br>2/19/13 PM 2-15-13 | <u>    Dr. J. Jacobson    </u> 2/28/13<br>Contract Dev. and Control<br>2-28-13 B. Wheeler |
|--|---|

### B. Legal Sufficiency:

    Z. J. J.     3/1/13  
 Assistant County Attorney

### C. Other Department Review:

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

AFFIDAVIT OF LIMITED LIABILITY COMPANY

STATE OF     New York    

COUNTY OF     Queens    

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 Manager of West Palm Beach Plaza, LLC, limited liability company organized and existing under the laws of the State of Florida ("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 a [select (a) or (b)] (a) manager managed or (b) member managed limited liability company.

5. The undersigned is the sole managing member of the Company or has been authorized by majority vote of the managing members to act on behalf of the Company and legally bind the Company and execute contracts and other instruments relating to the transaction of business of the Company.

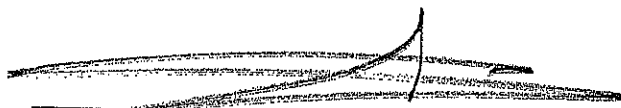
6. The undersigned has the right and authority to enter into that certain Development Site Lease Agreement between Palm Beach County, a political subdivision of the State of Florida and the Company (the "Agreement"), which is incorporated herein by reference and made a part hereof, and such other instruments 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 the undersigned, all of the aforesaid shall be valid agreements of and be binding upon the Company.

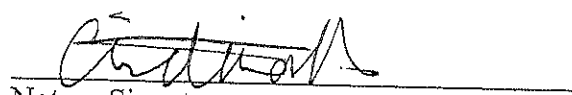
8. The transactions contemplated herein will not violate any of the terms and conditions of the Company's member agreement, operating agreement certificate of organization or of any other agreement and amendments thereto of whatever kind between the Company and any third person.

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,

  
George Abizeid Individually and as  
Manager

SWORN TO AND SUBSCRIBED before me on this 4<sup>th</sup> day of Feb, 2013, by George Abizeid, Manager of West Palm Beach Plaza, LLC on behalf of the Company who is personally known to me OR who produced Driver License, as identification and who did take an oath.

  
Notary Signature

Cristina Monterroso  
Print Notary Name

NOTARY PUBLIC

State of New York at large

My Commission Expires:  
04/05/2013

CRISTINA MONTERROSO  
Notary Public, State of New York  
No. 01MO6220040  
Qualified in Queens County  
Commission Expires April 5, 2014



# CERTIFICATE OF LIABILITY INSURANCE

WESTP-2

OP ID: VB

DATE (MM/DD/YYYY)  
02/13/2013

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 REPRESENTED. 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><br>Grace Insurance Agency<br>88 Broadway<br>Hicksville, NY 11801<br>D & A Agency-Commercial                  |  | Phone: 516-932-8100<br>Fax: 516-932-0388   | <b>CONTACT NAME:</b><br>PHONE:<br>(A/C No. Ext): FAX (A/C. No):<br>E-MAIL ADDRESS: |
| <b>INSURED</b><br>West Palm Beach Airport Plaza<br>LLC %<br>Gaz Realty Inc.<br>366 N. Broadway, Ste 206<br>Jericho, NY 11753 |  | <b>INSURER(S) AFFORDING COVERAGE</b><br>INSURER A: US Liability Insurance Co<br>INSURER B: Mount Vernon Ins. Co.<br>INSURER C:<br>INSURER D:<br>INSURER E:<br>INSURER F: |  |

**COVERAGES**      **CERTIFICATE NUMBER:**      **REVISION NUMBER:**

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 SUBR INSR | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS   |
|----------|--|----------------|---------------|-------------------------|-------------------------|--|
| A        | <b>GENERAL LIABILITY</b><br><input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR<br><br>GENL AGGREGATE LIMIT APPLIES PER:<br><input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC | X              | BINDER        | 02/11/2013              | 02/11/2014              | EACH OCCURRENCE \$ 1,000,000<br>DAMAGE TO RENTED PREMISES (EA occurrence) \$ 100,000<br>MED EXP (Any one person) \$ 5,000<br>PERSONAL & ADV INJURY \$ 1,000,000<br>GENERAL AGGREGATE \$ 2,000,000<br>PRODUCTS - COMP/OP AGG \$ 1,000,000 |
| B        | <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR<br><b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE<br>DED <input checked="" type="checkbox"/> RETENTION \$ 10000  | X              | BINDER        | 02/11/2013              | 02/11/2014              | EACH OCCURRENCE \$ 1,000,000<br>AGGREGATE \$ 1,000,000   |
|          | <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b><br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/ MEMBER EXCLUDED? (Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below.  | N/A            |               |                         |                         | WG STATUTORY LIMITS OTHER<br>E.L. EACH ACCIDENT \$<br>E.L. DISEASE - EA EMPLOYEE \$<br>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, & PALM BEACH COUNTY DEPARTMENT OF AIRPORTS 846 PALM BEACH INTERNATIONAL AIRPORT WEST PALM BEACH, FLORIDA 33406 ARE INCLUDED AS ADDITIONAL INSURED

|   |  |
|---|--|
| <b>CERTIFICATE HOLDER</b><br><br>PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS<br>846 PALM BEACH INT'L AIRPORT<br>WEST PALM BEACH, FL 33406 | <b>CANCELLATION</b><br><br>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.<br><br>AUTHORIZED REPRESENTATIVE<br><i>Vincent Blair</i> |
|---|--|

**DEVELOPMENT SITE LEASE AGREEMENT**

**Department of Airports**

**Palm Beach County, Florida**

**and**

**West Palm Beach Plaza, LLC**

## DEVELOPMENT SITE LEASE AGREEMENT

THIS DEVELOPMENT SITE LEASE AGREEMENT (this "Lease") is made and entered into \_\_\_\_\_, by and between Palm Beach County, a political subdivision of the State of Florida ("County"), and West Palm Beach Plaza, LLC, a Florida limited liability company, having its office and principal place of business at 366 North Broadway, Suite 206, Jericho, NY 11753 ("Tenant").

### WITNESSETH:

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

WHEREAS, County has certain ground areas at the Airport, which are available for leasing on triple net basis; and

WHEREAS, Tenant desires to lease certain ground area for the purpose of developing, constructing and operating an on-Airport travel plaza, including a gas station, car wash, convenience store, food service facilities and related amenities, and a public restroom for customers of the travel plaza and the Cell Phone Waiting Area at the Airport.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, and 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:

### ARTICLE 1 RECITALS

The foregoing recitals are true and correct and are hereby incorporated herein by reference.

### ARTICLE 2 DEFINITIONS

The following terms set forth below, when used in this Lease, shall be defined as follows:

- 2.01 "Additional Insured" has the meaning set forth in Section 12.08.
- 2.02 "Additional Rent" has the meaning set forth in Section 6.13.
- 2.03 "Adjustment Date" has the meaning set forth in Section 6.08.

- 2.04 "Adult Material" means any one or more of the following, regardless of whether it is new or used: (a) books, magazines, periodicals or other printed matter; photographs, films, motion pictures, video cassettes, slides, or other visual representations; recordings, other audio matter; and novelties or devices; which have as their primary or dominant theme subject matter depicting, exhibiting, illustrating, describing or relating to specified sexual activities or specified anatomical areas; or (b) instruments, novelties, devices, or paraphernalia which are designed for use in connection with specified sexual activities.
- 2.05 "Airport" means the Palm Beach International Airport located in Palm Beach County, Florida.
- 2.06 "Airport Facilities" has the meaning set forth in Section 4.04(A).
- 2.07 "Airport Rules and Regulations" means the Palm Beach County Airport Rules and Regulations adopted by Resolution No. R-98-220, as now or hereafter amended, and any successor ordinance or resolution regulating activities or operations on the Airport.
- 2.08 "Annual Report" has the meaning set forth in Section 6.04.
- 2.09 "Assignment" has the meaning set forth in Article 17.
- 2.10 "Bond Resolution" means the 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.
- 2.11 "Board" means the Board of County Commissioners of Palm Beach County, Florida.
- 2.12 "Bond" has the meaning set forth in Section 6.10.
- 2.13 "Business Day" means any day other than a Saturday, Sunday or County holiday. Use of the word "day" as opposed to Business Day means a calendar day.
- 2.14 "Cell Phone Waiting Area" means approximately 21,780 square feet (0.50 acre, more or less) to be located within the real property more particularly described on Exhibit "B", as adjusted pursuant to Section 4.01(A), subject to easements, rights-of-way and any other encumbrances of record, together with all buildings, structures, pavements, facilities, and other improvements now or hereafter constructed thereon.
- 2.15 "Concession Fee" has the meaning set forth in Section 6.01(C).
- 2.16 "Consumer Price Index" has the meaning set forth in Section 6.08(C).



- 2.17 "County Assessment" means the Phase I Environmental Site Assessment of the Premises dated June 6, 2012, performed by Dunkelberger Engineering & Testing, Inc.
- 2.18 "Date of Beneficial Occupancy" has the meaning set forth in Section 3.01.
- 2.19 "Department" means the Palm Beach County Department of Airports.
- 2.20 "Director" means the Director or Acting Director of the Department of Airports.
- 2.21 "Derelict Vehicle" means a vehicle designed for use on the roadways that is in a wrecked, dismantled or partially dismantled condition, or which is discarded and in an inoperable condition.
- 2.22 "Effective Date" means the date that this Lease is approved by the Palm Beach County Board of County Commissioners and signed by all parties.
- 2.23 "Environmental Laws" means all applicable Federal, State or local laws, statutes, ordinances, rules, regulations or governmental restrictions relating to the protection of the environment, human health, welfare or safety, or to the emission, discharge, seepage or release of Hazardous Substances into the environment, including, without limitation, ambient air, surface water, groundwater or land, or otherwise relating to the handling of such Hazardous Substances.
- 2.24 "FAA" means the Federal Aviation Administration.
- 2.25 "Fuel Flowage Fee" has the meaning set forth in Section 6.01(B).
- 2.26 "Fuel System" means all fuel and oil storage tanks and components thereto, all fuel and oil lines and associated distribution systems, pumps, nozzles and outlets, all fuel monitoring and alarm systems, and remediation improvements, whether above or below ground.
- 2.27 "Gross Revenues" means all revenues, receipts and income from the sale, lease or rental of goods, products or merchandise; all sales and charges for services rendered, provided or performed; and the amounts of all other receipts and income of all businesses conducted by or through Tenant on or from the Premises (including, but not limited to, amounts paid for food and beverages, vending machines, advertising and promotions), regardless of whether delivered on or off the Premises, how or by whom payment is made (cash, credit or otherwise), excluding only the following:
- (A) Federal, state, county/city, and municipal sales taxes or other taxes separately stated and collected from customers;

- (B) Receipts from the sale of gasoline, diesel fuel or other liquid fuel;
- (C) The amount of lottery proceeds remitted to the State of Florida;
- (D) ATM surcharge or transaction fees paid directly to the ATM provider or banking institution;
- (E) Refunds given for returned goods, products or merchandise;
- (F) Receipts from the sale of or the trade-in value of any trade fixtures;
- (G) Receipts in the form of refunds from or the value of merchandise, supplies, or equipment returned to shippers, suppliers or manufacturers;
- (H) Insurance proceeds;
- (I) Bulk sales as defined by the U.C.C;
- (J) Tax rebates;
- (K) Inter-store transfers;
- (L) Amounts for coupons and other forms of discounts (including, but not limited to, complimentary customer and employee meals), such that only the amounts actually received are ultimately included in Gross Receipts.
- (M) Subtenant ground or facility rent payments
- (N) Receipts from the sale of uniforms or clothing to Tenant's employees where it is required, that such uniforms or clothing be worn by said employees; and
- (O) Tips and gratuities.

In the event Tenant fails for any reason to charge for or collect the value of any good, product, merchandise or service provided hereunder, the amount customarily charged by Tenant for such good, product, merchandise or service shall be included in the calculation of Gross Revenues. Unless revenues from Tenant's business are expressly and specifically excluded from Gross Revenues under this Lease, such revenues shall be included in Gross Revenues. Further, no deduction shall be made from Gross Revenues by reason of any credit loss, charge or deduction that may be incurred by reason of the acceptance or use of credit cards or other credit or charge arrangements.

2.28 "Ground Rental" has the meaning set forth in Section 6.01(A).

- 2.29 "Hazardous Substances" shall mean any contaminant, hazardous or toxic substance, material or waste of any kind or any other substance that is regulated by any Environmental Laws.
- 2.30 "Inspection Period" has the meaning set forth in Section 3.05.
- 2.31 "Lease" means this Lease and all exhibits attached hereto, which are incorporated herein by this reference. Words such as "herein," "hereafter," "hereof," "hereby" and "hereunder" when used with reference to this Lease, refer to this Lease as a whole, unless context otherwise requires.
- 2.32 "Lease Year" means a twelve (12) month period beginning on the Date of Beneficial Occupancy, and each twelve (12) month period thereafter, until the expiration or earlier termination of this Lease.
- 2.33 "Leasehold Mortgage" has the meaning set forth in Section 18.01.
- 2.34 "Leasehold Mortgagee" has the meaning set forth in Section 18.01.
- 2.35 "Letter of Credit" has the meaning set forth in Section 6.10.
- 2.36 "Loss Payee" has the meaning set forth in Section 12.09.
- 2.37 "Minimum Capital Expenditure" has the meaning set forth in Section 7.01(B).
- 2.38 "Monthly Report" has the meaning set forth in Section 6.03.
- 2.39 "Phase I ESA" has the meaning set forth in Section 21.05.
- 2.40 "Plans" have the meaning set forth in Section 7.01(C).
- 2.41 "Premises" means approximately 113,221 square feet (2.60 acres, more or less) to be located within the real property more particularly described on Exhibit "A", as adjusted pursuant to Section 4.01(A), subject to easements, rights-of-way and any other encumbrances of record, together with all buildings, structures, pavements, facilities, and other improvements now or hereafter constructed thereon.
- 2.42 "Proposal" means the written proposal submitted by Tenant in response to the RFP.
- 2.43 "Refurbishment" means the routine renovation, improvement and redecoration of the Premises necessary to keep it in first-class condition and repair, including, but not limited to, repainting of the interior and exterior of the buildings and improvements located on the Premises; replacement of worn or outdated flooring, fixtures, interior and exterior building finishes, furnishings and equipment; and restriping and resealing of vehicular parking areas.
- 2.44 "Release Documents" has the meaning set forth in Section 18.08.

- 2.45 "Required Improvements" has the meaning set forth in Section 7.01(A).
- 2.46 "Request for Proposals" or "RFP" means Request for Proposals No. PB 12-11, issued by County on June 13, 2012, as amended or supplemented.
- 2.47 "Risk Management Department" means the Palm Beach County Risk Management Department.
- 2.48 "Security Deposit" has the meaning set forth in Section 6.10.
- 2.49 "Term" has the meaning set forth in Section 3.01.
- 2.50 "Title Review Period" has the meaning set forth in Section 3.02.
- 2.51 "TSA" means the Transportation Security Administration or any successor agency responsible for airport security.

**ARTICLE 3**  
**EFFECTIVE DATE, TERM AND EVALUATION OF PROPERTY**

3.01 Term. The term of this Lease shall commence on the Effective Date and expire thirty (30) years from the first to occur of: (a) the date of substantial completion of the Required Improvements; (b) the date Tenant commences using the Premises (or any part thereof) for the conduct of its business (other than construction); or (c) April 1, 2015 (the "Date of Beneficial Occupancy"), unless sooner terminated pursuant to the terms of this Lease (the "Term"). Substantial completion of the Required Improvements will occur when the applicable governmental authority issues a temporary or permanent certificate of occupancy for any building constructed on the Premises. Tenant shall promptly notify County in writing of the issuance of all certificates of occupancy and of the date Tenant commences using the Premises (or any part thereof) for the conduct of its business. Tenant will use due diligence and make good faith efforts to complete construction, open for business and cause the Date of Beneficial Occupancy to occur as soon as reasonably practicable.

3.02 Title Insurance. Tenant shall have thirty (30) days following the Effective Date to examine County's title to the Premises (the "Title Review Period") and, at Tenant's option, obtain a title insurance commitment for the issuance of a leasehold title policy, agreeing to issue to Tenant a title insurance policy in such amount as deemed appropriate by Tenant. Tenant shall furnish a copy of the title insurance commitment and title policy, if applicable, to County together with legible copies of all exceptions to coverage reflected thereon upon receipt. The cost of the title insurance commitment and title insurance policy and any premium shall be borne by Tenant.

3.03 Title Defects. In the event the title insurance commitment shows as an exception any matters which render title unmarketable or would unreasonably interfere with Tenant's intended development and use of the Premises for the uses permitted hereunder, Tenant shall notify County of Tenant's objections thereto prior to expiration of the Title Review Period.

County shall have the right, but not the obligation, within sixty (60) days from receipt of the notice, to cure such title defects or to make arrangements with the title insurer for the removal of such objections from the title insurance commitment. 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 sixty (60) day period, Tenant shall have the option of: (a) accepting title to the Premises as it then exists; (b) providing County with an additional ninety (90) days to remove such defects; or (c) terminating this Lease. Tenant shall provide County with written notice of its election within ten (10) days after expiration of the sixty (60) day period. In the event County is unable to cure such defects within the additional ninety (90) day period, Tenant shall have the option of: (a) accepting title to the Premises as it then exists; or (b) terminating this Lease. Tenant shall provide County with written notice of its election within ten (10) days after expiration of the ninety (90) day period. In the event Tenant terminates this Lease pursuant to this Section, the parties shall be released from all obligations under this Lease, with the exception of those obligations arising hereunder prior to termination of this Lease or which expressly survive termination. In the event Tenant fails to properly exercise its right to terminate this Lease, Tenant shall be deemed to have waived such right and shall be deemed to have accepted title to the Premises subject to all matters of record.

3.04 Survey. Tenant shall have the right, within the Title Review Period, to obtain a current survey of the Premises. The survey shall be prepared in accordance with the minimum technical standards for surveys within the State of Florida. If the survey reveals any encroachments, overlaps, boundary disputes or other defects, which render title unmarketable or unreasonably interfere with Tenant's intended development and use of the Premises for the uses permitted hereunder, the same shall be treated as title defects as described in Section 3.03 of this Lease and Tenant shall have the same rights and remedies as set forth therein.

3.05 Inspections. Commencing on the Effective Date and expiring ninety (90) days thereafter (the "Inspection Period"), Tenant may conduct any inspections and tests that Tenant deems appropriate with respect to the Premises, including, but not limited to, the following: (a) physical inspection of the Premises; (b) soil investigation; (c) environmental assessment; (d) topographic studies; and (e) engineering, utilities and site planning studies. All inspections, surveys and tests performed hereunder shall be conducted at Tenant's sole cost and expense and shall be performed by licensed persons or firms dealing in the respective areas or matters. Tenant agrees to indemnify County from and against any and all losses, damages, costs, expenses, and/or liability of whatsoever nature arising from or out of Tenant's and/or its agents, contractors, employees or invitees entry upon and inspection of the Premises. Tenant's obligation to indemnify County pursuant to this Section shall survive the expiration or termination of this Lease. Within ten (10) days of the expiration of the Inspection Period, Tenant shall provide County with one (1) complete copy of all written reports detailing the results of audits, inspections, tests and studies obtained by Tenant hereunder. If Tenant reasonably determines that it will be unable to use the Premises for the uses permitted hereunder based on the result(s) of the investigations or, if environmental assessment(s) reveal the presence of Hazardous Substances on the Premises, Tenant may elect to terminate this Lease upon written notice to the Department within ten (10) days of the expiration of the Inspection Period. If such notice is timely given, this Lease shall be deemed terminated, and the parties hereto shall be relieved of all liabilities and obligations under this Lease, except for those obligations arising hereunder prior to termination of this Lease or which expressly survive termination. In the event Tenant fails to properly exercise its right to terminate this Lease, Tenant shall be deemed to have

waived such right and accepted the Premises "As Is" in its then existing condition, subject to all defects, latent or patent, if any. In the event Tenant terminates this Lease pursuant to this Section, Tenant, at its sole cost and expense shall repair any damage resulting from Tenant's inspections and restore the Premises to the condition in which it existed prior thereto, using materials of like kind and quality.

**ARTICLE 4**  
**PREMISES AND PRIVILEGES**

4.01 Description of Premises/Cell Phone Waiting Area.

- (A) County hereby demises and leases to Tenant, and Tenant rents from County the Premises subject to the terms, conditions and covenants set forth herein. Within ninety (90) days of approval of the site plan by the Department, the parties shall enter into an amendment to this Lease: (i) replacing Exhibits "A" and "B" with a legal description based upon a survey prepared or approved by the County's surveyor, which shall describe the Premises consisting of approximately 113,221 square feet of unimproved ground within the area generally depicted in Exhibit "A" and the Cell Phone Waiting Area consisting of approximately 21,780 square feet of unimproved ground within the area generally depicted in Exhibit "B"; and (ii) adjusting the rental payments applicable to the Premises based upon the final square footage identified in the survey. The foregoing amendment may be signed by the Director on behalf of County.
- (B) County hereby grants Tenant a nonexclusive, revocable license for the construction, maintenance and repair of the Cell Phone Waiting Area in accordance with the terms, conditions and covenants set forth herein. Nothing in this Lease shall be construed as granting Tenant any title, interest or estate in the Cell Phone Waiting Area. The parties acknowledge and agree that the Cell Phone Waiting Area shall not be considered part of the Premises and Tenant shall have no right whatsoever to utilize the Cell Phone Waiting Area for its business operations hereunder.

4.02 Description of Specific Privileges, Uses and Rights. Tenant shall have the right to use the Premises for the purpose of constructing, operating and maintaining an on-Airport travel plaza, which shall include a gas station, car wash, convenience store, food service facilities, and related amenities as well as a public restroom for customers of the travel plaza and the Cell Phone Waiting Area.

4.03 Prohibited Uses, Products and Services. Tenant agrees that the Premises shall be utilized solely for the uses permitted herein and for no other purpose whatsoever. Tenant shall not provide any products or services that are not specifically authorized by this Lease or the Department, including, but not limited to, the following products and services:

- (A) Automotive service, repair and maintenance, including, but not limited to, oil changes, tune ups and general minor repair services;

- (B) Paid parking;
- (C) Parking or storage of unattended vehicles for more than two (2) hours, except for the personal vehicles of employees currently working on the Premises;
- (D) Rental or sales of motor vehicles;
- (E) Towing/emergency road service;
- (F) Advertising, with the exception of Department-approved business identification signage, unless otherwise approved in writing by the Department in its sole and absolute discretion;
- (G) Valet, shuttle or ground transportation services; and
- (H) Any use prohibited by law.

4.04 Description of General Privileges, Uses and Rights. In addition to the specific privileges, uses and rights granted in Section 4.02 above, County hereby grants to Tenant the following non-exclusive general privileges, uses, and rights, all of which shall be subject to the terms, conditions, and covenants set forth herein:

- (A) The general use, in common with others, of all public Airport Facilities and improvements which are now or may hereafter be connected with or appurtenant to the Airport (excluding airfield access), to be used by Tenant, its agents and employees, patrons and invitees, suppliers of service, furnishers of material, and its authorized subtenants, if any, in connection with its operations hereunder. The Department shall have the right to establish reasonable rules and regulations governing the use of public Airport Facilities. Tenant agrees to be subject to, and comply with, such reasonable rules and regulations. For purposes of this paragraph, public "Airport Facilities" shall include public roadways, sidewalks, or other public facilities appurtenant to the Airport that are not specifically leased to or under the contractual control of others.
- (B) The right of ingress to and egress from the Premises and Cell Phone Waiting Area over and across public roadways serving the Airport for Tenant, its agents and employees, patrons and invitees, suppliers of service and furnishers of material, and its authorized subtenants, if any. The right of ingress to and egress from shall be subject to such laws, rules, regulations and orders as now or may hereafter have application at the Airport.

Except as expressly set forth in this Section, nothing in this Lease shall be construed to grant to Tenant the right to use any space or area improved or unimproved which is leased to a third party, or which County has not leased herein.

4.05 Restrictions on Privileges, Uses and Rights.

- (A) The rights granted hereunder are expressly limited to the improvement, maintenance, and operation of the Premises and the Cell Phone Waiting Area pursuant to the terms and conditions of this Lease, and nothing herein shall be construed to give Tenant any exclusive rights to operate a particular business, or to sell or distribute any particular product(s) or service(s). Tenant covenants and agrees that the Premises shall be utilized solely for the uses permitted in this Article and for no other purpose whatsoever.
- (B) Parking of boats, motor homes or inoperable vehicles and the stockpiling or storage of inoperable equipment, machinery and containers is strictly prohibited.
- (C) All storage and dumpsters must be screened or concealed from public view, and storage shall be limited to the storage incidental to Tenant's overall operation on the Premises.
- (D) Persons, including, but not limited to Tenant's employees, shall not loiter or remain overnight on the Premises or elsewhere at the Airport. The foregoing will not preclude Tenant's personnel from being present on the Premises while on-duty.

4.06 Condition and Use of the Premises. Subject to Tenant's rights to complete inspections pursuant to Section 3.05, Tenant accepts the Premises and Airport in their "AS IS CONDITION" and "WITH ALL FAULTS," together with all defects, latent and patent, if any. Tenant further acknowledges that County has made no representations or warranties of any nature whatsoever regarding the Airport or the Premises including, but not limited to, the physical and/or environmental condition of the Premises or any improvements located thereon; the value of the Premises or improvements; the zoning of the Premises; title to the Premises; the suitability of the Premises or any improvements for Tenant's intended use; or Tenant's legal ability to use the Premises for Tenant's intended use.

**ARTICLE 5**  
**QUALITY AND CHARACTER OF SERVICES**

5.01 Quality of Merchandise. Tenant shall offer for sale only products and merchandise, which are safe, free of adulteration, sanitary and properly labeled in accordance with applicable laws.

5.02 Adult Materials. Any Adult Materials approved for sale in the Premises shall be handled in a discreet manner so as not to offend the public. Adult magazines shall be wrapped or covered, except for the name, and their manner of display shall be subject at all times to County's approval. Any other Adult Materials shall be handled as directed by County. Tenant shall immediately remove from the Premises any and all Adult Materials that County directs it to



so remove and shall not thereafter display such material on the Premises. For the purposes of this Section, County's designation of an item as Adult Material shall be final.

5.03 Gas Station/Convenience Store Quality and Services.

- (A) In connection with the sale or dispensing of fuel upon the Premises or otherwise, County assumes no responsibility for the acts of any supplier regarding delivery, quality of product, or maintenance of supplier-owned or Tenant-owned equipment. Fuel shall be sold, stored and dispensed by Tenant in accordance with all Federal, State and local laws.
- (B) Tenant shall provide and maintain sufficient quantities of fuel to satisfy anticipated customer demand.
- (C) A sufficient number of self-service pumps shall be available to serve anticipated customer demand, offering low-grade regular unleaded; mid-grade unleaded and premium gasoline, diesel fuel and compressed natural gas. Self-service pumps shall be fully automated allowing customers to pay-at-the-pump with the credit and debit cards normally accepted by Tenant pursuant to Section 5.10.
- (D) The gas station/convenience store operated on the Premises shall be at all times a nationally-recognized retail brand. Brands shall be subject to prior written approval of the Department, which approval shall not be unreasonably withheld, conditioned or delayed.
- (E) Any car wash facility operated on the Premises must be fully automated, with a zero discharge recycling system that does not allow any discharge of wastewater into any storm or sanitary sewer system. The facility must also be equipped with self-service equipment for vacuuming and air dispensing.
- (F) The gas/station convenience store operated on the Premises shall provide separate public restrooms for men and women, which are accessed from the interior of the facility. There shall be a sufficient number of restrooms to serve anticipated customer demand of both the businesses located on the Premises and the Cell Phone Waiting Area.
- (G) Tenant shall provide the following customer amenities, unless otherwise approved by the Department in writing, which approval may be granted or denied in Department's sole and absolute discretion: public telephone; ATM services; air pumps for inflating tires; free wireless internet access; a flight information display screen; and a customer loyalty program.

5.04 Restaurant/Fast Food. Any restaurant and/or fast food facilities operated on the Premises shall at all times be nationally-recognized or popular, locally branded concepts. Brands shall be subject to prior written approval of the Department, which approval shall not be unreasonably withheld, conditioned or delayed.

5.05 Hours of Operation. Tenant shall actively operate the Premises in a business-like manner. The gas station/convenience store operated on the Premises shall be open to the public twenty-four (24) hours per day, seven (7) days a week, including holidays, unless otherwise approved in writing by the Department, which approval may be approved or denied in the Department's sole and absolute discretion. All other facilities located on the Premises shall be open to serve the public seven (7) days per week, and the hours of operation of such facilities shall be subject to the prior written approval of the Department, which shall not be unreasonably withheld, conditioned or delayed. The hours of operation shall be such that all arriving and departing passengers of the Airport will be accommodated. No facilities shall be blocked off or closed at any time during the designated minimum hours of operation.

5.06 Right to Object. County shall have the right to raise reasonable objections to the appearance or condition of the Premises, the quality and quantity of merchandise, the character of the service, the hours of operation, the appearance and performance of service personnel, and to require any such conditions or practices objectionable to the Department to be remedied by Tenant.

5.07 Nondiscriminatory Services Requirement. Tenant shall provide all services authorized hereunder to its customers and patrons upon a fair, equal, and nondiscriminatory basis and charge fair, reasonable, and nondiscriminatory prices; provided, however, that Tenant may make or give such reasonable and nondiscriminatory discounts, rebates, or other similar price reductions as it may desire to its employees, Airport employees, seniors and military personnel.

5.08 Type of Operation. Tenant shall maintain and operate the Premises in an orderly, proper, and first-class manner, which does not unreasonably annoy, disturb, or offend others at the Airport considering the nature of such operations.

5.09 Replacements and Refunds. Tenant shall, without any additional charge to the purchaser, exchange any product determined by the purchaser to be unsatisfactory, flawed, defective, or of poor quality or shall provide a full refund of the purchase price.

5.10 Credit/Debit Cards. Tenant shall accept as payment for goods and services no less than three (3) nationally-recognized credit and debit cards. The selection of acceptable credit and debit cards shall include at least two (2) of the following: VISA, Master Card, or American Express.

5.11 Services to the General Public. Tenant shall, without charge, provide services such as making change, giving directions, and providing general information to the public. Tenant shall strive to ensure that all of its employees know the layout of the Airport and have the ability to provide passengers and visitors with information regarding the locations of Airport services.

5.12 Personnel.

- (A) Tenant shall maintain a sufficient number of properly trained personnel to ensure that all customers of Tenant receive prompt and courteous service at all times. All such personnel, while on or about the Premises, shall be

polite, clean, appropriately attired, and neat in appearance. Employees of Tenant shall wear appropriate nametags and employees performing similar jobs shall have a similar dress code or wear similar uniforms, which shall be clean and pressed. County shall have the right to object to the demeanor, conduct, and appearance of any employee of Tenant, or any of its invitees or those doing business with it, whereupon Tenant shall take all steps necessary to remedy the cause of the objection.

- (B) The management, maintenance, and operation of the Premises shall be at all times during the Term hereof under the supervision and direction of an active, qualified, competent, and experienced manager, who shall at all times be authorized to represent and act for Tenant within a defined scope. Tenant shall cause such manager to be assigned a duty station or office in the Premises at which he or she shall be available during normal business hours, and Tenant will at all times during the absence of such manager assign, or cause to be assigned, a qualified subordinate to assume and be directly responsible for the carrying out of his or her duties. A local representative of the Tenant shall be available by telephone twenty four (24) hours per day, seven (7) days per week, including holidays, in case of an emergency. The contact information for this representative shall be on record with County at all times.

#### ARTICLE 6

#### RENTAL, FEES, CHARGES AND SECURITY DEPOSIT

##### 6.01 Rental.

- (A) Ground Rental. Tenant shall pay to County an initial annual ground rental of One Dollar and Thirty-Five Cents (\$1.35) per square foot, for approximately 113,221 square feet of ground, or One Hundred Fifty Two Thousand, Eight Hundred Forty-Eight Dollars and Thirty-Five Cents (\$152,848.35) annually, together with applicable sales taxes thereon, payable in equal monthly installments ("Ground Rental").
- (B) Fuel Flowage Fee. Tenant shall pay to County a fuel flowage fee of one-half cent (\$0.005) for each gallon of fuel sold, pumped or otherwise dispensed on or from the Premises ("Fuel Flowage Fee"). Fuel flowage fees shall be payable to County on a monthly basis in accordance with the provisions of Section 6.02 below.
- (C) Concession Fee. Tenant shall pay to County an amount equal to two and one-half percent (2.5%) of annual Gross Revenues that exceed One Million Dollars (\$1,000,000.00) in Gross Revenues per Lease Year ("Concession Fee"). The Concession Fee shall be payable by monthly installment in accordance with the provisions of Section 6.02 below and shall be reconciled on an annual basis in accordance with the provisions of Section 6.04 below.

6.02 Commencement and Time of Payment.

- (A) Ground Rental shall commence on the Date of Beneficial Occupancy and shall be payable in equal monthly installments, in advance, on or before the first (1<sup>st</sup>) day of each and every month throughout the Term of this Lease.
- (B) Payment of Fuel Flowage Fees shall commence on the first (1<sup>st</sup>) day of the third Lease Year. Fuel Flowage Fees shall be payable on or before the twentieth fifth (25<sup>th</sup>) day of each and every month for the preceding calendar month.
- (C) Payment of Concession Fees shall commence on the first (1<sup>st</sup>) day of the third Lease Year. Concession Fees shall be payable on or before the twentieth fifth (25<sup>th</sup>) day of each and every month for the preceding calendar month.
- (D) All payments must be delivered (together with applicable sales taxes), without demand and without any deduction, holdback or set off whatsoever except as expressly set forth in this Agreement, to: Palm Beach County Department of Airports, 846 Palm Beach International Airport, Finance Division, West Palm Beach, Florida 33406, or at such other address as may be directed by the Department from time to time. Payments shall be made payable to "Palm Beach County."

6.03 Monthly Report. On or before the twentieth fifth (25<sup>th</sup>) day of each month, commencing in the third Lease Year, Tenant shall deliver to County an accurate written accounting statement (the "Monthly Report"), in a form and detail satisfactory to County, which includes the following information for the preceding calendar month: (a) the Gross Revenues for the preceding month by category (i.e., by store, restaurant, or other category as County may reasonably request); (b) the monthly Concession Fee amount payable to County; (c) the total number of gallons of fuel sold, pumped or otherwise dispensed on or from the Premises by fuel type and grade; (d) the Fuel Flowage Fees payable to County; and (e) any other information reasonably requested by County regarding Tenant's operations hereunder. The Monthly Report shall be certified by an authorized officer of Tenant. County may require the Monthly Report to be delivered electronically.

6.04 Annual Report. Within ninety (90) days after the end of the third Lease Year and each Lease Year thereafter, Tenant shall provide County with an annual report covering the preceding Lease Year (the "Annual Report"). The Annual Report shall be in a form reasonably satisfactory to County and shall be prepared by an independent Certified Public Accountant, not a regular employee of Tenant, in accordance with Generally Accepted Auditing Standards prescribed by the American Institute of Certified Public Accountants or any successor agency thereto. The Annual Report shall include the following:

- (A) A schedule detailing the Gross Revenues for the preceding Lease Year by month and category (i.e., by store, restaurant, or other category as County may reasonably request), including any exclusion from Gross Revenues.

- (B) A schedule detailing the payments made to County the preceding Lease Year by month and category (i.e., Concession Fee, Fuel Flowage Fees and Ground Rental).
- (C) A schedule detailing the total number of gallons of fuel sold, pumped or otherwise dispensed on or from the Premises by fuel type, grade and month.

The Annual Report shall include an opinion regarding the information contained in schedules listed above. The Annual Report shall not contain a qualified opinion, an adverse opinion, or a disclaimer of opinion, as defined by the American Institute of Certified Public Accountants or any successor agency thereto, regarding the information contained in the required schedules. If the Annual Report indicates that the amount (together with any sales taxes thereon) due and owing for any Lease Year is greater than the amount paid by Tenant to County during such Lease Year, Tenant shall pay the difference to County with the Annual Report. If the amount paid by Tenant to County during any Lease Year exceeds the amount due and owing for such Lease Year, County shall credit the overpayment in the following order: (a) against any past due amounts owed to County by Tenant, including interest and late fees; (b) against currently outstanding, but not yet due, rental payments owed to County by Tenant; and (c) against any other sums payable by Tenant to County. Notwithstanding the foregoing, in the event of an overpayment by Tenant during the last Lease Year, County shall credit the overpayment against any remaining amounts owed to County, including interest and late fees, and refund to Tenant any overpayment amount in excess of the credit. The obligations arising under this Section shall survive the expiration or earlier termination of this Lease until satisfied.

6.05 Accounting Records. Tenant shall keep all books of accounts and records customarily used in this type of operation, and as from time to time may be required by the Department, 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 each Lease Year, including three (3) years following the expiration or earlier termination of this Lease. County shall have the right to audit and examine during normal business hours all such books of accounts and records relating to Tenant's operations hereunder. If the books of accounts and records are kept at locations other than the Airport, Tenant shall, at its sole cost and expense, arrange for them to be brought to a location convenient to the auditors for County in order for County to conduct the audits and inspections as set forth in this Section. Failure to maintain books of accounts and records as required under this Section shall be a material default of this Lease. The obligations arising under this Section shall survive the expiration or termination of this Lease until satisfied.

6.06 Audit by County. Notwithstanding any provision in this Lease to the contrary, County or its representative(s) may at any time perform audits of all or selected operations performed by Tenant under the terms of this Lease. In order to facilitate the audit performed by County, Tenant agrees to make suitable arrangements with the Certified Public Accountant, who is responsible for preparing the Annual Report on behalf of Tenant pursuant to Section 6.04, to make available to County's representative(s) any and all working papers relevant to the report prepared by the Certified Public Accountant. County or its representative(s) shall make available to Tenant a copy of the audit prepared by or on behalf of County. Tenant shall have thirty (30)

days from receipt of the audit report from County or its representative(s) to provide a written response to the Department regarding the audit report. Tenant agrees that failure of Tenant to submit a written response to the audit report in accordance with the requirements of this Section shall constitute acceptance of the audit report as issued.

6.07 Inspector General. County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of Tenant, its officers, agents, employees and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

6.08 Adjustment of Ground Rental.

- (A) On October 1, 2016, and each three (3) year anniversary thereof (each such date, an "Adjustment Date"), the then current Ground Rental rate shall be adjusted in accordance with the provisions of this Section. The new Ground Rental rate shall be determined by an appraisal obtained by County, which shall set forth the fair market Ground Rental for the Premises (excluding any improvements). The appraisal shall be performed, at County's sole cost and expense, by a qualified appraiser selected by County. County shall notify Tenant in writing of the fair market rental of the Premises as established by the appraisal, which shall become the new Ground Rental rate for the Premises. Tenant shall commence paying the new Ground Rental rate on the Adjustment Date. The new Ground Rental rate shall not be less than the Ground Rental Rate for the prior period. This Lease shall automatically be considered as amended to reflect the new Ground Rental rate, without formal amendment hereto, upon County's written notification of the establishment of the new Ground Rental rate applicable to the Premises.
- (B) Notwithstanding the foregoing, the Ground Rental payable hereunder shall not exceed an amount that would be obtained by multiplying the Ground Rental established as of the Effective Date by a fraction, the numerator of which shall be the "Consumer Price Index" (as hereinafter defined) figure for May of the calendar year in which such adjustment is to become effective and the denominator of which shall be the Consumer Price Index figure for April of the calendar year in which this Lease became effective.
- (C) For the purposes hereof, the "Consumer Price Index" shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers, United States city average, all items (1982 - 1984 = 100), not seasonally adjusted, or any successor thereto as promulgated by the Bureau of Labor Statistics of the United States Department of Labor. In the event that the

Consumer Price Index ceases to use the 1982 - 1984 average of one hundred (100) as the standard reference index base period, the then current standard reference index base period shall be utilized. In the event the Consumer Price Index (or successor or substitute Consumer Price Index) is not available, a reliable governmental or other nonpartisan publication evaluating information theretofore used in determining the Consumer Price Index shall be used.

- (D) Notwithstanding any provision of this Lease to the contrary, Tenant acknowledges and agrees that County shall have the right to establish and maintain the rental rates hereunder to ensure compliance with the provisions of Section 710 (rate covenant) of the Bond Resolution.
- (E) Any delay or failure of County in computing the adjustment in rental, as hereinabove provided, shall not constitute a waiver of or in any way impair the continuing obligation of Tenant to pay such adjusted annual rental from the applicable Adjustment Date.

6.09 Late Payments - Interest. Tenant shall pay to County interest at the rate of one and one-half percent (1.5%) per month on any late payments commencing ten (10) days after the amounts are due.

6.10 Security Deposit. Prior to the Effective Date of this Lease, Tenant shall post a security deposit with County in the amount of Fifty Thousand Dollars (\$50,000.00) (the "Security Deposit"). The Security Deposit shall be held by County, without the obligation to pay or earn interest thereon, and may be commingled with other County funds. The Security Deposit shall serve as security for the payment of all sums due to County and shall also secure the performance of all obligations of Tenant to County. In the event of any failure by Tenant beyond any applicable cure periods to pay any rentals or charges when due or upon any other failure to perform any of its obligations or other default under this Lease, then in addition to any other rights and remedies available to County at law or in equity, County shall be entitled to draw on the Security Deposit and apply same to all amounts owed. Upon notice of any such draw, Tenant shall pay to County the amount so drawn in order to restore the Security Deposit to its original amount. The Security Deposit shall not be returned to Tenant until all obligations under this Lease are performed and satisfied. Prior to consent from County to any assignment of this Lease by Tenant, Tenant's assignee shall be required to provide a Security Deposit to County in accordance with the terms and conditions of this Section.

6.11 Triple Net Lease. This Lease shall be deemed to be "triple net" without cost or expense to County including, but not limited to, cost and expenses relating to taxes, insurance, and the maintenance and operation of the Premises.

6.12 Taxes and Fees. Tenant shall pay, on or before their respective due dates, all Federal, State and local taxes and fees, and all special assessments of any kind, which are now or may hereafter be levied upon the Premises (including improvements) or the estate hereby granted, or upon Tenant, or upon the business conducted on the Premises, or upon any of Tenant's property used in connection therewith, or upon any rentals or other sums payable hereunder, including, but not limited to any ad valorem taxes, and sales or excise taxes on

rentals, and personal property taxes against tangible and intangible personal property of Tenant. Tenant hereby covenants and agrees to pay monthly to County, as "Additional Rent," any sales, use or other tax, or any imposition in lieu thereof (excluding State and/or Federal Income Tax) now or hereinafter imposed upon the rents, use or occupancy of the Premises imposed by the United States of America, the State of Florida or Palm Beach County, notwithstanding the fact that the statute, ordinance or enactment imposing the same may endeavor to impose the tax upon County as Landlord, to the extent as applicable.

6.13 Additional Rent. Any and all sums of money or charges required to be paid by Tenant under this Lease other than the annual rent shall be considered "Additional Rent", whether or not the same is specifically so designated and County shall have the same rights to enforce due and timely payment by Tenant of all Additional Rent as are available to County with regards to annual rent.

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

## ARTICLE 7 CONSTRUCTION OF IMPROVEMENTS

7.01 Tenant Construction Requirements. Tenant shall make no additions, alterations or improvements to the Premises, the Cell Phone Waiting Area, or improvements constructed thereon, without the prior written consent of the Department, which consent shall not be unreasonably withheld, conditioned or delayed. Any such additions, alterations or improvements shall be made in accordance with the construction requirements contained herein and as established by the Department. All improvements constructed or placed on the Premises and Cell Phone Waiting Area, including drainage and landscaping, shall be of attractive construction and first-class design; comply with any and all applicable governmental laws, regulations, rules and orders; follow standard construction methods; and be constructed in accordance with the requirements of this Article.

(A) Required Improvements.

- (1) Tenant agrees that it shall construct, at its sole cost and expense, the following improvements: (a) an on-Airport travel plaza within the Premises, which shall consist of a gas station, car wash, convenience store, food service facilities and related amenities, and a public restroom for customers of the travel plaza and the Cell Phone Waiting Area; (b) a paved vehicular parking area, consisting of no less than sixty (60) parking spaces within the Cell Phone Waiting Area, including, but not limited to, lighting, striping, landscaping and signage; and (c) all other improvements/infrastructure necessary to support the development of the Premises and Cell Phone Waiting Area, including, but not



limited to, electrical systems, sewage, wastewater disposal, landscaping, lighting, signage, parking, roadways and driveways necessary for ingress, egress and circulation, stormwater control systems, lighting and security measures, as required (the "Required Improvements"). Construction of the Required Improvements shall be completed no later than twenty four (24) months following the Effective Date.

- (2) The parking spaces to be constructed in the Cell Phone Waiting Area shall be in addition to and not in lieu of any parking Tenant will be required to construct on the Premises to meet building or zoning code requirements. A public access driveway or roadway shall be provided to the Cell Phone Waiting Area.
  - (3) The parties acknowledge that the primary use of the Premises as an on-Airport Travel Plaza may require Tenant to obtain certain zoning approvals, as more particularly described in Attachment "2", RFP Assumptions, of the RFP, prior to development of the Required Improvements. In the event Tenant is denied the required zoning approvals to develop the Premises with the Required Improvements after exercising best efforts to do so, then either party may terminate this Lease upon thirty (30) days written notice to the other party. In the event this Lease is terminated pursuant to this Section, the parties shall be released from all further obligations under this Lease with the exception of those obligations arising hereunder prior to termination or which expressly survive termination. For purposes of this paragraph, the term "best efforts" means the obligation to make every effort a prudent business entity under similar circumstances would make when acting in a determined manner to obtain the intended result by action or expenditure, which is not unreasonably disproportionate or burdensome under the circumstances.
- (B) Minimum Capital Expenditure for Required Improvements. Tenant shall expend not less than Two Million Eight Hundred Eight-Two, Two Hundred Fifty Dollars (\$2,882,250) on the design, construction and installation of Required Improvements (the "Minimum Capital Expenditure"). Capital expenditure costs that may be counted toward the Minimum Capital Expenditure shall include all costs paid for work performed, services rendered and materials furnished for the construction of the Required Improvements, subject to the following terms, conditions and limitations:
- (1) The cost of design (subject to the limitations set forth herein), construction and acquisition of the Required Improvements; bonds; construction insurance; and building, impact and concurrency fees shall be included in the Minimum Capital Expenditure.

- (2) Payments made by Tenant to independent contractors for engineering and architectural design work shall be limited to twelve (12%) of the Minimum Capital Expenditure.
- (3) Only true third party costs and payments made by Tenant shall be included in the Minimum Capital Expenditure.
- (4) Costs for consultants (other than engineering and design consultants, as provided above). Legal fees and accountant fees shall not be included in the Minimum Capital Expenditure.
- (5) Finance and interest expenses shall not be included in the Minimum Capital Expenditure.
- (6) Administrative, supervisory and overhead or internal costs of Tenant shall not be included in the Minimum Capital Expenditure.
- (7) Costs incurred by any of Tenant's affiliates shall not be included in the Minimum Capital Expenditure unless Tenant has obtained written approval from the Department prior to incurring such costs, which approval shall not be unreasonably withheld, conditioned or delayed.
- (8) Costs associated with acquisition or installation of personalty, such as furnishings, trade fixtures and equipment, not permanently affixed to the Premises, or any other personalty whatsoever, shall not be included in the Minimum Capital Expenditure.
- (9) Costs of construction photographs and signage shall not be included the Minimum Capital Expenditure unless Tenant has obtained written approval from the Department prior to incurring such costs, which approval shall not be unreasonably withheld, conditioned or delayed.
- (10) Costs associated with repairs, alterations, modifications, renovations or maintenance of any improvements on the Premises (including, but not limited to, improvements existing on the Premises as of the Effective Date and improvements subsequently constructed on the Premises) shall not be included in the Minimum Capital Expenditure unless Tenant has obtained written approval from Department prior to incurring such costs, which approval shall not be unreasonably withheld, conditioned or delayed.
- (11) Any costs associated with any improvements other than the Required Improvements shall not be included in the Minimum Capital Expenditure unless Tenant has obtained written approval from the Department prior to incurring such costs, which approval shall not be unreasonably withheld, conditioned or delayed.

- (C) Construction Requirements. Prior to constructing any improvements on the Premises or the Cell Phone Waiting Area (including, but not limited to, the Required Improvements), Tenant, without cost to County, shall prepare detailed preliminary construction plans and specifications for the improvements (hereinafter collectively referred to as the "Plans") in accordance with standards established by the Department and deliver the preliminary Plans to the Department for review, comment and adjustment. The Department shall, within thirty (30) Business Days of receipt, review the preliminary Plans and provide a written response to Tenant after receipt of the preliminary Plans. In the event the Department does not approve the preliminary Plans, Tenant will be notified of the reasons for the disapproval and the necessary modifications and/or alterations to the Plans. Tenant shall resubmit modified Plans to the Department within thirty (30) days of the date of the Department's written notice of disapproval. Within one hundred twenty (120) days following approval of the preliminary Plans by the Department, Tenant shall prepare or cause to be prepared final working Plans in substantial conformity to the approved preliminary Plans and shall submit the final working Plans to the Department for approval. The Department shall provide Tenant with any objections to the final working Plans within thirty (30) Business Days of receipt. Upon approval of the final working Plans by the Department, Tenant shall obtain all permits and other government approvals required for the commencement of construction. Prior to commencement of construction, Tenant shall deliver to the Department one complete set of the final working Plans as approved by the governmental agencies exercising jurisdiction thereover. Minor changes from the final working Plans shall be permitted if such changes may be reasonably inferred from the final working Plans, or if they are made to comply with requirements of any governmental agency exercising jurisdiction thereover.
- (D) Within sixty (60) days of Tenant's receipt of a certificate of occupancy or certificate of completion, as appropriate, for improvements constructed pursuant to this Article, Tenant, at its sole cost and expense, shall have prepared and deliver to the Department: (a) one (1) complete set of as-built Mylar drawings and one (1) set of Auto CADD files in the latest version acceptable by the Department; and (b) a detailed statement attested to and certified by an independent Certified Public Accountant ("CPA"), acceptable to County, detailing the total costs incurred by Tenant for the construction of the improvements.
- (E) All improvements constructed upon the Premises and Cell Phone Waiting Area shall be completed at Tenant's sole cost and expense and shall be completed in accordance with the standards established by the Department.
- (F) Tenant acknowledges that the Premises and Cell Phone Waiting Area are located on one of the main entry roadways to the Airport and that it is of

the utmost importance to the parties to ensure that Airport passengers and users are presented with a positive "first impression" of the Airport. Accordingly, County's approval rights shall extend to and include architectural and aesthetic matters, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant acknowledges and agrees that it shall not be deemed unreasonable for County to require commercially reasonable modifications to the types, location, size or height of landscaping, exterior signage or fencing or to exterior building color schemes or decorative elements; to require screening of exterior mechanical equipment (including roof appurtenances, such as exhaust fans and heating and air conditioning units, and electrical equipment), loading docks, dumpsters or other similar items from public view; or to disapprove of the use of building materials that do not reflect a high degree of quality, durability or craftsmanship, such as plastic, or aluminum or vinyl siding. The parties agree to work cooperatively and in good faith to avoid any delays in the design approval process. For purposes of this paragraph, the term "commercially reasonable" means modifications a reasonable business entity would make under similar circumstances, taking into consideration the parties' goal of developing a first class on-Airport travel plaza.

7.02 Construction Bonds. Tenant shall ensure that all improvements are constructed to completion in accordance with the approved Plans and that all persons or entities performing work or providing materials relating to such improvements including, but not limited to, all contractors, subcontractors, laborers, materialmen, suppliers and professionals, are paid in full for such services and materials. Tenant, at its sole cost and expense, shall cause to be made, executed and delivered to County prior to commencement of any improvements to the Premises, a bond, drawn in a form and issued by a company approved by County, guaranteeing compliance by Tenant of its obligations arising hereunder. County shall be named as a dual obligee on the bonds.

7.03 Contractor Requirements. Tenant shall require contractors to furnish for the benefit of County a public construction bond as required under Section 255.05, Florida Statutes, in a form approved by County. Tenant shall require its contractors to name County as a dual obligee on the bond(s). Tenant shall also require contractors to furnish satisfactory evidence of statutory Worker's Compensation insurance, comprehensive general liability insurance, comprehensive auto insurance, and physical damage insurance on a Builder's Risk form with the interest of County endorsed thereon, in such amounts and in such manner as the Risk Management Department may reasonably require. The Risk Management Department may require additional insurance for any alterations or improvements approved hereunder, in such amounts as the Risk Management Department reasonably determines to be necessary.

7.04 No Liens. Tenant agrees that nothing contained in this Lease shall be construed as consent by County to subject the estate of County to liability under the Construction Lien Law of the State of Florida and understands that County's estate shall not be subject to such liability. Tenant shall notify any and all parties or entities performing work or providing materials relating to any improvements made by Tenant of this provision of this Lease. If so requested by County, Tenant shall file a notice satisfactory to County in the Public Records of Palm Beach County,

Florida, stating that County's estate shall not be subject to liens for improvements made by Tenant. In the event that a construction lien is filed against the Premises, Cell Phone Waiting Area or other County property in connection with any work performed by or on behalf of Tenant, Tenant shall satisfy such claim, or transfer same to security, within thirty (30) days from the date of filing. In the event that Tenant fails to transfer or satisfy such claim within the thirty (30) day period, County may do so and thereafter charge Tenant all costs incurred by County in connection with the satisfaction or transfer of such claim, including attorneys' fees, and Tenant shall promptly pay to County all such costs upon demand, as Additional Rent.

## ARTICLE 8 OBLIGATIONS OF TENANT

8.01 Observance of Rules and Regulations. Tenant covenants and agrees to observe and obey, and to require its subtenants, officers, employees, guests, invitees and those doing business with it to observe and obey such rules and regulations of the Department and County (including amendments and supplements thereto) regulating the conduct and operations of Tenant and others on the Premises as may from time to time be promulgated. The obligation of Tenant to require such observance and obedience on the part of its subtenants, guests, invitees and business visitors shall pertain only while such persons are on or in occupancy of any portion of the Premises.

8.02 Noise and Vibrations. Tenant shall take all reasonable measures to:

- (A) Reduce to a minimum, vibrations tending to damage any equipment, structure, building or portion of a building that is on the Premises or is a part thereof, or is located elsewhere on the Airport; and
- (B) Keep the sound level of its operations as low as possible.

8.03 Regulation of Conduct. Tenant shall control the conduct, demeanor and appearance of its employees, subtenants, invitees and others doing business at the Premises.

8.04 Garbage and Debris. Tenant shall be responsible for the provision of trash removal services for the Premises and Cell Phone Waiting Area at Tenant's sole cost and expense and agrees to deposit trash, garbage and debris in appropriate containers for collection.

8.05 Nuisance, Waste or Injury. Tenant shall not commit any nuisance, waste or injury on the Premises and shall not do, or permit to be done, anything which may result in the creation, commission or maintenance of such nuisance, waste or injury on the Premises.

8.06 Vapors, Fumes or Emissions. Tenant shall not create, nor permit to be caused or created upon the Premises any obnoxious odor, smoke, noxious gases or vapors; provided, however, that fumes resulting from the normal operations of properly certified and maintained trucks and other vehicles shall be excepted from this provision and fumes resulting from Tenant's ordinary course of business.

8.07 Utilities Systems. Tenant shall not do or permit to be done anything which may interfere with the effectiveness or accessibility of the utilities systems installed or located on or about the Premises that are also used by other occupants, customers or users of the Airport.

8.08 Overloading of Floor or Paved Areas. Tenant shall not overload any floor or paved area on the Premises and shall repair at its sole cost and expense, any floor, including supporting members, and any paved area damaged by overloading.

8.09 Hazardous Conditions. Tenant shall not do or permit to be done any act or thing upon the Premises that:

- (A) Will invalidate or conflict with any insurance policies covering the Premises or the Airport; or
- (B) May constitute a hazardous condition that increases the risk normally attendant upon the operations permitted by this Lease.

8.10 Flammable Liquids. All flammable liquids that are kept or stored at the Premises must at all times be handled, stored and used in accordance with all applicable Federal, State and local laws.

8.11 Fire Extinguishing System. From time to time and as often as reasonably required by the Department or any governmental authority having jurisdiction, Tenant shall conduct pressure, water flow, and other appropriate tests of the fire extinguishing system and apparatus, which are maintained by Tenant or any subtenant.

8.12 Derelict Vehicles. Tenant shall not permit the temporary or permanent storage of any Derelict Vehicles on the Premises. Tenant shall cause Derelict Vehicles to be removed from the Premises within twenty-four (24) hours after written notice from the Department.

8.13 Emergency Evacuation and Hurricane Plans. Tenant shall provide the Department with emergency evacuation and hurricane plans within thirty (30) calendar days of the Effective Date. These plans shall be detailed procedures of actions to be taken by Tenant and its subtenants, if any, in the event of an emergency evacuation or hurricane warning. Tenant shall update its emergency evacuation and hurricane plans annually, if requested by the Department.

## ARTICLE 9 MAINTENANCE AND REPAIR

9.01 Maintenance/Repair of Premises. Tenant shall be responsible for all repairs and maintenance of the Premises (which shall include, but shall not be limited to, all landscaped areas, paved areas, buildings and improvements thereon), whether such repair or maintenance be ordinary or extraordinary, structural or otherwise. Maintenance and repairs shall be in quality and class comparable to the original work. Tenant shall be required to keep all landscaped areas, paved areas, buildings and other improvements in first-class condition and repair throughout the Term and any extension thereof. Without limiting the generality thereof, Tenant shall:

- (A) Repair and maintain all doors, windows, pavement, equipment, lighting fixtures, furnishings, fixtures, roof, exterior walls, signage and structural support system(s).
- (B) Refurbish the Premises as often is as necessary to preserve the Premises in first-class condition and repair.
- (C) Provide and maintain all fire protection and safety equipment and all other equipment of every kind and nature required by any law, rule, order, ordinance, resolution or regulation of any applicable governmental authority.
- (D) Repair any damage to landscaped areas, paving or other surface(s) of the Premises caused by any oil, gasoline, grease, lubricants or other liquids or substances having a corrosive or detrimental effect thereon.
- (E) Take anti-erosion measures, including but not limited to, the planting and replanting of grasses with respect to all portions of the Premises not paved or otherwise improved.
- (F) Be responsible for the maintenance and repair of all utilities including, but not limited to, service lines for the supply of water, gas service lines, electrical power, telephone and telecommunications conduits and lines, sanitary sewers and storm sewers which are now or which may be subsequently located upon the Premises leased to Tenant and which are used exclusively by Tenant or any of its subtenants.
- (G) Be responsible for the maintenance of the storm drainage system within the Premises.

9.02 Maintenance/Repair of the Cell Phone Waiting Area. Tenant shall be responsible for all repairs and maintenance of the Cell Phone Waiting Area (which shall include, but shall not be limited to, maintenance, replacement and irrigation of all landscaping; and maintenance of paved surfaces, striping, lighting and signage). Maintenance and repairs shall be in quality and class comparable to the original work, to preserve the Cell Phone Waiting Area in good order and first-class condition and repair. Tenant shall keep any areas used for trash and garbage storage prior to removal from Airport in a clean and orderly condition so as not to attract rodents, pests, or birds, or create an offensive odor.

9.03 Cleanliness of Premises/Cell Phone Waiting Area. Tenant shall maintain the Premises and Cell Phone Waiting Area in a neat, orderly, sanitary, clean and presentable condition and shall cause routine janitorial services to be provided for the Premises and Cell Phone Waiting Area at Tenant's sole cost and expense. Tenant shall maintain vehicular parking areas in a clean and neat manner, free from debris. Tenant shall keep the buildings located on the Premises free of insects, vermin and other pests.

9.04 Inspections. The Department shall have the right to enter the Premises at reasonable times to inspect same for the purpose of determining whether Tenant is in compliance

with the requirements of this Lease. In the event Tenant is not in compliance with this Lease, as reasonably determined by the Department, the Department shall provide Tenant with written notice of such noncompliance. Tenant shall commence corrective action to remedy such noncompliance to the satisfaction of the Department within ten (10) days of receipt of the notice of noncompliance. If corrective action is not initiated within ten (10) days and pursued in a diligent manner to completion, the Department may cause the same to be accomplished. Tenant agrees that Tenant shall assume and be liable to County for payment of all costs incurred by County, plus a ten percent (10%) administrative overhead fee, which costs and administrative overhead fee shall constitute Additional Rent hereunder and shall be due and payable within thirty (30) calendar days of the date of the Department's written notice.

9.05 Routine Refurbishment. On or before the anniversary date of the Date of Beneficial Occupancy each year, representatives of County and Tenant shall inspect the Premises and mutually agree upon what, if any, routine Refurbishment is required to maintain the Premises in first-class condition and repair, and Tenant shall promptly undertake such Refurbishment at its sole cost and expense.

#### ARTICLE 10 UTILITIES

10.01 Utility Costs. Tenant shall pay for all electric and all other utility charges for the Premises. Metering devices shall become the property of County upon installation. Extension of utility mains or services shall be at the expense of Tenant and shall become the property of County upon installation.

10.02 Interruption of Service. No failure, delay or interruption in supplying any services for any reason whatsoever (whether or not a separate charge is made therefore) shall be construed to be an eviction of Tenant or grounds for any diminution or abatement of rental or shall be grounds for any claim by Tenant under this Lease for damages, consequential or otherwise.

10.03 Water, Industrial and Sanitary Sewage Systems. Tenant shall operate and maintain, at its sole cost and expense, all the components of any and all water, industrial and sanitary sewage system(s) and storm water drainage facilities serving the Premises within the Premises. Tenant shall provide, operate and maintain adequate facilities for separating, neutralizing and treating industrial waste and foreign materials generated within the Premises and the proper disposal thereof as required by all applicable Federal, State and local laws, regulation and rules, as now or hereafter amended.

#### ARTICLE 11 AIRPORT SECURITY PROGRAM

11.01 Compliance with Security Requirements. Tenant agrees to observe all security requirements and other requirements of the FAA, TSA, County and Department applicable to Tenant operations, as now or hereafter amended, including, but not limited to, Title 49, Parts 1500 et al., of the Code of Federal Regulations, to the extent applicable to Tenant and Tenant's activities hereunder.



11.02 Criminal History Background Checks. Tenant acknowledges that Tenant and its employees, contractors and agents may be subject to federal and state criminal history record check requirements under Federal, State and/or local laws, as may now exist or as may hereafter be enacted, including, but not limited to the Palm Beach County Criminal History Record Check Ordinance (Ordinance No. 2003-030), which laws may require Tenant to remove or restrict access of individuals who are not in compliance with the requirements of such laws. Tenant agrees to comply with and to require its employees, contractors and agents to comply with all Federal, State and local criminal history record check requirements, including, but not limited to, the Palm Beach County Criminal History Record Check Ordinance and any access restrictions imposed thereunder. Tenant acknowledges and agrees that its employees, contractors and agents, who will have access to a "critical facility", as defined in the Palm Beach County Criminal History Record Check Ordinance, will be subject to a national and state fingerprint based criminal history records check. Tenant shall be solely responsible for the financial, scheduling and staffing implications associated with complying with the Palm Beach County Criminal History Record Check Ordinance.

11.03 Security Deficiency. Tenant agrees to rectify any security deficiency or other deficiency that may be determined as such by the Department, County, FAA or TSA. In the event Tenant fails to remedy any such deficiency, County may do so at the cost and expense of Tenant. Tenant acknowledges and agrees that County shall have the right to take whatever action is necessary to rectify any security deficiency or other deficiency as may be determined by the Department, County, FAA or TSA.

## ARTICLE 12 INSURANCE REQUIREMENTS

Unless otherwise specified in this Lease, Tenant shall, at its sole expense, maintain in full force and effect at all times during the Term and any extension thereof, the insurance limits, coverages and endorsements required herein. Tenant acknowledges and agrees that the requirements contained in this Article, or County's review or acceptance of insurance, shall not in any manner limit or qualify the liabilities and obligations assumed by Tenant under this Lease.

12.01 Commercial General Liability. Tenant shall maintain Commercial General Liability Insurance with limits of liability not less than One Million Dollars (\$1,000,000) each occurrence, including coverage for, but not limited to, Premises/Operations, Products/Completed Operations, Contractual Liability, Personal/Advertising Injury and Cross Liability. This coverage shall be provided on a primary basis.

12.02 Business Auto Liability. Tenant shall maintain Business Automobile Liability Insurance with limits of liability not less than One Million Dollars (\$1,000,000) each occurrence for owned, non-owned and hired automobiles. In the event Tenant has no owned automobiles, Tenant shall maintain only Hired & Non-Owned Auto Liability Insurance. This coverage may be satisfied by way of endorsement to the Commercial General Liability/Airport Liability policy, or a separate Business Auto Liability policy. This coverage shall be provided on a primary basis.

12.03 Environmental Liability. Tenant shall maintain Pollution Liability or other similar Environmental Impairment Liability, at a minimum limit of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars annual aggregate (\$2,000,000)

providing coverage for damages including, but not limited to, third-party liability, clean up, corrective action, including assessment, remediation and defense costs. When a self-insured retention or deductible exceeds Ten Thousand Dollars (\$10,000), County reserves the right, but not the obligation, to review and request a copy of Tenant's most recent annual report or audited financial statements in evaluating the acceptability of a higher self-insured retention or deductible in relationship to Tenant's financial condition.

12.04 Business Interruption Insurance. Tenant shall maintain Business Interruption Insurance, which shall include Rent Insurance in an amount not less than the annual Ground Rental payable hereunder. Rent Insurance shall be carried in the name of Tenant as named insured and shall be payable to County to be applied to Ground Rental for the period from the occurrence of the damage or destruction until completion of the restoration or repairs.

12.05 Worker's Compensation & Employers Liability. Tenant shall maintain Worker's Compensation & Employers Liability in accordance with Chapter 440, Florida Statutes, and Federal law. This coverage shall be provided on a primary basis.

12.06 Umbrella or Excess Liability. If necessary, Tenant may satisfy the minimum limits required above Commercial General Liability and/or Business Auto Liability coverage under Umbrella or Excess Liability Insurance. The Umbrella or Excess Liability policy shall have an aggregate limit not less than the highest "each occurrence" limit for the Commercial General Liability, Business or Auto Liability. County shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability policy, unless the Certificate of Insurance notes the Umbrella or Excess Liability policy provides coverage on a "Follow-Form" basis.

12.07 Property, Wind & Flood Insurance.

- (A) Builder's Risk Insurance. Tenant shall maintain Builder's Risk insurance covering the Tenant's building(s), betterments and improvements during the course of construction at the Premises and Cell Phone Waiting Area in an amount at least equal to 100% of the estimated completed property or project value as well as subsequent modifications of that sum. Coverage shall be provided on an All-Risk basis including coverage for the perils of wind and flood. Tenant agrees this coverage shall be provided on a primary basis.
- (B) After construction is completed, Tenant shall maintain:
  - (1) Property insurance in an amount not less than one hundred percent (100%) of the total replacement cost of the buildings, betterments and improvements, including those made by or on behalf of Tenant as well as Tenant's contents located on the Premises. The settlement clause shall be on a Replacement Cost basis. Coverage shall be written with a Special - Cause of Loss (All-Risk) form and include an endorsement for Ordinance & Law in an amount not less than twenty-five percent (25%) of the Property insurance limit. This coverage shall be provided on a primary basis.

- (2) Flood insurance, regardless of the flood zone, in an amount not less than one hundred percent (100%) of the total replacement cost of the buildings, betterments and improvements, including, but not limited to, those made by or on behalf of Tenant as well as Tenant's contents, located on the Premises, or the maximum amount available from the National Flood Insurance Program. This coverage shall be provided on a primary basis.
- (3) Windstorm insurance, unless included as a covered peril in the property insurance, in an amount not less than one hundred percent (100%) of the total replacement cost of the building, betterments and improvements, including, but not limited to, those made by or on behalf of Tenant as well as Tenant's contents, located on the Premises, or the maximum amount available under the Florida Windstorm Underwriting Association. This coverage shall be provided on a primary basis.

12.08 Additional Insured Endorsement. Tenant shall endorse County as an "Additional Insured" on each liability insurance policy required to be maintained by Tenant, except for Worker's Compensation and Business Auto Liability policies. The CG 2011 Additional Insured - Managers or Lessors of Premises, or its equivalent, shall be an endorsement to the Commercial General Liability policy. Other policies, when required, shall provide a standard "Additional Insured" endorsement offered by the insurer. The "Additional Insured" endorsements shall provide coverage on a primary basis. "Additional Insured" endorsements shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents, c/o Palm Beach County Department of Airports, 846 Palm Beach International Airport, West Palm Beach, Florida 33406," or as otherwise acceptable to the Risk Management Department.

12.09 Loss Payee Endorsement. Tenant shall endorse County as a "Loss Payee" on the Property, Flood and Windstorm insurance policies. "Loss Payee" endorsements shall provide coverage on a primary basis and 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," or as otherwise acceptable to the Risk Management Department.

12.10 Certificate of Insurance.

- (A) Tenant shall provide the Department with a certificate of insurance, or certificates of insurance, evidencing limits, coverages and endorsements required herein within the time frames set forth below:
  - (1) Commercial General Liability/Airport Liability insurance prior to the Effective Date;
  - (2) Business Auto Liability insurance prior to allowing vehicles on to the Premises or Cell Phone Waiting Area;

- (3) Business Interruption insurance on or before the Date of Beneficial Occupancy.
  - (4) Environmental Liability insurance on or before the Date of Beneficial Occupancy; and
  - (5) Builder's Risk insurance and Property, Wind and Flood insurance within the time frames set forth in Section 12.07.
- (B) All certificates of insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. In the event coverage is cancelled or is not renewed, Tenant shall provide County a new certificate of insurance or certificates of insurance evidencing replacement coverage no later than thirty (30) days prior to the expiration or cancellation of the coverage. The certificate holder's name and 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," or as otherwise acceptable to the Risk Management Department.

12.11 Waiver of Subrogation. By entering into this Lease, Tenant agrees to a Waiver of Subrogation for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, Tenant shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. The requirements of this paragraph shall not apply to any policy, a condition to which the policy specifically prohibits such an endorsement, or voids coverage if Tenant enters into such an agreement on a pre-loss basis.

12.12 Premiums and Proceeds. Tenant shall not keep, use, sell or offer for sale in or upon the Premises any article which may be prohibited by any, condition, provision, or limitation of the property, flood or wind insurance policies. Tenant shall be responsible for all premiums, including increases, for property, flood and wind insurance policies. Tenant agrees that all property, flood and windstorm insurance proceeds shall be made available for use to promptly replace, repair or rebuild the building, betterments and improvements, including, but not limited to, those made by or on behalf of Tenant.

12.13 Deductibles, Coinsurance & Self-Insured Retention. Tenant shall be fully and solely responsible for any deductible, coinsurance penalty, or self-insured retention; including any losses, damages, or expenses not covered due to an exhaustion of limits or failure to comply with the policy.

12.14 Right to Review or Adjust Insurance. The Risk Management Department may review, modify, reject or accept any required policies of insurance, including, but not limited to, limits, coverages or endorsements, required by this Article from time to time throughout the Term and any extension thereof. County may also reject any insurer or self-insurance plan providing coverage because of poor financial condition or failure to operate legally. In such

event, County shall provide Tenant a written notice of rejection, and Tenant shall comply within thirty (30) days of receipt of the notice.

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

### ARTICLE 13 DAMAGE TO OR DESTRUCTION OF PREMISES

13.01 Removal of Debris. If the Premises, or any portion thereof, is damaged by fire, the elements or other casualty, Tenant shall promptly remove all debris resulting from such damage from the Premises. Tenant shall take all necessary actions to place the Premises in a neat and orderly condition to ensure the safety of persons entering upon the Premises. If Tenant fails to promptly comply with the provisions of this Section, County, upon written notice of not less than ten (10) days, may take such measures as it deems necessary to render the Premises in a neat, orderly, and safe condition. Tenant agrees that Tenant shall fully assume and be liable to County for payment of any costs incurred by County, plus a ten percent (10%) administrative overhead fee, which costs and administrative overhead fee, shall be due and payable to County within thirty (30) days from the date of written notice provided by the Department.

13.02 Tenant's Obligations. Tenant assumes full responsibility for the condition of the Premises and the character, acts and conduct of all persons admitted to the Premises by or with the actual or constructive consent of Tenant or with the consent of any person acting for or on behalf of Tenant. If the Premises, or any portion thereof, are damaged in any way whatsoever, whether by an act of God or by the act, default or negligence of Tenant, or Tenant's agents, employees, officers, representatives, guests, invitees, contractors, patrons or any person admitted to the Premises by Tenant or otherwise, Tenant shall, at its sole cost and expense, restore the Premises to the condition existing prior to such damage. Tenant shall commence restoration within sixty (60) days after any such damage and shall diligently pursue such restoration to completion in accordance with the construction requirements set forth in Article 7. All repairs and restoration shall be performed by Tenant at Tenant's sole cost and expense, in accordance with the construction requirements contained herein. If Tenant fails to restore the Premises as required by this Section, County shall have the right to enter the Premises and perform the necessary restoration. Tenant agrees that Tenant shall fully assume and be liable to County for payment of the costs of restoration, plus a ten percent (10%) administrative overhead fee, which costs and administrative overhead fee, shall be due and payable to County within thirty (30) days from the date of the written notice provided by the Department.

13.03 Insurance Proceeds. Upon receipt by Tenant of the proceeds of any insurance policy or policies required hereunder, the proceeds shall be deposited in an escrow account approved by the Department so as to be available to pay for the cost of any required repair, replacement or rebuilding. The proceeds shall be disbursed during construction to pay the cost of such work. If the amount of the insurance proceeds is insufficient to pay the costs of the required repair, replacement or rebuilding of damaged improvements, Tenant shall pay any

additional sums required to complete the required repair, replacement or rebuilding into the escrow account. If the amount of the insurance proceeds is in excess of the costs of the required repair, replacement or rebuilding, the excess amount shall be remitted to Tenant.

**ARTICLE 14**  
**ENCUMBRANCES**

Except as otherwise provided for herein, Tenant shall not, in any manner, mortgage, pledge or otherwise encumber this Lease, the Premises or any improvements now existing or hereinafter erected or constructed upon the Premises without County's prior written consent, which will not be unreasonably withheld, conditioned or delayed. Any such encumbrance without County's approval shall be null and void. Tenant shall cause to be removed any and all liens of any nature arising out of or resulting out of or resulting from the performance of any work or labor performed upon the Premises or the furnishing of any materials for use upon the Premises, by, on behalf of or at the direction of Tenant, its employees, agents, contractors or subcontractors. This provision shall be construed to include a prohibition against any mortgage, pledge, or encumbrance by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary.

**ARTICLE 15**  
**TITLE TO IMPROVEMENTS**

15.01 Title to Improvements on the Cell Phone Waiting Area. Tenant shall be deemed to be the owner of all improvements constructed by Tenant upon the Cell Phone Waiting Area until such improvements are accepted by County in writing. Upon such acceptance, all improvements constructed or placed upon the Cell Phone Waiting Area by Tenant, title to which has not previously vested in County hereunder, shall become the absolute property of County, and County shall have every right, title, and interest therein, free and clear of any liens, mortgages, and other encumbrances. Upon the request of County, Tenant shall provide County with a bill of sale or other evidence of the transfer of ownership of the improvements together with evidence satisfactory to County that the improvements are free from liens, mortgages and other encumbrances.

15.02 Title to Improvements on the Premises. Tenant shall be deemed to be the owner of all improvements constructed by Tenant upon the Premises during the Term. Upon expiration or earlier termination of this Lease, all improvements constructed or placed upon the Premises by Tenant, title to which has not previously vested in County hereunder, excluding the Fuel System, shall become the absolute property of County, and County shall have every right, title, and interest therein, free and clear of any liens, mortgages, and other encumbrances. Upon the request of County, Tenant shall provide County with a bill of sale or other evidence of the transfer of ownership of the improvements together with evidence satisfactory to County that the improvements are free from liens, mortgages and other encumbrances.

15.03 Fuel System. Tenant shall be fully responsible for the ownership, permitting, maintenance and liability of all components of the Fuel System at all times during the Term and any extension thereof. Upon expiration or earlier termination of this Lease, County may, at County's sole option, require that Tenant assign all right, title and interest to County or, at County's option, to a successor lessee or assignee, and thereafter the Fuel System shall become

the absolute property of County, or successor lessee or assignee, who shall have every right, title and interest therein. Upon the request of County, Tenant shall provide County with a bill of sale or other evidence of the transfer of ownership of the improvements together with evidence satisfactory to County, or the successor lessee or assignee, that the improvements are free from liens, mortgages and other encumbrances. In the event County requires assignment of rights, title and interest in the Fuel System to a third party, Tenant hereby reserves the right to require reasonable indemnification from such third party as to any and all faults, without recourse and without any representation or warranty, expressed or implied, as to merchantability, condition or fitness or compliance with governmental requirements. In the event of removal, partial removal, or modification of the Fuel System, Tenant shall provide a detailed closure report signed and sealed by a professional geologist or other environmental assessment prepared by an independent environmental consultant acceptable to County, and certified to Palm Beach County Board of County Commissioners, detailing the total scope of work completed and any associated environmental findings.

15.04 Removal of Improvements. Notwithstanding any provision of this Lease to the contrary, County shall be entitled, at its option, to have the Premises returned to County free and clear of some or all of the improvements, including, but not limited to, the Fuel System, or any of the Fuel System components, at Tenant's sole cost and expense. In such event, County shall provide timely notification to Tenant of its election to require removal of improvements and, to the extent possible, County shall notify Tenant at least sixty (60) days prior to the expiration or earlier termination of this Lease. Tenant shall have sixty (60) days from date of notice within which to remove the improvements. If Tenant fails to remove the improvements, County may remove the improvements. Tenant agrees that Tenant shall fully assume and be liable to County for payment of all costs of removal of the improvements (whether direct or indirect) incurred by County, plus a ten percent (10%) administrative overhead fee, which costs and administrative overhead fee shall be due and payable to County within thirty (30) days from the date of the written notice provided by the Department.

15.05 Survival. The provisions of this Article shall survive expiration or termination of this Lease.

#### ARTICLE 16

#### EXPIRATION OF LEASE, DEFAULTS, REMEDIES AND TERMINATION

16.01 Expiration. This Lease shall automatically terminate at the end of the Term.

16.02 Default. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Tenant:

- (A) The vacating or abandonment of the Premises by Tenant for a period greater than thirty (30) days.
- (B) The failure by Tenant to make payment of rental or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of ten (10) Business Days after such payment is due and payable.

- (C) The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, where such failure continues for a period of thirty (30) days after written notice thereof from County to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commenced such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion. Nothing contained in this paragraph shall be deemed to alter or affect the cure period for performance of any covenant, condition or provision for which a specific time period is provided in this Lease.
- (D) To the extent permitted by law, (a) the making by Tenant or any guarantor thereof of any general assignment, or general arrangement for the benefit of creditors; (b) the filing by or against Tenant of a petition to have Tenant adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy [unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days]; (c) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or (d) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days.

Notwithstanding any provision of this Lease, Tenant acknowledges and agrees that the Department may require Tenant to immediately cease any activity, which could result in an airport hazard or endanger safety of any other Airport user, as reasonably determined by the Department.

16.03 Remedies. In the event of any default or breach by Tenant, County may at any time thereafter, with or without notice or demand and without limiting any other right or remedy which County may have under the law by reason of such default or breach, elect to exercise any one of the following remedies:

- (A) Declare the entire rent for the balance of the Term or any part thereof due and payable forthwith, and bring an action for recovery thereof.
- (B) Terminate Tenant's right to possession of the Premises by any lawful means and re-enter and re-take possession of the Premises for the account of Tenant, in which case rent and other sums hereunder shall be accelerated and due in full, and Tenant shall be liable for the difference between the rent which is stipulated to be paid hereunder plus other sums as described herein and what County is able to recover from its good faith efforts to relet the Premises, which deficiency shall be paid by Tenant. Upon such reletting, all rentals received by County shall be applied, first to the payment of any indebtedness, other than rent due hereunder from Tenant; second, to the payment of any reasonable costs and expenses of



such reletting, which shall include all damages incurred by County due to Tenant's default including, but not limited to, the reasonable cost of recovering possession of the Premises including reasonable attorneys' fees, and reasonable real estate commissions paid by County relating to the unexpired term of this Lease; third, to the payment of rent due and unpaid hereunder; and the remainder, if any, shall be paid to Tenant.

- (C) Treat this Lease as terminated and re-enter and re-take possession of the Premises for the account of County, thereby terminating any further liability under this Lease on the part of Tenant and County. Notwithstanding the foregoing, County shall have a cause of action to recover any rent remaining unpaid when County retakes possession of the Premises for the account of County.
- (D) Stand by and do nothing, holding Tenant liable for the rent as it comes due.
- (E) Pursue any other remedy now or hereinafter available to County under the laws of the State of Florida.

Notwithstanding anything in this Lease to the contrary, County shall have the right to bring an action for its damages upon the occurrence of a default by Tenant and County reserves all rights which laws of the State of Florida confer upon a landlord against a tenant in default. Tenant hereby waives any additional notice Tenant may be entitled to pursuant to Florida law.

16.04 Termination by Tenant. Tenant may terminate this Lease, if Tenant is not in default of this Lease (including, but not limited to, its payments to County hereunder), by giving County sixty (60) days advance written notice, upon or after the happening of any one of the following events:

- (A) The issuance by any court of competent jurisdiction of an injunction in any way preventing the use of the Airport for Airport purposes or a substantial part of the Premises for the purposes permitted hereunder, which injunction remains in force for a period of at least ninety (90) days.
- (B) The default by County in the performance of any covenant or agreement herein required to be performed by County and the failure of County to remedy such default for a period of thirty (30) days after receipt from Tenant of written notice to remedy same; provided, however, that no notice of cancellation, as provided herein, shall be of any force or effect if County shall have remedied the default prior to receipt of Tenant's notice of cancellation; or in the event the same cannot be cured within such thirty (30) day period and County has commenced such cure and thereafter diligently pursues the same until completion.
- (C) The lawful assumption by the United States Government or any authorized agency thereof, of the operation, control or use of the Airport and facilities, or any substantial part or parts thereof, in such a manner as to

substantially restrict the operation of Tenant, for a period of at least ninety (90) days.

16.05 Default by County. County shall not be in default unless County fails to perform obligations imposed upon County hereunder within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to County, specifying wherein County has failed to perform such obligations; provided, however, that if the nature of County's default is such that more than thirty (30) days are reasonably required for its cure, then County shall not be deemed to be in default if County commenced such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion.

16.06 Surrender of Premises. Tenant expressly agrees that it shall immediately surrender the Premises to County in good condition, upon expiration or termination of this Lease, depreciation and wear from ordinary use for the purpose for which the Premises were leased being excepted. In the event Tenant shall holdover, refuse, or fail to give up the possession of the Premises at the termination of this Lease, Tenant shall be liable to County for any and all damages, and in addition thereto, Tenant shall also be strictly liable to pay to County during the entire time period of such holdover, double rental, as provided for in Section 83.06, Florida Statutes. Tenant shall remove all of its personal property from the Premises prior to the expiration of this Lease. Any personal property of Tenant not removed by Tenant shall, at the option of County, become the property of County, or alternatively, may be disposed of by County at Tenant's expense.

#### ARTICLE 17 ASSIGNMENT, TRANSFER AND SUBLETTING

Tenant shall not, in any manner, assign, transfer or otherwise convey an interest in this Lease, the Premises or any portion thereof ("Assignment"), without the prior written consent of County, which consent shall not be unreasonably withheld, conditioned or delayed. County shall not be deemed to have withheld its consent unreasonably unless County has been furnished evidence establishing that the proposed assignee: (a) has the ability to make the rental payments required under this Lease; (b) has sufficient experience to operate the facilities constructed or to be constructed on the Premises in the manner required hereunder; (c) has the ability to otherwise perform all of the terms, conditions and covenants of this Lease; and (d) agrees to assume all obligations, responsibilities and liabilities of Tenant arising on and after the effective date of the Assignment. Any attempted Assignment without County approval shall be null and void. In the event County consents in writing to an Assignment, Tenant shall have the right to assign this Lease to the extent permitted by County's consent to such Assignment, provided that the use of the Premises shall be limited to the same uses as are permitted under this Lease. Any permitted Assignment shall be subject to the same conditions, obligations and terms as set forth herein. Tenant shall have the right to sublease the Premises subject to the prior written consent of County, which consent shall not be unreasonably withheld, conditioned or delayed. All subleases shall be subject to the same conditions, obligations, and terms as set forth herein and Tenant shall be fully responsible for the observance by its subtenants of the terms and covenants contained in this Lease. Notwithstanding any provision of this Lease to the contrary, the consent of County shall not be required for an Assignment of this Lease in its entirety where all or substantially all of the assets of Tenant are acquired by another entity by reason of a merger acquisition, or other business reorganization, provided that Tenant provides written notice to

County ten (10) days prior to the change in ownership. County may freely assign this Lease at any time without the consent of Tenant, and upon assumption by such assignee of County's obligations hereunder, County shall be released from all liability and obligation arising hereunder upon such assignment.

**ARTICLE 18**  
**RIGHTS OF LEASEHOLD MORTGAGEES**

18.01 Right to Mortgage. Tenant may encumber its leasehold estate and interest in the Premises by mortgage, security agreement or other such instrument (any such instrument is hereinafter referred to as "Leasehold Mortgage", and the holder thereof is referred to as "Leasehold Mortgagee") during the Term of this Lease; provided, however, that the entire proceeds of any loan or future advance secured thereby shall be utilized for the construction and improvement of the Premises and further provided that County shall not be obligated to, nor deemed to have subjected or subordinated County's fee simple interest in the Premises to any Leasehold Mortgage, nor subordinated County's interest in this Lease to such Leasehold Mortgage. County's interests in the fee and this Lease are and shall remain at all times superior and prior in right to any Leasehold Mortgage.

18.02 Notice of Default. A Leasehold Mortgagee may provide written notice of its Leasehold Mortgage in the same manner and at the same address as required by this Lease for notices delivered to County, together with the name and address of the Leasehold Mortgagee. In the event such notice is delivered to County, County, upon serving Tenant with any notice under this Lease, shall also serve a copy of that notice upon the Leasehold Mortgagee in the same manner as required by this Lease for notices delivered to Tenant. The delivery shall be made at the address the Leasehold Mortgagee shall have designated in writing to County. County agrees to give the Leasehold Mortgagee written notice of any default by Tenant and of County's intention to terminate this Lease for any reason at least sixty (60) days before the effective date of such termination. The Leasehold Mortgagee shall have the right to perform any of Tenant's covenants or to cure any default by Tenant which is curable by it or to exercise any right conferred upon Tenant by the Terms of this Lease within such sixty (60) day period or such longer period if the default by Tenant is of such nature that it cannot be cured within such sixty (60) day period, provided that the Leasehold Mortgagee diligently and actively undertakes to cure such default and pursues such cure to completion within a reasonable period of time under the circumstances. The sole remedy available to Leasehold Mortgagee due to the failure of County to provide Leasehold Mortgagee with notice as required hereunder shall be the tolling of the applicable cure period afforded to Leasehold Mortgagee herein until the earlier of provision of such notice to Leasehold Mortgagee or Leasehold Mortgagee's receipt of actual knowledge of such notice. County's failure to provide Leasehold Mortgagee notice as required hereunder shall not alter or affect Tenant's rights or obligations under this Lease, nor extend any cure period afforded to Tenant hereunder, or entitle Tenant to damages or other remedies.

18.03 Opportunity to Cure. County will recognize the Leasehold Mortgagee as the tenant of the Premises and accept the performance by the Leasehold Mortgagee of Tenant's obligations under this Lease, upon written notice from the Leasehold Mortgagee to County that it has taken possession of the Premises, for so long as the Leasehold Mortgagee is in possession of the Premises, and provided that Leasehold Mortgagee diligently and actively undertakes to cure and pursues such cure to completion within a reasonable period of time under the circumstances

any then existing defaults by Tenant, and performs Tenant's obligations under this Lease. County agrees that it will not unreasonably withhold or delay its consent to any future assignment by the Leasehold Mortgagee of the rights of Tenant under this Lease; provided that: (a) there is no existing default under this Lease or the Leasehold Mortgagee or such assignee diligently and actively undertakes to cure any such default and pursues such cure to completion as provided above, and (b) the assignee has similar recent experience and knowledge regarding operations being conducted on the Premises and has the financial ability to perform under this Lease, as reasonably determined by County. Upon any valid permitted assignment of this Lease by the Leasehold Mortgagee, Leasehold Mortgagee shall have no further liability under this Lease for obligations arising after such assignment. Any action by the Leasehold Mortgagee to cure any default by Tenant or otherwise to exercise Tenant's rights under this Lease shall not be deemed to be an assumption by the Leasehold Mortgagee of Tenant's obligations under this Lease unless the Leasehold Mortgagee takes possession of the Premises pursuant to a foreclosure or other enforcement of its security interest in this Lease or otherwise expressly assumes such obligations in writing. If the Leasehold Mortgagee takes possession of the Premises or succeeds to the interest of Tenant, County shall accept the Leasehold Mortgagee as tenant under this Lease, and this Lease shall continue in full force and effect, provided that there are no then existing uncured defaults under this Lease, and Leasehold Mortgagee performs all obligations of Tenant under this Lease.

18.04 No Lease Amendments. This Lease shall not be amended, modified, terminated or canceled by reason of the exercise of any option or election by Tenant under this Lease, or by the giving of any notice by Tenant under this Lease, unless such amendment, modification, termination or cancellation is assented to in writing by any Leasehold Mortgagee. Any such attempted amendment or modification, termination or cancellation without that assent shall be void.

18.05 Limitation of Liability. A Leasehold Mortgagee shall only be liable to perform the obligations imposed on Tenant in this Lease during the period that the Leasehold Mortgagee is in possession or ownership of the leasehold estate created by this Lease.

18.06 Certificates. Each party agrees, at any time and from time to time upon not less than twenty (20) days prior written notice by the other party, to execute, acknowledge and deliver to the other party a statement in writing certifying: (a) whether this Lease is in full force and effect, and if it is alleged that this Lease is not in full force and effect, setting forth the nature thereof in reasonable detail; (b) whether this Lease has been supplemented or amended; specifying the manner in which it has been supplemented or amended; (c) the date to which all rental payments have been made; (d) the commencement and expiration date of this Lease; and (e) whether or not, to the best of the knowledge of the signer of such statement, the other party is in default or may be with notice or the passage of time, or both, in keeping, observing or performing any term, covenant, agreement, provision, condition or limitation contained in this Lease and if in default, specifying each such default, it being intended that any such statement delivered pursuant to this paragraph may be relied upon by the other party, any prospective assignee of the other party's interest in this Lease or any Leasehold Mortgagee, but reliance on such certificate may not extend to any default as to which the signer shall not have had actual knowledge.

18.07 Subordination of Landlord's Lien. County does hereby subordinate its statutory landlord's lien to the lien and operation of any Leasehold Mortgage. This subordination of County's lien shall be self operative.

18.08 Release of Lien. Upon the scheduled expiration or early termination of this Lease, provided such termination is in accordance with the terms of this Lease including, without limitation, this Article, Tenant and/or Leasehold Mortgagee, as appropriate, shall promptly execute, in recordable form, and deliver to County, a termination of lease, termination of memorandum of lease, release of mortgage and such other documents as County may reasonably require (collectively, the "Release Documents"). In the event Tenant or Leasehold Mortgagee fails to provide the foregoing Release Documents within thirty (30) days after County's written request therefore, County shall be entitled to execute the same for and on behalf of Tenant and/or Leasehold Mortgagee and Tenant and Leasehold Mortgagee hereby appoint County as attorney in fact for the limited purpose of execution of such Release Documents.

18.09 Indemnification. By acceptance of the rights and benefits conferred upon a Leasehold Mortgagee by this Article, such Leasehold Mortgagee agrees, for itself and its successors and assigns, that it shall be bound by the terms of this Article as if such Leasehold Mortgagee were a direct party hereto and further agrees to protect, defend, reimburse, indemnify and hold County, its agents, employees, and elected officers harmless from and, against all claims, liability, expense, loss, costs, damage, or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise arising due to the Leasehold Mortgagee's negligence or willful misconduct in connection with its entry upon the Premises for inspection or other purposes.

#### ARTICLE 19 INDEMNIFICATION

Tenant agrees to protect, defend, reimburse, indemnify and hold County, its agents, employees and elected officers and each of them, free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages (including attorney fees at trial and appellate levels) and causes of action of every kind and character against, or in which County is named or joined, arising out of this Lease or Tenant's use or occupancy of the Premises, including, without limitation those arising by reason of any damage to property or the environment, or bodily injury (including death) incurred or sustained by any party hereto, or of any party acquiring any interest hereunder, and any third or other party whomsoever, or any governmental agency, arising out of or incident to or in connection with Tenant's acts, omissions or operations hereunder, or the performance, non-performance or purported performance of Tenant or any breach of the terms of this Lease; provided, however, Tenant shall not be responsible to County for damages resulting out of bodily injury (including death) or damages to property which are judicially determined to be attributable to the negligence of County, its respective agents, servants, employees and officers. Tenant further agrees to hold harmless and indemnify County for any fines, citations, court judgments, insurance claims, restoration costs or other liability resulting from or in any way arising out of or due to Tenant's activities or operations or use of the Premises whether or not Tenant was negligent or even knowledgeable of any events precipitating a claim or judgment arising as a result of any situation involving the activities. This indemnification shall be extended to include all deliverers, suppliers, furnishers of material, or anyone acting for, on behalf of or at the request of Tenant. Tenant recognizes the

broad nature of this indemnification and hold-harmless provision, and acknowledges that County would not enter into this Lease without the inclusion of such clause, and voluntarily makes this covenant and expressly acknowledges the receipt of Ten Dollars (\$10.00) and such other good and valuable consideration provided by County in support of this indemnification in accordance with the laws of the State of Florida. The obligations arising under this Article shall survive the expiration or termination of this Lease.

## ARTICLE 20 SIGNS

Tenant may install and operate upon or in the Premises, and at Tenant's sole cost and expense, signs representing the businesses operating on the Premises. Tenant acknowledges County's desire to maintain a high level of aesthetic quality on the Airport and agrees that all signage shall be of first class design and appearance. Tenant covenants and agrees that, in the exercise of its privilege to install and maintain appropriate signage on the Premises, Tenant shall submit to County the size, design, content, and intended location of each and every sign it proposes to install on or within the Premises. No signs of any type shall be installed on or within the Premises without the prior written approval of County as to the size, design, content, and location. Handwritten, hand lettered and hand held signs are prohibited. County shall have the right to require Tenant to remove any unapproved signage. In the event Tenant fails, refuses or neglects to remove any unapproved signage within a fifteen (15) days of County's written notice to do so, County may also elect, at its sole option, to cause such signage to be removed on behalf of and for the account of Tenant. Tenant shall reimburse County the actual cost of such removal services, plus a ten percent (10%) administrative overhead within thirty (30) days of the date of the invoice therefor. County's failure to require removal of any sign placed on or about the Premises without written permission shall not be deemed a waiver of County's authority to require removal of any unapproved sign.

## ARTICLE 21 LAWS, REGULATIONS AND PERMITS

21.01 General. Tenant agrees that throughout the Term and any extension thereof; Tenant shall at all times be and shall remain in full and complete compliance with all applicable Federal, State and local laws, statutes, regulations, rules, rulings, orders, ordinances and directives of any kind or nature without limitation, as now or hereafter amended, including, but not limited to, FAA Advisory Circulars and Airport Rules and Regulations.

21.02 Permits and Licenses Generally. Tenant agrees that it shall, at its sole cost and expense, be strictly liable and responsible for obtaining, paying for, and maintaining current, and fully complying with, any and all permits, licenses and other governmental authorizations, however designated, as may be required at any time throughout the Term of this Lease or any extension thereof by any Federal, State or local governmental entity or any court of law having jurisdiction over Tenant or Tenant's operations and activities, for any activity of Tenant's conducted on the Premises and for any and all operations conducted by Tenant including ensuring that all legal requirements, permits, and licenses necessary for or resulting, directly or indirectly, from Tenant's operations and activities on the Premises have been obtained and are in full legal compliance. Upon the written request of County, Tenant shall provide to County certified copies of any and all permits and licenses which County may request.

21.03 Air and Safety Regulation. Tenant agrees that it shall conduct its operations and activities under this Lease in a safe manner, shall comply with all safety regulations of the Department and with safety standards imposed by applicable Federal, State and local laws and regulations and shall require the observance thereof by all employees, subtenants, contractors, business invitees and all other persons transacting business with or for Tenant resulting from, or in any way related to, the conduct of Tenant's business on the Premises. Tenant shall procure and maintain such fire prevention and extinguishing devices as required by County and by law and shall at all times be familiar and comply with the fire regulations and orders of County and the fire control agency with jurisdiction at the Airport, as same may now exist or hereafter come into being. Tenant hereby agrees that neither Tenant, nor employee or contractor or any person working for or on behalf of Tenant, shall require any personnel engaged in the performance of Tenant's operations to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health or safety, as determined by standards adopted pursuant to the Occupational Safety and Health Act of 1970, as same may be amended from time to time, as well as all State and local laws, regulations, and orders relative to occupational safety and health.

21.04 Environmental and Natural Resource Laws, Regulations and Permits.

- (A) Notwithstanding any other provision of the Lease to the contrary, Tenant hereby expressly covenants, warrants, guarantees and represents to County, upon which County expressly relies, that Tenant is knowledgeable of any and all Federal, State and local governmental laws, ordinances, regulations, orders and rules, without limitation, which govern or which in any way, apply to the direct or indirect results and impacts to the environment and natural resources due to, or in any way resulting from, the conduct by Tenant of its operations pursuant to this Lease or upon the Premises. Tenant agrees that it shall comply with all applicable Federal, State and local laws, regulations and ordinances protecting the environment and natural resources, now existing or hereafter adopted or amended, including, but not limited to, the Federal Clean Water Act, Safe Drinking Water Act, Clean Air Act, Resource Conservation Recovery Act, and Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("Superfund").
- (B) Tenant acknowledges and understands that its operations performed pursuant to this Lease may involve the generation, processing, handling, storing, transporting and disposal of certain hazardous and/or toxic materials which are, or may be, subject to regulation by Federal, State or local laws, ordinances, regulations, rules, orders or other governmental rules and requirements.
- (C) Tenant expressly covenants, warrants, guarantees and represents to County, upon which County expressly relies, that Tenant is knowledgeable of all such governmental laws and regulations governing hazardous and/or toxic waste, ground water contamination, air and water pollution, oil spills, sanitary and industrial waste, pollutants, cooling water

and industrial storm water drainage. Tenant further expressly covenants, warrants, guarantees and represents that it is fully qualified to handle and dispose of any and all such hazardous and/or toxic waste materials, and all other pollutants and contaminants, in a manner which is both safe and in full compliance with any and all applicable Federal, State and local laws and regulations.

- (D) Tenant hereby expressly assumes and accepts full responsibility and liability for compliance with all such governmental laws and regulations in the handling and disposal of any and all hazardous waste and/or toxic materials, and all pollutants or contaminants of any kind, resulting from or arising out of Tenant's operations conducted on the Premises, and Tenant shall, prior to commencement of any such operations pursuant to this Lease, secure any and all permits, and properly make all necessary notifications as may be required by any and all governmental agencies having jurisdiction over parties or the subject matter thereof. Tenant further represents, warrants, guarantees and covenants to County, upon which County hereby expressly relies, that Tenant, its employees, agents, contractors, and those persons that are required to be so trained working for, or on behalf of, Tenant have been fully and properly trained in the handling of all such hazardous and toxic waste materials, and other pollutants and contaminants, and that such training, at a minimum, complies with any and all applicable Federal, State and local laws, ordinances, regulations, rulings, orders and standards, as now or hereafter amended.
- (E) Tenant shall provide to County satisfactory documentary evidence of all such requisite legal permits and notifications, as hereinabove required and as may be further required, upon request, from time to time by County.
- (F) If Tenant is deemed to be a generator of hazardous waste, as defined by State, Federal or local law:
  - (1) Tenant shall obtain an EPA identification number and the appropriate generator permit and shall comply with all requirements imposed upon a generator of hazardous waste including, but not limited to, ensuring that the appropriate transportation and disposal of such materials are conducted in full compliance with the law;
  - (2) Provisions shall be made by Tenant to have an accurate inventory list (including quantities) of all such hazardous, toxic, and other contaminated or polluted materials, whether stored, disposed of, or recycled, available at all times for inspection at any time on the Premises by County;
  - (3) Notification of all hazardous waste activities by Tenant shall be made to the Palm Beach County Solid Waste Authority, Palm Beach County Environmental Resources Management Department, and



such other agencies as County may from time to time designate, by Tenant so that it shall be included as a County Generator of such waste; and

- (4) Tenant agrees that an emergency coordinator and phone number shall be furnished to the Department, Risk Management Department - Safety Division, and to all appropriate governmental entities having jurisdiction thereof in case of any spill, leak, or other emergency situation involving hazardous, toxic, flammable, and/or other pollutant/contaminated materials.
- (G) Violation of any part of the foregoing provisions or disposition by Tenant of any sanitary waste, pollutants, contaminants, hazardous waste, industrial cooling water, sewage or any other materials in violation of the provisions of this Section shall be deemed to be a default under this Lease and shall be grounds for termination of this Lease unless cured within ten (10) days of notice from the Department or as expeditiously as possible if the default cannot be completely cured within the ten (10) day period. Tenant shall be strictly liable for, and hereby expressly assumes all responsibility for all citations, fines, environmental controls and monitoring, clean-up and disposal, restoration and corrective measures resulting from or in any way connected with the improper use, handling, storage, and/or disposal of all pollutants or contaminated materials, as same are defined by law, by Tenant or by Tenant's employees, invitees, suppliers of service or furnishers of materials or any other person whomsoever, regardless of whether or not a default notice has been issued and notwithstanding any other obligations imposed upon Tenant pursuant to the terms of the Lease. All such remedies of County with regard to environmental requirements as set forth herein shall be deemed cumulative in nature and shall survive expiration or termination of this Lease.
- (H) Tenant agrees to protect, defend, reimburse, indemnify and hold County, its agents, employees and elected officers harmless from and against any and all claims, liability, expenses, losses, costs, fines and damages (including reasonable attorney fees at trial and appellate levels), arising from, resulting out of or in any way caused by or connected to Tenant's failure to comply with any and all applicable Federal, State and local laws, ordinances, regulations, rulings, orders and standards, now or hereafter promulgated for the purpose of protecting the environment or natural resources. Tenant understands that this indemnification is in addition to and is a supplement of Tenant's indemnification agreement set forth in Article 19 of this Lease. Tenant acknowledges the broad nature of this indemnification and hold-harmless clause and that County would not enter into this Lease without the inclusion of such clause, and voluntarily makes this covenant and expressly acknowledges the receipt of Ten Dollars (\$10.00) and such other good and valuable consideration provided by County in support of this indemnification in accordance with the laws of

the State of Florida. The obligations arising under this paragraph shall survive the expiration or termination of this Lease.

21.05 Environmental Assessment. Tenant acknowledges receipt of the County Assessment. At least one hundred twenty (120) days, but no more than one hundred eighty (180) days, prior to the expiration or earlier termination of the Lease, Tenant shall cause a Phase I Environmental Assessment (the "Phase I ESA") of the Premises to be prepared and delivered to County. If the Phase I ESA indicates that there is a potential that environmental conditions may exist on the Premises or the adjacent property based on activities that have occurred or are occurring on the Premises, Tenant shall promptly cause a Phase II Environmental Assessment of the Premises to be prepared and delivered to County. The ESAs shall be prepared by a professional geologist or engineer licensed by the State of Florida, acceptable to County, and shall be prepared to meet the standards of practice of the American Society of Testing and Materials, to determine the existence and extent, if any, of Hazardous Substances on the Property. The ESAs shall state that County is entitled to rely on the information set forth in the ESAs. The ESAs shall be prepared and delivered to County at Tenant's sole cost and expense. The Phase II ESA must address any potential environmental conditions or areas of contamination identified in the Phase I portion of the assessment. To the extent the environmental conditions and/or contamination identified in the environmental assessments are a result of Tenant and/or its officers, employees, subtenants, contractors or invitees activities or operations on the Premises, Tenant shall, at its sole cost and expense, promptly commence and diligently pursue to completion any assessment, remediation, clean-up and/or monitoring of the Premises necessary to bring the Premises into compliance with Environmental Laws. The requirements of this paragraph shall be in addition to any other provisions of the Lease relating to the condition of the Premises and shall survive the termination or expiration of the Lease.

#### ARTICLE 22 AMERICANS WITH DISABILITIES ACT

Tenant shall comply with the applicable requirements of the Americans with Disabilities Act and the State of Florida Accessibility Requirements Manual, and any similar or successor laws, ordinances, rules, and regulations, including cooperation with County, concerning the same subject matter.

#### ARTICLE 23 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 EMPLOYEES, AGENTS, OR INVITEES DURING THE TERM OF THIS LEASE OR ANY EXTENSION THEREOF INCLUDING, BUT NOT LIMITED TO, LOSS, DAMAGE OR INJURY TO THE IMPROVEMENTS OR PERSONAL PROPERTY OF TENANT OR TENANT'S BUSINESS INVITEES THAT MIGHT BE LOCATED OR STORED ON THE PREMISES, UNLESS SUCH LOSS, DAMAGE OR INJURY IS JUDICIALLY DETERMINED TO HAVE BEEN CAUSED BY COUNTY'S NEGLIGENCE OR IS CAUSED BY COUNTY'S BREACH OF ITS OBLIGATIONS UNDER THIS LEASE. ABSENT FRAUD OR WILLFUL

MISCONDUCT BY COUNTY, 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. TENANT RELEASES COUNTY FROM ANY AND ALL LIABILITY RELATING TO ANY INFORMATION PROVIDED BY COUNTY RELATING TO THIS LEASE. FURTHERMORE, TENANT ACKNOWLEDGES AND AGREES THAT ITS USE OF ANY SUCH INFORMATION, WHETHER PREPARED OR PROVIDED BY COUNTY OR OTHERWISE, IN DETERMINING WHETHER TO ENTER INTO THIS LEASE WAS AT ITS SOLE RISK.

#### ARTICLE 24 GOVERNMENTAL RESTRICTIONS

24.01 Federal Right to Reclaim. In the event a United States governmental agency shall demand and take over the entire facilities of the Airport or the portion thereof wherein the Premises are located for public purposes for a period in excess of ninety (90) days, either party may terminate this Lease by providing written notice of such termination to the other party and the parties shall thereupon be released and fully discharged from any and all liability hereunder arising after such termination or as a result thereof. This Section shall not act or be construed as a waiver of any rights Tenant may have against the United States as a result of such taking.

24.02 County Tax Assessment Right. None of the terms, covenants and conditions of this Lease shall in any way be construed as a release or waiver on the part of County, as a political subdivision of the State of Florida, or any of the public officials of County, of the right to assess, levy, and collect any ad valorem, non ad valorem, license, personal, intangible, occupation, or other tax which shall be lawfully imposed on the Premises, the business or property of Tenant.

24.03 Height Restriction. Tenant expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Premises to such a height so as to comply with Title 14, Part 77 of the Code of Federal Regulations, as now or hereafter amended.

24.04 Right of Flight. County reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises together with the right to cause in said airspace such noise as may be inherent in the operations of aircraft now known or hereafter used, for navigation of, or flight in, said airspace for landing on, taking off from, or operating on the Airport.

24.05 Operation of Airport. Tenant expressly agrees for itself, its sublessees, successors and assigns, to prevent any use of the Premises which would interfere with or adversely affect the operation, maintenance or development of the Airport, or otherwise constitute an Airport hazard.

24.06 Release. Tenant acknowledges that noise and vibration are inherent to the operation of Airport and hereby releases County from any and all liability relating to the same.

24.07 Exclusive Rights. Notwithstanding any provision of this Lease to the contrary, Tenant understands and agrees that the rights granted under this Lease are nonexclusive, other than the exclusive right of use of the Premises, and that County may grant similar privileges to another lessee or other lessees on other parts of the Airport.

24.08 Hazardous Wildlife Attractants. Tenant shall be prohibited from using the Premises in a manner which attracts, or has the potential to attract, hazardous wildlife to or in the vicinity of the Airport. Tenant acknowledges that water detention and retention areas are considered wildlife attractants and shall request the approval of the Department prior to constructing a water detention or retention area within the Premises. If approved by the Department, water detention or retention areas shall be in compliance with the siting, design and construction requirements of the Department. Tenant further agrees to comply with the provisions of Federal Aviation Administration Advisory Circular No. 150/5200-33, as now or hereafter amended, as such circular is interpreted by the Department.

## ARTICLE 25 NON-DISCRIMINATION

25.01 Non-Discrimination in County Contracts. Tenant acknowledges that County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Tenant is prohibited from discriminating against any employee, applicant, or client because of race, color, creed, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, or gender identity and expression.

25.02 Federal Non-Discrimination Covenants.

- (A) Tenant, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:
- (1) In the event facilities are constructed, maintained or otherwise operated on the Premises for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Tenant shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, as said regulations may be amended.
  - (2) No person, on the grounds of race, color or national origin, shall be unreasonably excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in Tenant's personnel policies and practices or in the use or operation of Tenant's services or facilities.
  - (3) Tenant agrees that in the construction of any improvements on, over, or

under Airport land and the furnishing of services thereon, no person, on the grounds of race, color, or national origin, shall be unreasonably excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.

- (4) Tenant shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, as said regulations may be amended.
  - (5) In the event of a breach of any of the above nondiscrimination covenants, County shall have the right to terminate this Lease and re-enter the Assigned Premises as if this Lease had never been made or issued. This Lease shall not be terminated pursuant to this paragraph until the procedures of 49 CFR Part 21 are followed and completed, including exercise or expiration of appeal rights.
- (B) Tenant assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age or handicap be excluded in participating in any activity conducting with or benefitting from Federal assistance.
  - (C) Tenant assures that, in performance of its obligations hereunder, it will fully comply with the requirements of 14 CFR Part 152, as now or hereafter amended, to the extent applicable to Tenant, to ensure that no person will be excluded from participation in any employment, contracting or leasing activities covered by such regulations on the grounds of race, creed, color, national origin or sex. Tenant, if required, will provide assurances to County that Tenant will undertake an affirmative action program or steps for equal employment opportunity and will require the same of its subcontractors.

25.03 Airport Concession Disadvantaged Business Enterprises ("ACDBE"). This Lease is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. It is the policy of County that ACDBEs shall have the maximum practicable opportunity to participate in the performance of contracts. Tenant agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. Tenant agrees to include the aforementioned statement in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

25.04 Airport Concession Disadvantaged Business Enterprise Participation Goal.

- (A) Tenant agrees that the ACDBE participation in this Lease shall be at least equal to

fifteen percent (15%) throughout the Term and any extension thereof, or Tenant shall clearly demonstrate to the Department its good faith efforts to do so in a manner acceptable to the Department.

- (B) "Good faith efforts" are those efforts that could reasonably be expected to result in ACDBE participation. Tenant shall actively seek to obtain ACDBE participation in this Lease and shall document those efforts. Efforts that are merely "pro forma" are not considered good faith efforts in meeting the ACDBE goal. In determining whether or not a Tenant has made such good faith efforts, the Department will refer to the description of good faith efforts as provided in 49 CFR Parts 23 and 26.
- (C) For the purpose of verifying Tenant's good faith efforts, Tenant shall keep and maintain such books of account and records as necessary to document compliance with 49 CFR Part 23, as now or hereafter amended or any successor regulation, and this Section 25.04. County and its representatives shall have the right to inspect and audit such books of account and records upon reasonable notice to Tenant at a location convenient for County and its representatives.
- (D) Tenant shall provide written quarterly reports on or before the twentieth (20<sup>th</sup>) day of each reporting month (January, April, July and October of each Lease Year) to the Department, in a form and detail satisfactory to the Department, as to the participation of ACDBE's in this Lease. The quarterly reports shall detail ACDBE participation for each quarter, as well as the cumulative "to date" participation for the entire Lease Year. Quarterly reports shall be certified by an officer of Tenant as being true and accurate. If requested by the Department, the quarterly reports shall include certification of receipt payment from the ACDBE firms participating in this Lease, in a form and detail satisfactory to the Department. In the event the ACDBE participation level drops below the established ACDBE participation goal, Tenant shall take immediate corrective measures to ensure that the ACDBE participation is increased to the established ACDBE participation goal. Tenant shall document its good faith efforts to achieve the ACDBE participation goal and provide written reports to the Department documenting such good faith efforts. The Department may require the reports required hereunder to be submitted electronically.
- (E) Tenant shall use good faith efforts to replace any ACDBE that is terminated or has otherwise failed to complete its agreement or subcontract with another ACDBE. Tenant shall notify the Department of any ACDBE's inability or unwillingness to perform and shall provide reasonable documentation. Tenant shall obtain prior approval from the Department of the substitution an ACDBE.
- (F) Tenant shall provide the Department with copies of all subcontracts and agreements with ACDBE firms providing goods or services under this Lease upon request.

ARTICLE 26  
COUNTY NOT LIABLE

County shall not be responsible or liable to Tenant for any claims for compensation or any losses, damages or injury whatsoever sustained by Tenant resulting from failure of any water supply, heat, air conditioning, electrical current, or sewerage or drainage facility, or caused by natural physical conditions on the Premises, whether on the surface or underground, including stability, moving, shifting, settlement of ground, or displacement of materials by fire, water, windstorm, tornado, hurricane, act of God or state of war, civilian commotion or riot, or any cause beyond the control of County. All personal property placed on or moved on to the Premises shall be at the sole risk of Tenant. County shall not be liable for any damage or loss of any personal property placed or moved on to the Premises.

ARTICLE 27  
AUTHORIZED USES ONLY

Notwithstanding anything to the contrary herein, Tenant shall not use or permit the use of the Premises or the Airport for any illegal or improper purpose or for any purpose which would invalidate any policies of insurance, now existing or hereafter written on the Premises or the Airport for County or Tenant.

ARTICLE 28  
MISCELLANEOUS

28.01 Waiver. The failure of either party to insist on strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that either party may have for any subsequent breach, default, or non-performance, and neither parties' right to insist on strict performance of this Lease shall be affected by any previous waiver or course of dealing.

28.02 Subordination.

- (A) Subordination to Bond Resolution. This Lease and all rights granted to Tenant hereunder are expressly subordinated and subject to the lien and provisions of the pledge, transfer, hypothecation or assignment made by County in the Bond Resolution, and County and Tenant agree that to the extent permitted by authorizing legislation, the holders of the bonds or their designated representatives may exercise any and all rights of County hereunder to the extent such possession, enjoyment and exercise are necessary to insure compliance by Tenant and County with the terms and provisions of this Lease and Bond Resolution.
- (B) Subordination to State/Federal Agreements. This Lease shall be subject and subordinate to all the terms and conditions of any instrument and documents under which County acquired the land, of which the Premises are a part, or improvements thereon, and shall be given only such effect as will not conflict with nor be inconsistent with such terms and conditions. Tenant understands and agrees that this Lease shall be subordinate to the

provisions of any existing or future agreement between County and the United States of America or State of Florida, or any of their 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 state or federal funds for the development of the Airport.

28.03 Easement. Nothing in this Lease shall impair any existing utility easements, nor impair the right of access to any existing utility lines. County reserves the right to grant utility easements, licenses and rights-of way to others over, under, through, across or on the Premises; provided, however, that such grant is not materially detrimental to the proper conduct of Tenant's operations.

28.04 Independent Contractor. Tenant or any successor in interest to this Lease, is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions, and County shall in no way be responsible therefor.

28.05 Governmental Authority. Nothing in this Lease shall be construed to waive or limit County's governmental authority as a political subdivision of the State of Florida to regulate Tenant or its operations. County's obligations under this Lease are made in a proprietary capacity, rather than in a governmental capacity and such agreements shall not be construed as limiting, prohibiting or eliminating the obligation of the parties to comply with all applicable rules, regulations, ordinances, statutes and laws, nor alter or impair County's governmental functions, including, without limitation, County's right to lawfully exercise its regulatory authority over the development of the Premises, nor as enabling, permitting, or creating any cause of action or claim arising out of the lawful exercise of County's governmental authority.

28.06 Rights Reserved to County. All rights not specifically granted Tenant by this Lease are reserved to County.

28.07 Invalidity of Clauses. The invalidity of any portion, article, paragraph, provision, clause or any portion thereof of this Lease shall have no effect upon the validity of any other part or portion hereof.

28.08 Governing Law. This Lease shall be governed by and in accordance with the laws of the State of Florida.

28.09 Venue. Venue in any action, suit or proceeding in connection with this Lease shall be filed and held in a State court of competent jurisdiction located in Palm Beach County, Florida.

28.10 Inspections. Notwithstanding any provision of this Lease to the contrary, Tenant agrees that authorized employees and representatives of County and any Federal, State and local governmental entity having jurisdiction over Tenant's operations or activities on the Premises shall have the right of access to the Premises at all reasonable times for the purposes of inspection for compliance with the provisions of this Lease and applicable laws.



28.11 Notices. All notices and elections (collectively, "notices") to be given or delivered by or to any party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service or overnight mail, telecopied or faxed (provided in each case a receipt is obtained), or alternatively shall be sent by United States Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services or overnight mail, or on the date of transmission with confirmed answer back if by telecopier or fax if transmitted before 5PM on a Business Day and on the next Business Day if transmitted after 5PM or on a non-Business Day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

County:

Attn: Deputy Director, Airports Business Affairs  
Palm Beach County Department of Airports  
846 Palm Beach International Airport  
West Palm Beach, Florida 33406-1470  
Fax: 561-471-7427

With a copy to:

Attn: Airport Real Estate Attorney  
Palm Beach County Attorney's Office  
301 North Olive Ave, Suite 601  
West Palm Beach, FL 33401  
Fax: 561-355-4398

Tenant:

West Palm Beach Plaza, LLC  
366 North Broadway, Suite 206  
Jericho, NY 11753  
Fax: 516-908-4999

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

28.12 Paragraph Headings. The heading of the various articles and sections of this Lease are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Lease or any part or parts of this Lease.

28.13 No Recording. Neither this Lease, nor any memorandum or short form hereof, shall be recorded in the Public Records of Palm Beach County, Florida, without the prior written consent of the Department.

28.14 Binding Effect. The terms, conditions and covenants of this Lease shall inure to the benefit of and be binding upon the parties hereto and their successors, assigns and subtenants, if any. This provision shall not constitute a waiver of any prohibition against or limitations regarding assignment or subletting.

28.15 Performance. The parties expressly agree that time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

28.16 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, shall be 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.

28.17 No Broker. Tenant represents and warrants that Tenant has not dealt with any real estate salesperson, agent, finder or broker in connection with this Lease and further agrees to indemnify, defend and hold harmless County from and against any claims or demands of any such salesperson, agent, finder or broker claiming to have dealt with Tenant. The foregoing indemnification shall include all costs, expenses and fees, including reasonable attorney's fees plus cost at trial and all appellate levels, expended or incurred in the defense of any such claim or demand. The obligations set forth in this paragraph shall survive the termination of this Lease.

28.18 Public Entity Crimes. As provided in Section 287.132-133, Florida Statutes, by entering into this Lease or performing any work in furtherance hereof, Tenant 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 hereof. This notice is required by Section 287.133(3) (a), Florida Statutes.

28.19 Scrutinized Companies. As provided in F.S. 287.135, by entering into this Lease or performing any work in furtherance hereof, Tenant certifies that it, its affiliates, suppliers, subcontractors and consultants who perform hereunder, have not been placed on the Scrutinized Companies Activities in Sudan List or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to F.S. 215.473. If County determines, using credible information available to the public, that a false certification has been submitted by Tenant, this Lease may be terminated and a civil penalty equal to the greater of \$2 Million or twice the amount of this Lease shall be imposed, pursuant to F.S. 287.135.

28.20 Annual Appropriation. Nothing in this Lease shall obligate County, during any fiscal year, to expend money or incur any liability that involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. County's obligations under this Lease, which involve the expenditure of money, shall be subject to annual budgetary funding and appropriations by the Palm Beach County Board of County Commissioners in accordance with Chapter 129, Florida Statutes, as it may be amended.

28.21 Consent or Action. In the event that this Lease is silent as to the standard for any consent, approval, determination, or similar discretionary action, the standard shall be at the sole, absolute and unfettered discretion of County or Department, rather than any implied standard of good faith, fairness or reasonableness. Wherever this Lease requires County or Department's consent or approval or permits County or Department to act, such consent, approval or action

may be given or performed by the Director.

28.22 No Third Party Beneficiaries. No provision of this Lease is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Lease, including but not limited to any citizen or employees of County and/or Tenant.

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

28.24 Remedies Cumulative. The rights and remedies of the parties hereto with respect to any of the terms and conditions of this Lease shall be cumulative and not exclusive and shall be in addition to all other rights and remedies of the parties.

28.25 Incorporation by References. All terms, conditions and specifications of the RFP; the Proposal; and all exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Lease by reference. In the event of any conflict and for purposes of resolving any disputes which may arise regarding this Lease, the order-of-precedence shall be: (i) this Lease; (ii) the RFP; and (iii) the Proposal.

28.26 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.

28.27 Survival. Notwithstanding any early termination of this Lease, Tenant shall remain obligated hereunder to perform any duty, covenant or obligation imposed upon Tenant hereunder arising prior to the date of such termination.

(Remainder of page left blank intentionally.)

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

ATTEST:

SHARON R. BOCK,  
CLERK AND COMPTROLLER

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

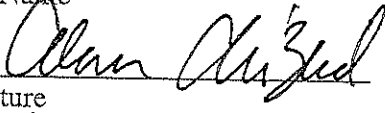
APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: \_\_\_\_\_  
County Attorney

Signed, sealed and delivered in the  
presence of two witnesses for TENANT:

  
Signature

STEFANO PASUCCI  
Print Name

  
Signature

Alan Abizeid  
Print Name

PALM BEACH COUNTY,  
A POLITICAL SUBDIVISION OF THE  
STATE OF FLORIDA, BY ITS BOARD  
OF COUNTY COMMISSIONERS

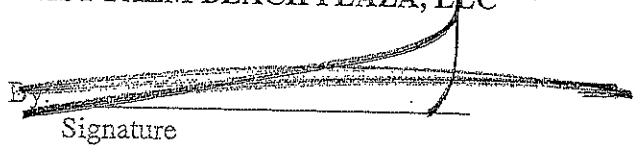
By: \_\_\_\_\_  
Steven L. Abrams, Mayor

APPROVED AS TO TERMS  
AND CONDITIONS

By:   
Director, Department of Airports

TENANT:

WEST PALM BEACH PLAZA, LLC

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

GEORGE ABIZEID  
Print Name

MANAGING PARTNER  
Title

(Seal)

EXHIBIT "A"  
TO  
DEVELOPMENT SITE LEASE AGREEMENT

PREMISES LEGAL DESCRIPTION

# COUNTY OF PALM BEACH STATE OF FLORIDA

BOARD OF COUNTY COMMISSIONERS  
PROJECT NO. 85222

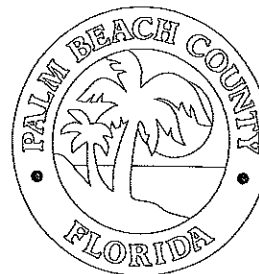
## BOUNDARY SURVEY OF P.B.I.A. LEASE PARCEL AT FLORIDA MANGO ROAD

KAREN T. MARCUS  
DISTRICT 1

CAROL A. ROBERTS  
DISTRICT 2

MARY MCCARTY  
DISTRICT 4

TONY MASILOTTI  
DISTRICT 6



WARREN H. NEWELL  
DISTRICT 3

BURT AARONSON  
DISTRICT 5

MAUDE FORD LEE  
DISTRICT 7

### DESCRIPTION

A PARCEL OF LAND LOCATED WITHIN PALM BEACH INTERNATIONAL AIRPORT PROPERTY, SITUATE IN SECTION 32, TOWNSHIP 43 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 32; THENCE NORTH 88°26'54" WEST ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 32, A DISTANCE OF 55.26 FEET; THENCE SOUTH 01°33'06" WEST AT RIGHT ANGLE TO SAID SECTION LINE, A DISTANCE OF 40.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF BELVEDERE ROAD AS SHOWN ON ROAD PLAT BOOK 3, PAGE 94 OF THE PUBLIC RECORDS OF SAID PALM BEACH COUNTY AND THE POINT OF BEGINNING; THENCE DEPARTING SAID RIGHT-OF-WAY LINE SOUTH 43°15'36" EAST, A DISTANCE OF 35.24 FEET TO A LINE LYING 30.00 FEET EAST OF THE PHYSICAL CENTERLINE OF AN AIRPORT ACCESS ROAD (SAID CENTERLINE IS NOT THE NORTH-SOUTH QUARTER SECTION LINE OF SAID SECTION 32); THENCE SOUTH 02°04'21" WEST ALONG SAID LINE, A DISTANCE OF 304.88 FEET; THENCE SOUTH 13°28'53" WEST, A DISTANCE OF 34.31 FEET; THENCE NORTH 88°28'56" WEST, A DISTANCE OF 386.76 FEET; THENCE NORTH 02°23'45" EAST, A DISTANCE OF 363.88 FEET TO SAID SOUTH RIGHT-OF-WAY LINE OF BELVEDERE ROAD; THENCE SOUTH 88°26'54" EAST ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 346.47 FEET TO THE POINT OF BEGINNING.

### SURVEYOR'S REPORT

THE PROPERTY AS SURVEYED CONTAINS 3.0992 ACRES OR 135,001 SQUARE FEET MORE OR LESS.

BEARINGS ARE BASED ON A GRID (NAD 83, 1980 ADJUSTMENT) BEARING OF NORTH 88°28'54" WEST ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 43 SOUTH, RANGE 43 EAST, AS DETERMINED BY PALM BEACH COUNTY AND ALL OTHER BEARINGS ARE RELATIVE THERETO.

THIS INSTRUMENT PREPARED BY GLENN W. MARK, P.L.S., IN THE OFFICE OF THE COUNTY ENGINEER, 160 AUSTRALIAN AVENUE, WEST PALM BEACH, FLORIDA 33408.

NO SEARCH OF THE PUBLIC RECORDS HAS BEEN MADE BY THE SIGNING SURVEYOR.

NO TITLE POLICY OR TITLE SEARCH WAS PROVIDED BY THE CLIENT.

A NUMBER OF UTILITY POLES AND LINES ARE PRESENT ON THE PROPERTY SUGGESTING THAT EASEMENTS MAY EXIST.

THE CLIENT DID NOT REQUEST THE EXISTING TREES OR SHRUBS ON THE PROPERTY TO BE LOCATED.

NO UNDERGROUND IMPROVEMENTS HAVE BEEN LOCATED BY THIS SURVEY.

THE CLIENT DID NOT REQUEST VERTICAL TOPOGRAPHY ON THE SITE.

THIS SITE CONTAINS A TEMPORARY CONSTRUCTION AREA THAT WAS NOT LOCATED.

ALL BEARINGS AND DISTANCES ARE DEED AND MEASURED AS THIS PARCEL AND DESCRIPTION WAS PREPARED BY THE SIGNING SURVEYOR.

FIELD WORK FOR THIS PROJECT IS LOCATED IN FIELD BOOK 1066C, PAGE 17. INSTRUMENTS USED WERE THE TOPCON GTS-4 TOTAL STATION, KILD NA-2 AND PARAVANT RHC DATA COLLECTOR.

FIELD WORK COMPLETED ON 04/07/99.

THE PROJECT'S FIELD TRAVERSE WAS BALANCED USING MAPTECH FIELD PACK, COMPASS RISE ADJUSTMENT. THE FILE NAMES ARE 85222B.PLD, 85222B.CMD, 85222B.ASC, 85222.TXT & 85222.OSM.

### LEGEND

- = OVERHEAD ELECTRIC LINE
- = OUT WIRE
- = WOODEN POWER POLE
- = CONCRETE POWER POLE
- = ELECTRIC SERVER
- = ELECTRIC METER
- = TRAFFIC SIGN
- = SOUTHERN BELL TELEPHONE MANHOLE
- △ = DELTA
- L = LENGTH
- R = RADIUS
- (C) = CALCULATED
- (D) = DEED
- (P) = PLAT
- E = CENTERLINE
- L.S. = LICENSED SURVEYOR
- P.B. = PLAT BOOK
- P.P.L. = FLORIDA POWER & LIGHT
- B.R.B. = OFFICIAL RECORD BOOK
- P.L.S. = PROFESSIONAL LAND SURVEYOR
- P.R.M. = PERMANENT REFERENCE MONUMENT
- P.O.B. = POINT OF BEGINNING
- P.O.C. = POINT OF COMMENCEMENT

N.T.S. = NOT TO SCALE

PALM BEACH COUNTY  
ENGINEERING AND PUBLIC WORKS  
ENGINEERING SERVICES  
P. O. BOX 4299, WEST PALM BEACH, FLORIDA



|                  |  |
|------------------|--|
| BY DATE          |  |
| REVISION         |  |
| NO.              |  |
| SCALE: N.T.S.    |  |
| APPROVED: G.W.M. |  |
| BRANN A.B.F.     |  |
| CHECKED: N.J.H.  |  |
| DATE: 4/8/99     |  |

PROPERTY CORNERS WERE SET PER THE LEGAL DESCRIPTION AND BASED ON THE MEASUREMENTS SHOWN ON THIS DISTANCE ACCURACY REQUIREMENT OF 1/10,000 REQUIRED BY THIS SURVEY.

ALL APPARENT EXISTING IMPROVEMENTS HAVE BEEN LOCATED OR NOTED.

COORDINATES SHOWN ARE GRID  
DATUM = NAD 83, 1980 ADJUSTMENT  
ZONE = FLORIDA EAST  
LINEAR UNITS = US SURVEY FOOT  
COORDINATE SYSTEM 1983 STATE PLANE TRANSVERSE MERCATOR PROJECTION  
ALL DISTANCES ARE GROUND.  
SCALE FACTOR = 1.000044878  
GROUND DISTANCE X SCALE FACTOR = GRID DISTANCE  
ALL FEATURE SYMBOLS SHOWN ARE NOT TO SCALE.

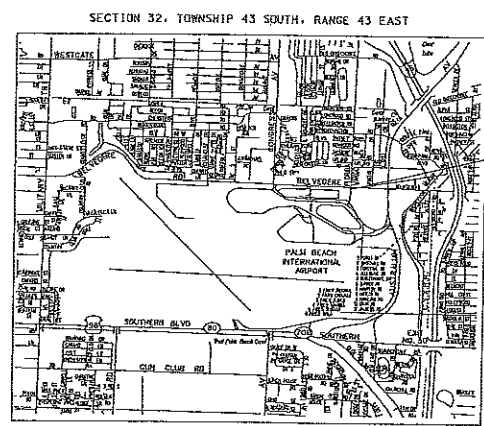
THERE ARE NO APPARENT USAGES (ENCROACHMENT) ON THE PROPERTY OTHER THAN WHAT IS SHOWN ON THE MAP SHEET OF THIS SURVEY.

THE ROAD RIGHT-OF-WAY FOR BELVEDERE ROAD WAS TAKEN FROM ROAD PLAT BOOK 3, PAGE 94. THIS MAP ALSO SHOWS A STUB-IN FOR FLORIDA MANGO ROAD. NONE OF THE RIGHT-OF-WAY HAD BEEN VILLOCATED BY RIGHT-OF-WAY DEEDS BY THE SIGNING SURVEYOR. THIS BOUNDARY SURVEYS EAST LINE WAS PULLED BACK 50 AS NOT TO ENCROACH ON THE FLORIDA MANGO ROAD RIGHT-OF-WAY THAT MAY EXIST.

CERTIFIED TO PALM BEACH COUNTY, DEPARTMENT OF AIRPORTS

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

I HEREBY CERTIFY THAT THE BOUNDARY SURVEY SHOWN HEREON WAS MADE UNDER MY RESPONSIBLE DIRECTION AND SUPERVISION AND THAT SAID SURVEY MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 61G11-01, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.



LOCATION MAP  
N.T.S.

GLENN W. MARK PLS  
FLORIDA CERTIFICATE NO. 5304

DATE

BOUNDARY SURVEY OF  
P.B.I.A. LEASE PARCEL  
AT FLORIDA MANGO RD.  
DRAWING NO.  
51-83-1336  
DESIGN FILE NAME  
P:\glenn\proj\85222.dgn

SHEET: 1  
OF: 2  
PROJECT NO.  
85222



EXHIBIT "B"  
TO  
DEVELOPMENT SITE LEASE AGREEMENT  
CELL PHONE WAITING AREA LEGAL DESCRIPTION



COUNTY OF PALM BEACH  
STATE OF FLORIDA

BOARD OF COUNTY COMMISSIONERS  
PROJECT NO. 85222

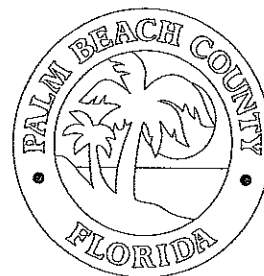
BOUNDARY SURVEY OF  
P.B.I.A. LEASE PARCEL  
AT FLORIDA MANGO ROAD

KAREN T. MARCUS  
DISTRICT 1

CAROL A. ROBERTS  
DISTRICT 2

MARY MCCARTY  
DISTRICT 4

TONY MASILOTTI  
DISTRICT 6



WARREN H. NEWELL  
DISTRICT 3

BURT AARONSON  
DISTRICT 5

MAUDE FORD LEE  
DISTRICT 7

DESCRIPTION

A PARCEL OF LAND LOCATED WITHIN PALM BEACH INTERNATIONAL AIRPORT PROPERTY, SITUATED IN SECTION 32, TOWNSHIP 43 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 32; THENCE NORTH 89°26'54" WEST ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 32, A DISTANCE OF 95.25 FEET; THENCE SOUTH 01°33'05" WEST AT RIGHT ANGLE TO SAID SECTION LINE, A DISTANCE OF 40.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF BELVEDERE ROAD AS SHOWN ON ROAD PLAT BOOK 3, PAGE 94 OF THE PUBLIC RECORDS OF SAID PALM BEACH COUNTY AND THE POINT OF BEGINNING; THENCE DEPARTING SAID RIGHT-OF-WAY LINE SOUTH 43°15'36" EAST, A DISTANCE OF 35.24 FEET TO A LINE LYING 30.00 FEET EAST OF THE PHYSICAL CENTERLINE OF AN AIRPORT ACCESS ROAD (SAID CENTERLINE IS NOT THE NORTH-SOUTH QUARTER SECTION LINE OF SAID SECTION 32); THENCE SOUTH 02°04'21" WEST ALONG SAID LINE, A DISTANCE OF 304.80 FEET; THENCE SOUTH 15°28'00" WEST, A DISTANCE OF 34.31 FEET; THENCE NORTH 89°28'56" WEST, A DISTANCE OF 386.78 FEET; THENCE NORTH 02°23'02" EAST, A DISTANCE OF 363.60 FEET TO SAID SOUTH RIGHT-OF-WAY LINE OF BELVEDERE ROAD; THENCE SOUTH 89°25'54" EAST ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 346.47 FEET TO THE POINT OF BEGINNING.

SURVEYOR'S REPORT

THE PROPERTY AS SURVEYED CONTAINS 3.0992 ACRES OR 135,001 SQUARE FEET MORE OR LESS.

BEARINGS ARE BASED ON A GRID (NAD 83, 1990 ADJUSTMENT) BEARING OF NORTH 89°25'54" WEST ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 43 SOUTH, RANGE 43 EAST, AS DETERMINED BY PALM BEACH COUNTY AND ALL OTHER BEARINGS ARE RELATIVE THEREOF.

THIS INSTRUMENT PREPARED BY GLENN W. MARK, P.L.S., IN THE OFFICE OF THE COUNTY ENGINEER, 160 AUSTRALIAN AVENUE, WEST PALM BEACH, FLORIDA 33406.

NO SEARCH OF THE PUBLIC RECORDS HAS BEEN MADE BY THE SIGNING SURVEYOR.

NO TITLE POLICY OR TITLE SEARCH WAS PROVIDED BY THE CLIENT.

A NUMBER OF UTILITY POLES AND LINES ARE PRESENT ON THE PROPERTY SUGGESTING THAT EASEMENTS MAY EXIST.

THE CLIENT DID NOT REQUEST THE EXISTING TREES OR SHRUBS ON THE PROPERTY TO BE LOCATED.

NO UNDERGROUND IMPROVEMENTS HAVE BEEN LOCATED BY THIS SURVEY.

THE CLIENT DID NOT REQUEST VERTICAL TOPOGRAPHY ON THE SITE.

THIS SITE CONTAINS A TEMPORARY CONSTRUCTION AREA THAT WAS NOT LOCATED.

ALL BEARINGS AND DISTANCES ARE USED AND MEASURED AS THIS PARCEL AND DESCRIPTION WAS PREPARED BY THE SIGNING SURVEYOR.

FIELD WORK FOR THIS PROJECT IS LOCATED IN FIELD BOOK 106C, PAGE 17. INSTRUMENTS USED WERE THE TOPCON GTS-4 TOTAL STATION, WILD NA-2 AND PARAVANT BHC DATA COLLECTOR.

FIELD WORK COMPLETED ON 04/01/99.

THE PROJECT'S FIELD TRAVERSE WAS BALANCED USING MAPTECH FIELD PACK. COMPASS RULE ADJUSTMENT. THE FILE NAMES ARE 85222B.PLD, 85222B.CHX, 85222B.ASC, 85222.TXT & 85222.DGN.

LEGEND

- Q.H.E. = OVERHEAD ELECTRIC LINE
- = GUY WIRE
- = WOODEN POWER POLE
- X.P.P. =
- = CONCRETE POWER POLE
- CL.P. =
- = ELECTRIC SERVER
- E.S. =
- = ELECTRIC METER
- E.M. =
- = TRAFFIC SIGN
- = SOUTHERN BELL TELEPHONE MARKER
- SBTT N.H. =
- N.T.S. = NOT TO SCALE
- Δ = DELTA
- L = LENGTH
- R = RADIIUS
- LCI = CALCULATED
- (D) = DEED
- IP1 = PLAT
- = CENTERLINE
- L.S. = LICENSED SURVEYOR
- P.B. = PLAT BOOK
- F.P.L. = FLORIDA POWER & LIGHT
- D.R.B. = OFFICIAL RECORD BOOK
- P.L.S. = PROFESSIONAL LAND SURVEYOR
- P.R.N. = PERMANENT REFERENCE MARKMENT
- P.O.B. = POINT OF BEGINNING
- P.O.C. = POINT OF COMMENCEMENT

PALM BEACH COUNTY  
ENGINEERING AND PUBLIC WORKS  
ENGINEERING SERVICES  
P. O. BOX 2388, WEST PALM BEACH, FLORIDA

|                     |                    |               |               |
|---------------------|--------------------|---------------|---------------|
| NO.                 | REVISION           | BY            | DATE          |
| SCALE: N.T.S.       | APPROVED: M.W.M.   | DRAWN: A.B.F. | CHECKED: J.H. |
| FILED BOOK NO. 106C | FILED DATE 11/8/99 |               |               |

PROPERTY CORNERS WERE SET PER THE LEGAL DESCRIPTION AND BASED ON THE MEASUREMENTS SHOWN HEREON EXCEPT THE DISTANCE ACCURACY REQUIREMENT OF 1:10,000 REQUIRED BY THIS SURVEY.

ALL APPARENT EXISTING IMPROVEMENTS HAVE BEEN LOCATED OR NOTED.

COORDINATES SHOWN ARE GRID  
DATUM = NAD 83, 1990 ADJUSTMENT  
ZONE = FLORIDA EAST  
LINEAR UNITS = US SURVEY FOOT  
COORDINATE SYSTEM 1983 STATE PLANE TRANSVERSE MERCATOR PROJECTION  
ALL DISTANCES ARE GRIDNO.  
SCALE FACTOR = 1.00004878  
GROUND DISTANCE X SCALE FACTOR = GRID DISTANCE  
ALL FEATURE SYMBOLS SHOWN ARE NOT TO SCALE.

THERE ARE NO APPARENT USAGES (ENCROACHMENTS) ON THE PROPERTY OTHER THAN WHAT IS SHOWN ON THE MAP SHEET OF THIS SURVEY.

THE ROAD RIGHT-OF-WAY FOR BELVEDERE ROAD WAS TAKEN FROM ROAD PLAT BOOK 3, PAGE 94. THIS MAP ALSO SHOWS A STUB-IN FOR FLORIDA MANGO ROAD. THE RIGHT-OF-WAY HERE WAS VALIDATED BY RIGHT-OF-WAY DEEDS BY THE SIGNING SURVEYOR. THIS BOUNDARY SURVEY'S EAST LINE WAS PULLED BACK 50 AS NOT TO ENCROACH ON THE FLORIDA MANGO ROAD RIGHT-OF-WAY THAT MAY EXIST.

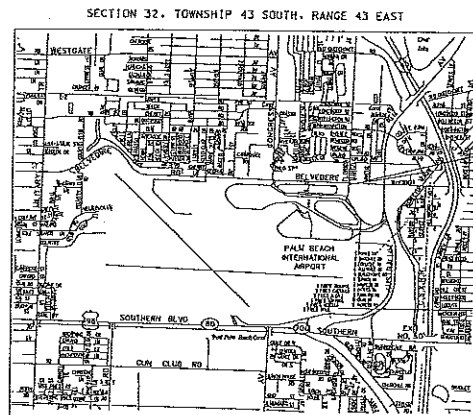
CERTIFIED TO: PALM BEACH COUNTY, DEPARTMENT OF AIRPORTS

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

I HEREBY CERTIFY THAT THE BOUNDARY SURVEY SHOWN HEREON WAS MADE UNDER MY PERSONAL DIRECTION AND SUPERVISION AND THAT SAID SURVEY MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 6101-6, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.007, FLORIDA STATUTES.

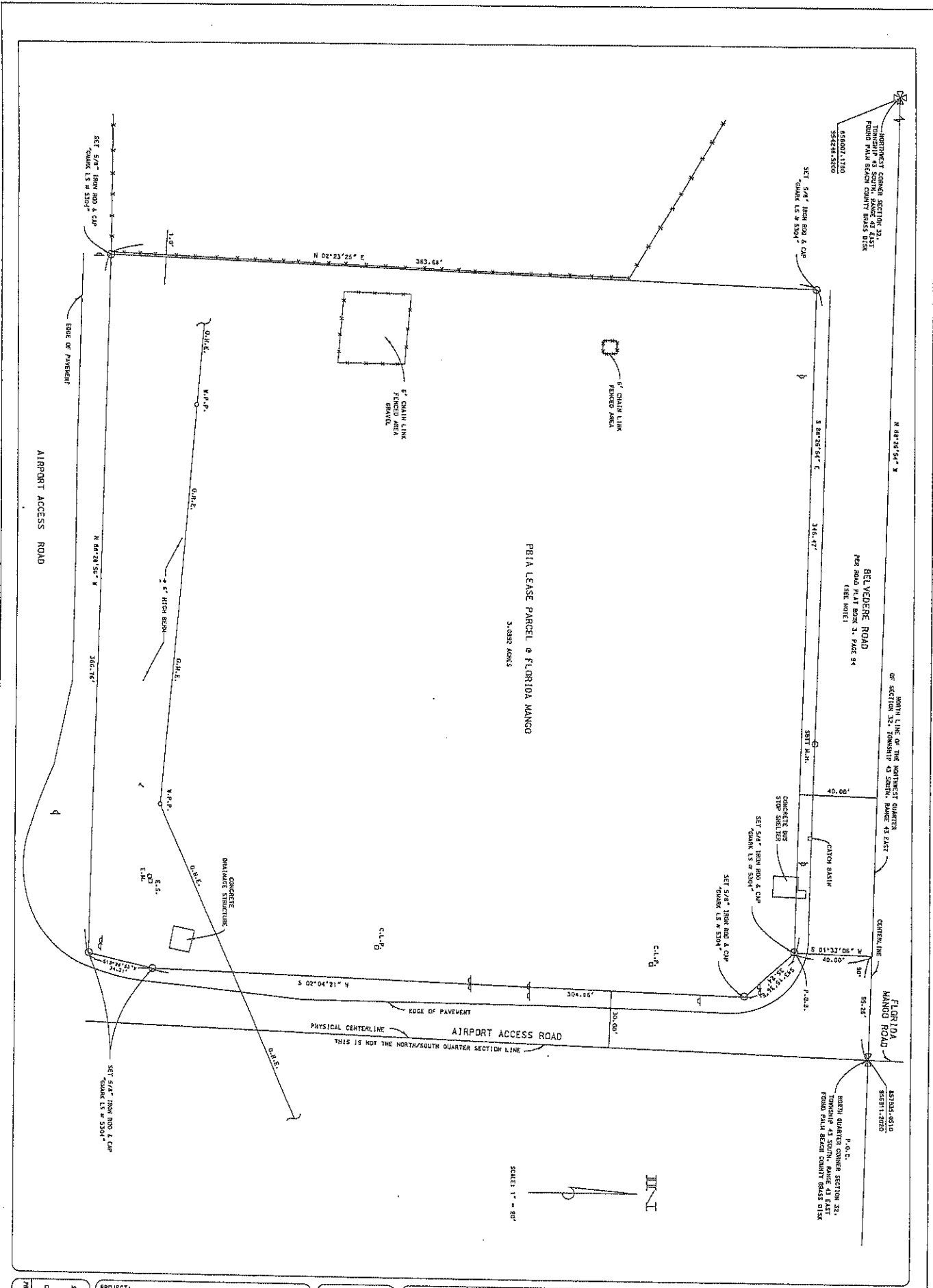
GLENN W. MARK PLS  
FLORIDA CERTIFICATE NO. 5304

DATE



LOCATION MAP  
N.T.S.

PROJECT: BOUNDARY SURVEY OF P.B.I.A. LEASE PARCEL AT FLORIDA MANGO RD.  
DRAWING NO. 5-3-99-1335  
SECTION FILE NAME 85222.dgn  
SHEET: 1  
OF: 2  
PROJECT NO. 85222



SHEET 2  
 OF 2  
 PROJECT NO. 852922

PROJECT:  
**BOUNDARY SURVEY OF  
 P.B.I.A. LEASE PARCEL  
 AT FLORIDA MANGO RD.**

DESIGN FILE NAME: d:\projects\852922.dgn  
 DRAWING NO.: 5-3-95-1324

DATE: 4/28/95  
 DRAWN: J.R.F.  
 CHECKED: J.L.H.

NO. \_\_\_\_\_  
 REVISION \_\_\_\_\_  
 BY \_\_\_\_\_  
 DATE \_\_\_\_\_

SCALE: 1" = 80'  
 APPROVED: M.M.  
 DRAWN: J.R.F.  
 CHECKED: J.L.H.  
 DATE: 4/28/95  
 FIELD BOOK NO. 10682

| NO. | REVISION | BY | DATE |
|-----|----------|----|------|
|     |          |    |      |



**PALM BEACH COUNTY  
 ENGINEERING AND PUBLIC WORKS  
 ENGINEERING SERVICES**  
 160 AUSTRALIAN AVENUE  
 WEST PALM BEACH, FL 33406