



## II. FISCAL IMPACT ANALYSIS

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

Fiscal Years	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	_____	<u>\$76,424</u>	<u>\$64,639</u>	<u>\$64,639</u>	<u>\$64,639</u>
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	_____	<u><u>\$76,424</u></u>	<u><u>\$64,639</u></u>	<u><u>\$64,639</u></u>	<u><u>\$64,639</u></u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Proposed Budget? Yes X No \_\_\_\_\_  
Budget Account No: Fund 4100 Department 120 Unit 8452 Rsource 4416  
Reporting Category \_\_\_\_\_

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

This Amendment provides for extension to the date of beneficial occupancy from April 1, 2015 to October 1, 2015. Payment of rental commences upon the date of beneficial occupancy. In addition, annual ground rental has been reduced from \$152,848 to \$88,209. The fiscal impact analysis only reflects fixed rental. 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: CM Simon

## III. REVIEW COMMENTS

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

Susan Neary 8/13/14  
OFMB AM  
8/13 8/13

Alice J. Jacobson 8/18/14  
Contract Dev. and Control  
8-18-14 BiWheeler

### B. Legal Sufficiency:

[Signature] 8/19/14  
Assistant County Attorney

### C. Other Department Review:

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

**FIRST AMENDMENT TO DEVELOPMENT SITE LEASE AGREEMENT  
BETWEEN PALM BEACH COUNTY AND WEST PALM BEACH PLAZA, LLC**

This **First Amendment to Development Site Lease Agreement** (this "Amendment") is made and entered into this \_\_\_\_\_, 2014 ("Effective Date") 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 12680 Darby Brook Ct, Woodbridge VA 22192 ("Tenant").

**W I T N E S S E T H :**

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

**WHEREAS**, the parties entered into that certain Development Site Lease Agreement dated March 12, 2013 (R-2013-0257) (the "Lease"); and

**WHEREAS**, County has requested Tenant expand the vehicular parking areas designated for use by Airport customers and the public to accommodate increased traffic; and

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

**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:

1. The foregoing recitals are true and correct and are hereby incorporated herein by reference. Terms not defined herein shall have the meanings set forth in the Lease.

2. Section 2.14, "Cell Phone Waiting Area", of the Lease is hereby deleted in its entirety and replaced with the following:

2.14 "Cell Phone Waiting Area" means the short-term vehicular parking areas located within the Premises to be constructed and maintained by Tenant on behalf of County, consisting of not less than eighty five (85) vehicular parking spaces, which shall include not less than sixty five (65) standard parking spaces and the Oversized Vehicle Parking Area. For purposes of this Lease, County shall be considered the owner and operator of the Cell Phone Waiting Area.

3. Article 2, Definitions, of the Lease is hereby amended to add the following:

2.52 “Oversized Vehicle Parking Area means twenty (20) vehicular parking spaces for oversized vehicles such as vans, stretch limousines and small buses with cross access to the on-Airport travel plaza.

4. Section 2.41 “Premises” of the Lease is hereby deleted in its entirety and replaced with the following:

2.41 “Premises” means approximately one hundred seventy four thousand two hundred forty (174,240) square feet of real property located generally in the area depicted in Exhibit “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. Within ninety (90) days of final site plan approval, the parties shall enter into an amendment amending this definition to reflect the final square footage of the site and replacing Exhibit “A” with a legal description based upon a survey prepared or approved by County’s surveyor. The foregoing amendment may be signed by the Director on behalf of County.

5. Section 3.01, Term, of the Lease is hereby deleted in its entirety and replaced with the following:

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, exclusive of the Oversized Vehicle Parking Area; (b) the date Tenant commences using the Premises (or any part thereof) for the conduct of its business (other than construction); or (c) October 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. In the event construction of Required Improvements, exclusive of the Oversized Parking Area, is delayed due to causes beyond the reasonable control of Tenant, as determined by the Department, the Date of Beneficial Occupancy may be extended by the Department upon written request for approval of an extension by Tenant. Tenant’s written request for an extension shall detail the reasons for the delays. Tenant acknowledges and agrees that the Department may grant or deny the request for an extension in its sole and absolute discretion.

6. Section 4.01, Description of Premises, of the Lease is hereby deleted in its entirety and replaced with the following:

4.01 Description of Premises. County hereby demises and leases to Tenant, and Tenant rents from County the Premises, subject to the terms, conditions and covenants set forth herein.

7. Section 4.02, Description of Specific Privileges, Uses and Rights, of the Lease is hereby deleted in its entirety and replaced with the following:

4.02 Description of Specific Privileges. Tenant shall have the right and obligation to use the Premises, exclusive of the Cell Phone Waiting Area, for the purpose of constructing, operating and maintaining an on-Airport travel plaza in accordance with the requirements of this Lease, which shall include a gas station, car wash, convenience store, food service facilities with drive-through access, and related amenities as well as public restrooms for customers of the travel plaza and Cell Phone Waiting Area. Tenant's use of the Cell Phone Waiting Area shall be limited to the construction and maintenance of the Cell Phone Waiting Area on behalf of County as specified herein. The Cell Phone Waiting Area shall be made available for use by the public and Airport customers waiting for arriving passengers at the Airport and shall be subject to rules and regulations established by the Department, in its sole discretion, including restrictions on use and hours of operation. County shall have the right to sell, install and maintain advertising within the Cell Phone Waiting Area.

8. Section 5.03, Gas Station/Convenience Store Quality and Services, of the Lease is hereby amended to add the following:

(H) Tenant agrees provide County with a discount for purchases of fuel, including compressed natural gas, for use by vehicles owned, leased and/or operated by or on behalf of the County's Department of Airports. The amount of the discount will be no less than five cents (\$.05) per gallon (CPG) from the posted retail fuel prices and will be subject to separate agreement between the parties and/or County's designated contractor(s).

9. Section 6.01(A), Ground Rental, of the Lease is hereby deleted in its entirety and replaced with the following:

(A) Ground Rental. The parties acknowledge that expansion, integration and collocation of the Cell Phone Waiting Area within the Premises makes it difficult to separate the improvements exclusively benefitting the Cell Phone Waiting Area versus the travel plaza improvements and agree that

one and one-half (1.5) acres of the Premises can be fairly designated as required solely for the development of the travel plaza exclusive of the Cell Phone Waiting Area. Accordingly, Tenant shall pay an initial ground rental of One Dollar and 35/100 (\$1.35) per square foot for sixty five thousand three hundred forty (65,340) square feet of ground, or Eighty Eight Thousand Two Hundred and Nine Dollars (\$88,209) annually, together with applicable sales taxes thereon, payable to County in equal monthly installments ("Ground Rental").

10. Section 6.01(C), Concession Fee, of the Lease is hereby deleted in its entirety and replaced by the following:

- (C) 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) and three percent (3%) of annual Gross Revenues that exceed Two Million Five Hundred Thousand Dollars (\$2,500,000) ("Concession Fee"). The Concession Fee shall be payable monthly in accordance with the provisions of Section 6.02 below and reconciled on an annual basis in accordance with the provisions of Section 6.04 below.

11. Section 7.01(A)(1), Required Improvements, of the Lease is hereby deleted in its entirety and replaced with the following:

- (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 consisting of a gas station, car wash, convenience store, food service facilities with drive-through access and related amenities, including indoor public restroom facilities for customers of the travel plaza and Cell Phone Waiting Area, which shall include appropriate lighting, striping, landscaping and signage; (b) a Cell Phone Waiting Area consisting of not less than eighty five (85) vehicular parking spaces, which shall include not less than sixty five (65) standard vehicular parking spaces and the Oversized Vehicle Parking Area, and related improvements such as lighting, striping, landscaping and separate signage identifying the location of the Cell Phone Waiting Area, including signage designating areas for the parking of oversized vehicles; and (c) all other improvements/infrastructure necessary to support the development of the Premises and Cell Phone Waiting Area(s), 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 and security measures. Tenant shall also construct and maintain, at Tenant's sole cost and expense, a freestanding monument sign complementary to the design of the travel plaza identifying the Airport entrance at the corner of Belvedere Road and Florida Mango. The location and design of the monument sign, including all wording/messages, shall be subject to prior written approval of the Department. The improvements required to be constructed by Tenant pursuant to this Section 7.01(A)(1) shall hereinafter be referred to as the "Required Improvements". Construction of the Required Improvements, exclusive of the Oversized Vehicle Parking Area, shall be completed no later than October 1, 2015, unless otherwise approved in writing by the Department. Construction of the Oversized Vehicle Parking Area shall be completed no later six (6) months after substantial completion of the on-Airport Travel Plaza, as evidenced by issuance of a certificate of occupancy. Upon the date the Cell Phone Waiting Area is open for use by the public, County agrees to close the existing cell phone waiting area currently located to the East of the Premises.

12. The first sentence of Section 7.01(B), Minimum Capital Expenditure for Required Improvements, of the Lease is hereby deleted in its entirety and replaced with the following:

(B) Minimum Capital Expenditure for Required Improvements. Tenant shall expend not less than Three Million Four Hundred Eighty Two Thousand Two Hundred Fifty Dollars (\$3,482,250) on the design, construction and installation of the Required Improvements.

13. Section 15.01, Title to Improvements on the Cell Phone Waiting Area, of the Lease is hereby deleted in its entirety.

14. Section 15.02, Title to Improvements on the Premises, of the Lease is hereby deleted in its entirety and replaced with the following:

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 until such improvements are accepted by County in writing. Upon such acceptance, all improvements constructed or placed upon the Premises by Tenant, title to which has not previously vested in County hereunder, shall become the absolute property of County, and County, as owner, shall have every right, title, and interest therein, subject only to the right of Tenant to use during the Term of this Lease and shall remain the property of County thereafter with the sole right, title, and interest thereto.

15. Section 25.01, Non-Discrimination in County Contracts, of the Lease is hereby deleted in its entirety and replaced with the following:

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, gender identity and expression, or genetic information.

16. Section 28.11, Notices, of the Lease is hereby amended to reflect the current Tenant address:

Tenant:  
West Palm Beach Plaza, LLC  
12680 Darby Brook Ct  
Woodbridge, VA 22192  
Fax: 703-576-1694

17. Exhibits "A" to the Lease is hereby deleted in its entirety and replaced with Exhibit "A" to this Amendment. Exhibit "B" to the Lease is hereby deleted in its entirety.

18. Except as modified herein, all terms and conditions of the Lease shall remain in full force and effect.

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

{Remainder of page intentionally left blank.}



IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment, or have caused the same to be executed by their duly authorized representatives, as of the day and year first above written.

ATTEST:

SHARON R. BOCK  
Clerk and Comptroller

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

PALM BEACH COUNTY, a political  
subdivision of the State of Florida by  
its Board of County Commissioners

By: \_\_\_\_\_  
Priscilla A. Taylor, Mayor

(SEAL)

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

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

APPROVED AS TO TERMS  
AND CONDITIONS

By: [Signature]  
Director, Department of Airports

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

[Signature]  
Signature

TAD ANDERSON  
Print Name

[Signature]  
Signature

H. Mostaghimi  
Print Name

TENANT:

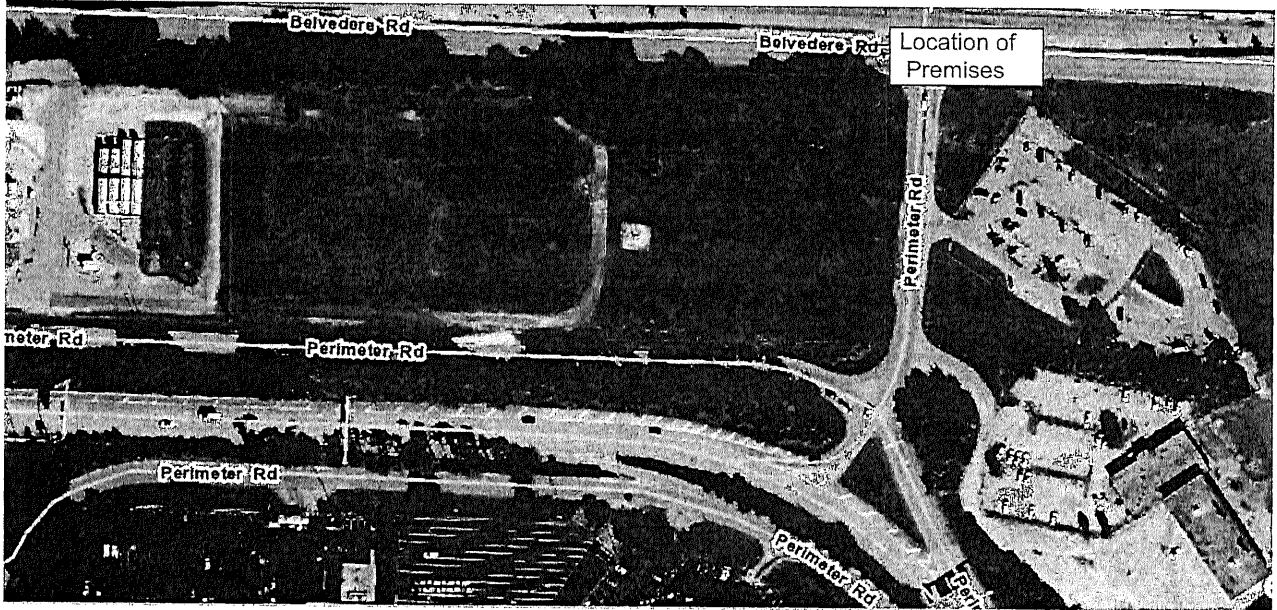
By: [Signature]  
Signature

HOSSEIN ESTERAI  
Print Name

MANAGING MEMBER  
Title

(SEAL)

**EXHIBIT "A"**  
**Premises**



**AFFIDAVIT OF LIMITED LIABILITY COMPANY**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

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 First Amendment to Development Site Lease 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 and any future amendments to the Development Site Lease (R-2013-0257).

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,

[Signature]  
\_\_\_\_\_, Individually and as  
**Manager**

SWORN TO AND SUBSCRIBED before me on this 1<sup>st</sup> day of August, 2014, by Abdelhusseni Etemali, Manager of West Palm Beach Plaza, LLC on behalf of the Company who is personally known to me OR who produced \_\_\_\_\_ Passively known to me, as identification and who did take an oath.



[Signature]  
\_\_\_\_\_  
Notary Signature

Houtan mostaghimi  
\_\_\_\_\_  
Print Notary Name

NOTARY PUBLIC

State of Virginia at large

My Commission Expires: 05/31/2016

\_\_\_\_\_



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
08/08/2014

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

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

<b>PRODUCER</b> Waymon Lynch Waymon Lynch Insurance Agency 4424 Longfellow Street Hyattsville, MD 20781		<b>CONTACT NAME:</b> Waymon Lynch <b>PHONE (A/C, No, Ext):</b> 202-462-9243 <b>FAX (A/C, No):</b> 202-462-9248 <b>E-MAIL ADDRESS:</b> lynchw@nationwide.com	
<b>INSURED</b> PMG Airport Developers, LLC West Palm Beach Plaza, LLC 2359 Research Court Woodbridge, VA 22192		<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> United States Liability Insurance Company <b>INSURER B:</b> <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>	

**COVERAGES**

CERTIFICATE NUMBER: CL1664861

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 INSD : WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOG OTHER:	Y	CL1664861	08/06/2014	02/06/2015	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$					<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE EACH OCCURRENCE \$ AGGREGATE \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A			<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Location: Parcel 0043433200001090, Palm Beach International Airport, West Palm Beach, FL 33046

Certificate Holder Is Named As An Additional Insured

RECEIVED  
 21 AUG 11 AM 9:58  
 AIRPORTS  
 46. P.B.I.A.

**CERTIFICATE HOLDER****CANCELLATION**

Palm Beach County Board of County Commissioners 846 Palm Beach International Airport West Palm Beach, FL 33046	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE Waymon Lynch
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