

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS**

## AGENDA ITEM SUMMARY

**Meeting Date:** December 4, 2018

☒ Consent      ☐ Regular  
☐ Workshop      ☐ Public Hearing

**Department:** Department of Airports

**Submitted By: Department of Airports**

**Submitted For:** Department of Airports

## I. EXECUTIVE BRIEF


**Motion and Title:** **Staff recommends motion to approve:** First Amendment (Amendment) to Development Site Lease Agreement (Lease) PBI Post Distr. LLC (PBI Post) (R-2017-1892), extending the date for beneficial occupancy, the deadline for governmental approvals and the construction deadline each by 6 additional months.

**Summary:** The Lease provides for the development of an approximately 120,000 square foot warehouse for the storage, handling and distribution of PODS storage containers by PBI Post. The Lease provided PBI Post with 12 months from December 19, 2017, to obtain all the necessary government approvals to commence construction of the development. Although PBI Post has diligently proceeded with applying for the required approvals, PBI Post will not receive all necessary approvals before December 19, 2018, and has requested additional time to complete the governmental approval processes. This Amendment will extend the date of beneficial occupancy, the deadline for receipt of all governmental approvals and the construction deadline each by 6 additional months. **Countywide (HF)**


**Background and Justification:** On December 19, 2017, the Board approved the Lease with PBI Post. The Lease provides PBI Post with the right to terminate in the event it is unable to obtain all the necessary governmental approvals by December 19, 2018. This Amendment extends these periods by 6 months.

**Attachments:**

- ### 1. Amendment (3)

Recommended By:   
Department Director

11/4/88  
Date

Approved By:   
County Administrator

Date \_\_\_\_\_



## II. FISCAL IMPACT ANALYSIS

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

Fiscal Years	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>\$-0-</u>	<u>\$-0-</u>	<u>\$-0-</u>	<u>\$-0-</u>	<u>\$-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes \_\_\_\_\_ No X  
Does this item include the use of federal funds? 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 Lease currently provides that rent will commence on the date of beneficial occupancy, which occurs on the earlier of: (a) substantial completion of the improvements; (b) the date PBI Post commences using the property for the conduct of its business; or (c) 26 months from the effective date of the Lease. The Amendment extends the outside date for rental commencement by 6 months, from 26 months to 32 months. Upon commencement, PBI Post will pay an initial annual rental of \$186,217 with escalations commencing October 1, 2022, and every 3 years thereafter. Approval of this item may delay the commencement of lease payments by 6 months; however, this extension will not impact the total value of the contract over the leasehold life. As it is unknown at this time whether the approval of this item will result in a delay of the rent commencement date, \$-0- fiscal impact has been noted.

C. Departmental Fiscal Review: CM Scrimm

## III. REVIEW COMMENTS

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

Robyn Law 11/14/18  
OFMB 11/16

Lauren D. [Signature] for Kevin Jacobowitz  
Contract Dev. and Control  
11/14/18 TD

### B. Legal Sufficiency:

[Signature] 11/15/18  
Assistant County Attorney

### C. Other Department Review:

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

REVISED 11/17

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

Summary of Certificates

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

Wednesday, October 31, 2018

Simple View

Certificate Images

Documents

Insured: PBI Post Distr. LLC

Insured ID: PBI-PO-17-01

Status: Compliant

ITS Account Number: PLC2920

Project(s): Palm Beach County - Airport Properties - (Active)

Insurance Policy	Required	Provided	Override
General Liability			
Expiration: 11/27/2018			
General Aggregate:	\$2,000,000	\$2,000,000	
Products - Completed Operations Aggregate:	\$2,000,000	\$2,000,000	
Personal And Advertising Injury:	\$1,000,000	\$1,000,000	
Each Occurrence:	\$1,000,000	\$1,000,000	
Fire Damage:	\$0	\$0	
Medical Expense:	\$0	\$0	

Notifications

There were no deficiency letters issued.

Do you have an updated Certificate? Click the button below to submit a Certificate.

Certificate Submittal



**AFFIDAVIT OF LIMITED LIABILITY COMPANY**

STATE OF NEW YORK

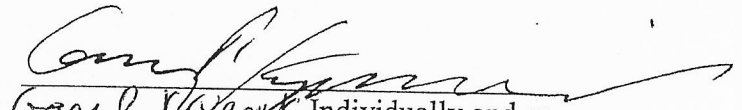
COUNTY OF NASSAU

BEFORE ME, the undersigned authority, personally appeared, the undersigned who by me being first duly sworn, depose(s) and say(s) that:

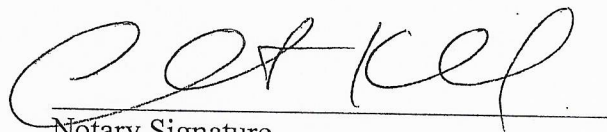
1. The undersigned is the Manager of PBI Post Distr. LLC, a Delaware limited liability company, a limited liability company organized and existing under the laws of the State of Delaware ("Company").
2. Articles of Organization of the Company have been filed, and are on-file with, the Delaware Department 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 manager 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 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,

  
\_\_\_\_\_  
Gary P. Krupnick, Manager

SWORN TO AND SUBSCRIBED before me on this 23<sup>rd</sup> day of October, 2018, by Gary P. Krupnick, Manager of PBI Post Distr. LLC, a Delaware limited liability company on behalf of the Company who is personally known to me OR who produced \_\_\_\_\_, as identification and who did take an oath.

  
\_\_\_\_\_  
Notary Signature  
Christine Konefal  
\_\_\_\_\_  
Print Notary Name

NOTARY PUBLIC

State of New York at large

My Commission Expires:

2/24/19

CHRISTINE KONEFAL  
Notary Public, State of New York  
No. 02KO5073526  
Qualified in Rockland County  
Commission Expires February 24, 2019

**FIRST AMENDMENT TO DEVELOPMENT SITE LEASE AGREEMENT  
BETWEEN PALM BEACH COUNTY AND PBI POST DISTR. LLC**

**THIS FIRST AMENDMENT TO DEVELOPMENT SITE LEASE AGREEMENT** (this "Amendment") is made and entered into as of \_\_\_\_\_, 20\_\_, by and between Palm Beach County, a political subdivision of the State of Florida ("County"), and PBI Post Distr. LLC, a Delaware limited liability company, having its office and principal place of business at 687 Old Willets Path, Suite C, Hauppauge, NY 11788 ("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**, the parties entered into that certain Development Site Lease Agreement dated December 19, 2017 (R-2017-1892) ("Lease"); 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. Recitals and Definitions. 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. Amendment of Term. 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 earlier of: (a) substantial completion of the Initial Leasehold Improvements as defined in Section 6.01(A); (b) the date Tenant commences using the Premises (or any part thereof) for the conduct of its business (other than construction); or (c) thirty-two (32) months from the Effective Date (or such later date agreed to by County pursuant to Section 6.01(A)) ("Date of Beneficial Occupancy") and expire thirty (30) years thereafter, unless sooner terminated pursuant to the terms of this Lease ("Initial Term").

3. Extension of Governmental Approvals Deadline. Section 3.07, Governmental Approvals, of the Lease is hereby amended to delete subsection (B) in its entirety and replace it with the following:



- (B) Provided that Tenant submits its applications in a timely manner and continues to work diligently in good faith to obtain all Governmental Approvals, if Tenant has not received all required Governmental Approvals on or before the date that is eighteen (18) months from the Effective Date ("Approval Deadline"), Tenant shall be entitled to terminate this Lease upon prior written notice to County within thirty (30) days after the expiration of the Approval Deadline. If termination notice is timely given by Tenant to County pursuant to this Section 3.07(B), 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.

4. Extension of Initial Leasehold Improvements Deadline. Section 6.01, Tenant Construction Requirements, of the Lease is hereby amended to delete subsection (A) in its entirety and replace it with the following:

- (A) Initial Leasehold Improvements. Tenant shall cause the design and construction of the following improvements at Tenant's sole cost and expense: (a) a warehouse/storage facility on the Property, consisting of approximately one hundred twenty thousand (120,000) square feet of space consistent with the conceptual site plan included in Tenant's Proposal; and (b) all other improvements and infrastructure, whether located on or off the Property, necessary to support the development of the Property, 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 "Initial Leasehold Improvements") at its sole cost and expense. Construction of the Initial Leasehold Improvements shall be completed no later than thirty-two (32) months following the Effective Date, unless otherwise approved by the Department in writing, which approval shall not be unreasonably withheld, conditioned or delayed for reasons beyond the reasonable control of Tenant. Substantial completion of the Initial Leasehold Improvements will occur when the applicable governmental authority issues a temporary or permanent certificate of occupancy for the Property, as improved by the Initial Leasehold Improvements. Tenant shall promptly notify County in writing of the issuance of a certificate of occupancy for the Initial Leasehold Improvements.

5. Paragraph Headings. The heading of the various articles and sections of this Amendment 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 Amendment or any part or parts of this Amendment.

6. Entire Agreement. Except as modified herein, all terms and conditions of the Lease shall remain in full force and effect. In the event of any conflict or inconsistency between the provisions of the Lease and the provisions of this Amendment, the provisions of this Amendment shall govern and control.

7. Effective Date. 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 as of the day and year first above written.

ATTEST:

SHARON R. BOCK

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

By: \_\_\_\_\_  
Clerk and Comptroller

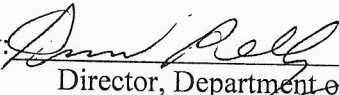
By: \_\_\_\_\_  
Mayor

(SEAL)

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

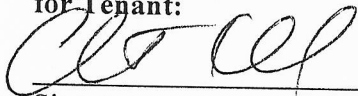
APPROVED AS TO TERMS  
AND CONDITIONS

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

By:   
Director, Department of Airports

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

Tenant:  
PBI Post Distr. LLC

  
Signature

  
Signature

Christine Kouefal  
Print Name

Gary P. Krupnick  
Print Name

  
Signature

Manager  
Title

Michael L. Dornbaum  
Print Name

(Seal)