

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: January 10, 2017

☒ Consent      ☐ Regular  
☐ Workshop      ☐ Public Hearing

Department:

Submitted By: Department of Airports

Submitted For:

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to receive and file:

- A) Third Amendment to Non-Signatory Airline Agreement with Air Canada, a Canadian Corporation (R-2016-0156), replacing Exhibit "B" revising their leasehold at the Palm Beach International Airport effective October 1, 2016.
- B) Addendum To Airline Agreement with Air Canada, a Canadian Corporation, commencing October 1, 2016, and terminating on the date the Non-Signatory Airline Agreement with Air Canada (R-2016-0156) either expires or is canceled, providing for changes in leased facilities on a short-term basis due to seasonal demands at the Palm Beach International Airport.

**Summary:** Delegation of authority for execution of the standard County Third Amendment agreement above was approved by the BCC in R-2014-1575. Delegation of authority for execution of the standard County Addendum agreement above was approved by the BCC in R-2016-0976. **Countywide (AH)**

**Background and Justification:** N/A

**Attachments:**

- 1. One (1) Third Amendment to Non-Signatory Airline Agreement
- 2. One (1) Addendum To Airline Agreement

**JB**

Recommended By:  12/15/16  
Department Director Date

Approved By:  12-27-16  
County Administrator Date

## II. FISCAL IMPACT ANALYSIS

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

Fiscal Years	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>
Capital Expenditures					
Operating Costs					
Operating Revenues					
Program Income (County)					
In-Kind Match (County)					
<b>NET FISCAL IMPACT</b>	<b><u><u>\$-0-</u></u></b>	<b><u><u>\$-0-</u></u></b>	<b><u><u>\$-0-</u></u></b>	<b><u><u>\$-0-</u></u></b>	<b><u><u>\$-0-</u></u></b>
<b># ADDITIONAL FTE</b>					
<b>POSITIONS (Cumulative)</b>					

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


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

Air Canada's Third Amendment revises their leasehold by relocating their ticket office. The Addendum provides flexibility and increases efficiency in processing seasonal air carriers; therefore, there is no fiscal impact of this action. Seasonal carriers pay approximately \$1,050,000 per year in fees. Revenues are not guaranteed, however, and may vary from year-to-year.

C. Departmental Fiscal Review: 

### III. REVIEW COMMENTS

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


 12/13/16  
 12/13  
 OFMB ET 12/12

*An. J. Jacobson*  
Contract Dev. and Control  
*12/20/16*

### B. Legal Sufficiency:

Anne Delgado 12/21/16  
Assistant County Attorney

**C. Other Department Review:**

**Department Director**

**REVISED 9/03**  
**ADM FORM 01**  
**(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)**

**THIRD AMENDMENT TO NON-SIGNATORY AIRLINE AGREEMENT BETWEEN  
PALM BEACH COUNTY AND AIR CANADA**

**THIS THIRD AMENDMENT TO NON-SIGNATORY AIRLINE AGREEMENT** (this "Third Amendment") is made and entered into this NOV 21 2016, 2016, by and between Palm Beach County, a political subdivision of the State of Florida ("County"), and Air Canada, a Canadian Corporation, having its offices and principal place of business at 7373 Cote Vertu West, Ville Saint Laurent, Quebec, Canada H4Y 1H4 ("Airline")

**WITNESSETH:**

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

**WHEREAS**, pursuant to the Non-Signatory Airline Agreement between County and Airline dated December 9, 2015 (R-2016-0156) (the "Agreement"), as amended, Airline leases various terminal facilities and equipment at the Airport in connection with its operations as a commercial air carrier; and

**WHEREAS**, the Director of the Department has been delegated the authority to execute certain amendments to the Agreement pursuant to County Resolution No. 2014-1575; and

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

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

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

2. The parties agree that effective October 1, 2016, Exhibit "B" (Preferential Use Premises (Terminal Areas)) to the Agreement shall be deleted in its entirety and replaced with Exhibit "B" (Preferential Use Premises (Terminal Areas)) attached to this Third Amendment.

3. The parties agree that Article 18 is hereby deleted in its entirety and replaced with the following Article 18:

**ARTICLE 18**  
**NON-DISCRIMINATION**

18.01 Non-Discrimination in County Contracts. Airline warrants and represents to County that all of its employees are treated equally during employment without regard to race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity and expression, disability, or genetic information. Airline has submitted to County a copy of its non-discrimination policy, which is consistent with the above, as contained in Resolution R-2014-1421, as may be amended, or in the alternative, if Airline does not have a written non-discrimination policy, it has acknowledged through a signed statement provided to County affirming their non-discrimination policy conforms to R-2014-1421, as may be amended.

18.02 Federal Non-Discrimination Covenants.

A. Airline, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1. In the event facilities are constructed, maintained, or otherwise operated on the Airline Premises for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Airline will maintain and operate such facilities and services in compliance with all requirements imposed by the nondiscrimination acts and regulations listed in the Nondiscrimination Authorities (as hereinafter defined), as may be amended, such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
2. No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of County property, including, but not limited to, the Airline Premises.
3. In the construction of any improvements on, over, or under the Airline Premises and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
4. Airline shall comply with, and use the Airline Premises in compliance with, the requirements imposed by or pursuant to the Nondiscrimination Authorities.

B. In the event of breach of any of the above nondiscrimination covenants, County shall have the right to terminate this Agreement and to enter, re-enter, and repossess the Airline Premises, and hold the same as if this Agreement had never been made or issued. This Agreement shall not be terminated pursuant to this paragraph until the procedures of 49 CFR Part 21 are followed and completed, including, the exercise or expiration of appeal rights.

For purposes of this Article, the term "Non-Discrimination Authorities" includes, but is not limited to, the non-discrimination statutes, regulations and authorities listed in Appendix "E" of Appendix "4" of FAA Order 1400.11, Non-discrimination in Federally-Assisted Programs at the Federal Aviation Administration, as may be amended.

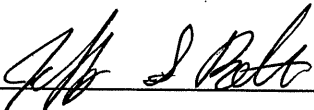
4. Exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Third Amendment by such reference.

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

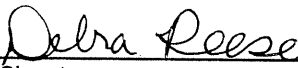
6. This Third Amendment shall become effective when signed by both parties hereto and approved by the Palm Beach County Board of County Commissioners.

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

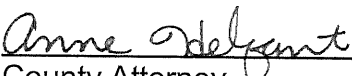
Signed, sealed and delivered in the presence of two (2) witnesses for County:

Signature   
Jeffrey S. Bolton

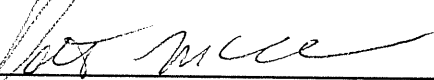
Print Name

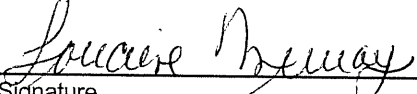
Signature   
Debra Reese  
Print Name

APPROVED AS TO FORM & LEGAL SUFFICIENCY:

Signature   
County Attorney

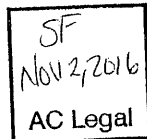
Signed, sealed and delivered in the presence of two (2) witnesses for Airline:

Signature   
PATRICIA MCCALL  
Print Name

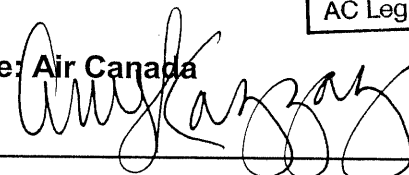
Signature   
LORRAINE MURRAY  
Print Name

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

BY:   
Director, Department of Airports



Airline: Air Canada

By:   
AMOS KAZZAZ  
Typed or printed name of Corporate Officer

Title: SUP. FINANCIAL PLANNING & ANALYSIS  
(Seal)

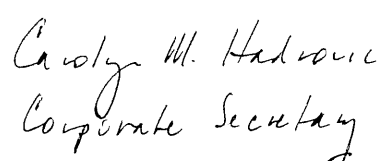
  
Carolyn M. Hadronic  
Corporate Secretary

EXHIBIT "B" - Preferential Use Premises (Terminal Areas)  
**Air Canada**

First Level Plan – Palm Beach International Airport Main Terminal

No Leased Space

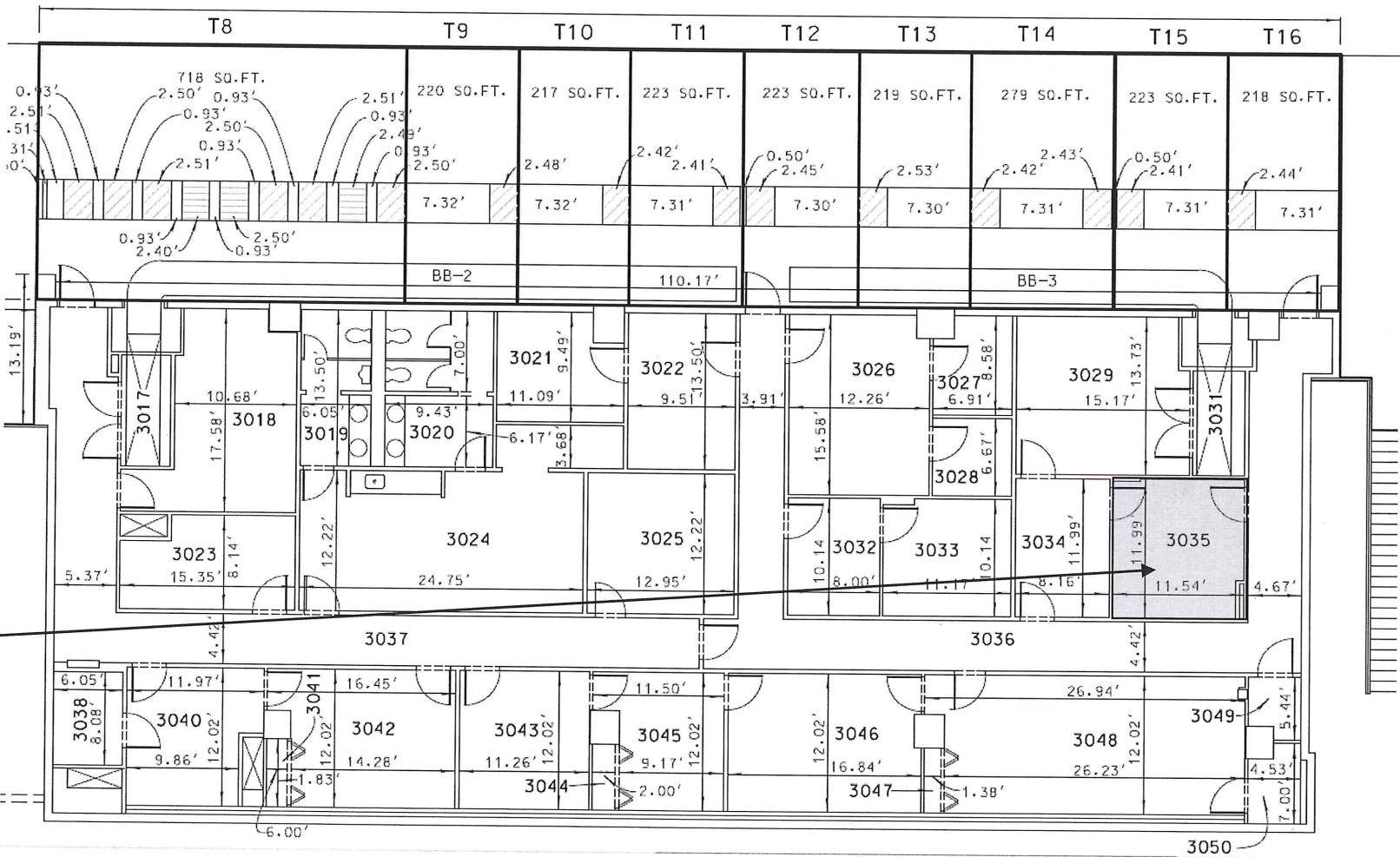
EXHIBIT “B” - Preferential Use Premises (Terminal Areas)  
**Air Canada**

Second Level Plan – Palm Beach International Airport

No Leased Space

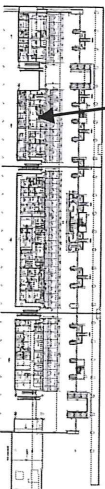
EXHIBIT "B" - Preferential Use Premises (Terminal Areas)  
Air Canada

Third Level Plan – Palm Beach International Airport Main Terminal



Effective October 1, 2016

TICKET OFFICE  
136 Sq. Ft.





Summary of Certificates

This report displays detailed Certificate of Insurance information for a selected Insured. Any items shown in red are deficient.

Monday, November 21, 2016

- Simple View
- Certificate Images
- Contracts

Insured: Air Canada

Insured ID: PBI-AI-15-01-PBC

Status: Compliant (with overrides)

ITS Account Number: PLC1839

Project(s): Palm Beach County - Airport Properties

Insurance Policy	Required	Provided	<u>Override</u>
<u>General Liability</u>			
Expiration: 12/15/2016			
General Aggregate:	\$100,000,000	\$100,000,000	
Products - Completed Operations Aggregate:	\$100,000,000	\$100,000,000	
Personal And Advertising Injury:	\$25,000,000	\$25,000,000	
Each Occurrence:	\$100,000,000	\$100,000,000	
Fire Damage:	\$0	\$0	
Medical Expense:	\$0	\$0	
<u>Automobile Liability</u>	All Owned Autos	not provided	X
	Hired Autos	not provided	X
	Non-Owned Autos	not provided	X
Combined Single Limit:	\$1,000,000	\$0	X
<u>Workers Compensation/Employers Liability</u>	WC Stat. Limits	not provided	X
Each Accident:	\$1,000,000	\$0	X
Disease - Policy Limit:	\$1,000,000	\$0	X
Disease - Each Employee:	\$1,000,000	\$0	X
<u>Aircraft Liability Insurance</u>			
Expiration: 12/15/2016			
Each Occurrence:	\$100,000,000	\$100,000,000	
Aggregate Limit:	\$100,000,000	\$100,000,000	

Missing Policy Information

Override

The original Certificate of Insurance received did not include policies for the following coverages:

- Automobile Liability
  - Workers Compensation/Employers Liability
- X  
X

Notifications

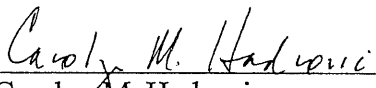
CERTIFICATE

I, Carolyn M. Hadrovic, Corporate Secretary of Air Canada (the "Corporation"), hereby certify that pursuant to a resolution adopted by the Board of Directors of the Corporation under By-Law No. 1 and to the delegated authorities thereunder, Amos Kazzaz, Senior Vice President, Financial Planning & Analysis is authorized to execute on behalf of the Corporation Third Amendment to Non-Signatory Airline Agreement between the Corporation and Palm Beach County.

I further certify that this authority was effective as of October 1, 2015 and has not been revoked and is in full force.

Dated at Montreal, Quebec, this 7<sup>th</sup> day of November, 2016.

AIR CANADA

  
Carolyn M. Hadrovic  
Corporate Secretary

## ADDENDUM TO AIRLINE AGREEMENT

THIS ADDENDUM TO AIRLINE AGREEMENT (this "Addendum") is made and entered into this NOV 21 2016 day of NOV 21 2016, 2016, by and between Palm Beach County, a political subdivision of the State of Florida, ("County") and Air Canada, a Canadian Corporation, having its offices and principal place of business at 7373 Cote Vertu West, Ville Saint Laurent, Quebec, Canada H4Y1H4 ("Airline").

### WITNESSETH:

WHEREAS, County, by and through its Department of Airports (the "Department"), is the owner and operator of the Palm Beach International Airport (the "Airport"); and

WHEREAS, the parties entered into that certain Non-Signatory Airline Agreement dated December 9, 2015 (R2016-0156), as amended (the "Airline Agreement"), which is hereby incorporated herein by reference; and

WHEREAS, Airline requires use of Airport facilities from time-to-time on a short-term, seasonal basis in connection with its aircraft operations at the Airport under the Airline Agreement.

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

### **ARTICLE 1 BASIC PROVISIONS**

1.01 Recitals. The foregoing recitals are true and correct and incorporated herein. Terms not defined herein shall have the meanings set forth in the Airline Agreement.

1.02 Designated License Area. In the event Airline requires additional space such as ticket counter or office space on a short term basis for its seasonal aircraft operations at the Airport, Airline may notify County in writing of the: (a) type and amount of space required for its operations; (b) the anticipated date Airline will commence use of the space; and (c) the anticipated date Airline will return the space. Airline should notify County no less than ninety (90) days prior to its proposed commencement of operations of its space requirements. In the event appropriate space is available, County will notify Airline in writing of the available space and provide the attached Exhibit "A" ("Facilities Use Permit") to Airline for approval. In the event Airline approves of the space(s) designated for Airline's use under the Facilities Use Permit ("License Area"), Airline shall cause an authorized representative of Airline to sign and return the Facilities Use Permit to the County.

1.03 Return of License Area. Upon expiration or earlier termination of Airline's license to use the License Area under a Facilities Use Permit, Airline, at its sole cost and expense, shall surrender the License Area to the County in at least the same condition as the License Area was in as of the Commencement Date of the Facilities Use Permit. Airline shall remove all personal property and signage from the License Area at Airline's sole cost and expense, unless otherwise approved in writing by the Department. Any personal property of Airline not removed in accordance with this Section, at the option of County, may be removed and placed in storage by County at the sole cost of Airline, or may become the property of County, all at no cost to County. In the event County does not elect to take ownership of the property, it may dispose of same by either public or private sale and retain the proceeds thereof. Any costs of removal and disposition not covered by such proceeds shall be borne by Airline. In the event Airline fails to timely restore the License Area as provided above, County may restore the License Area at Airline's sole cost and expense. Airline shall reimburse County for County's actual costs plus a twenty five percent (25%) administrative overhead within thirty (30) days of the date of County's invoice. Airline's reimbursement obligations under this Section shall survive the expiration or earlier termination of the Facilities Use Permit, the Airline Agreement and/or this Addendum until County has received full reimbursement.

## **ARTICLE 2**

### **TERM**

The term of this Addendum shall commence on October 1, 2016 (the "Commencement Date") and automatically terminate on the date the Airline Agreement expires or is terminated (the "Term"), unless terminated earlier as provided for herein.

## **ARTICLE 3**

### **FEES AND CHARGES**

Airline shall pay County all fees and charges applicable to the License Area identified in the Facilities Use Permit in accordance with the then current Rate and Fee Schedule (as defined in the Airline Agreement), subject to any waiver of fees and charges pursuant to an Airline Service Incentive Program Participation Agreement entered into by the parties.

## **ARTICLE 4**

### **LICENSE AREA**

Airline acknowledges and agrees that Airline's use of the License Areas shall be governed by the terms and conditions of the Airline Agreement, this Addendum and the Facilities Use Permit.

## **ARTICLE 5**

### **REVOCATION OF ADDENDUM/DEFAULT**

5.01 License. Notwithstanding any provision of this Addendum to the contrary, the parties acknowledge and agree the rights granted to Airline under the Facilities Use Permit shall be a non-exclusive license to use the License Area.

5.02 Termination for Convenience. Either party may terminate this Addendum or a Facilities Use Permit for convenience upon fifteen (15) days prior written notice to the other party, whereupon the parties shall be relieved of all further obligations hereunder with the exception of those obligations accruing prior to the date of such termination and which expressly survive termination of this Addendum.

5.03 Default. Failure to perform or observe any of the agreements, covenants or conditions contained in the Airline Agreement, this Addendum or any Facilities Use Permit issued pursuant to this Addendum to be performed or observed by such party upon thirty (30) days prior written notice shall constitute a material default of this Addendum and the Airline Agreement.

## **ARTICLE 6**

### **EFFECTIVE DATE**

This Addendum shall become effective when executed by the parties hereto.

**(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)**

IN WITNESS WHEREOF, County and Airline have executed this Addendum, or have caused the same to be executed as of the day and year first above written.

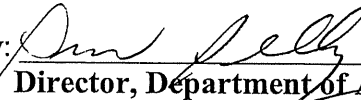
WITNESSES:

  
Signature **Jeffrey S. Bolton**

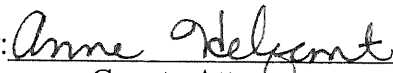
Debra Reese  
Typed or Printed Name

Debra Reese  
Signature  
Debra Reese  
Typed or Printed Name

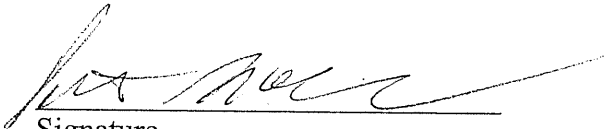
PALM BEACH COUNTY, FLORIDA,  
A POLITICAL SUBDIVISION OF THE  
STATE OF FLORIDA

By:   
Director, Department of Airports


APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

By:   
County Attorney

WITNESSES:

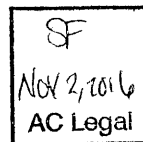
  
Signature

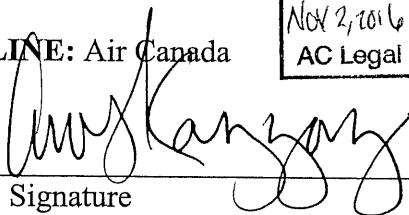
PATRICIA MCCALL  
Typed or Printed Name

  
Signature

LORRAINE MURRAY  
Typed or Printed Name

AIRLINE: Air Canada

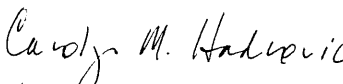


By:   
Signature

**Amos Kazzaz**  
Typed or Printed Name  
Senior Vice President  
Financial Planning & Analysis

Title: \_\_\_\_\_

(Seal)

  
Carolyn M. Hadovic  
Corporate Secretary

**EXHIBIT "A"**  
**FACILITIES USE PERMIT**

# Palm Beach

INTERNATIONAL AIRPORT

**FACILITIES USE PERMIT**

**AIRLINE:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_  
\_\_\_\_\_

**TELEPHONE/E-MAIL:** \_\_\_\_\_

**NAME AND TITLE OF  
AUTHORIZED REPRESENTATIVE:** \_\_\_\_\_

In accordance with that certain Non-Signatory Airline Agreement dated December 9, 2015 (R2016-0156) (the “Airline Agreement”) and Addendum to Airline Agreement dated \_\_\_\_\_, 20\_\_ (R-\_\_\_\_\_) (“Addendum”), by and between Palm Beach County, a political subdivision of the State of Florida (“County”), and Air Canada, a Canadian Corporation (“Airline”), Airline shall have a short-term license to utilize the following space(s) (“License Area”), which license shall commence and terminate on the dates/times listed below, unless otherwise agreed to in writing by the Department of Airports:

Space Type	Location	Square Footage	Commencement Date/Time	Termination Date/Time
	See Attachment “I”			
	See Attachment “I”			
	See Attachment “I”			
	See Attachment “I”			

By signing below, I hereby certify that I have the authority to represent and obligate Airline and that Airline shall comply with all terms and conditions of the Airline Agreement, the Addendum and this Facilities Use Permit applicable to the use of the License Area.

**AIRLINE:**

\_\_\_\_\_  
*Signature of Authorized Representative of Airline*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

**APPROVED BY:**

\_\_\_\_\_  
*Director, Department of Airports*

\_\_\_\_\_  
*Date*

**TRANSMITTED TO AIRPORT FINANCE DIVISION BY:**

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Date*