

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**AGENDA ITEM SUMMARY**

Meeting Date: May 16, 2023

Consent     Regular  
 Workshop     Public Hearing

Submitted By: Department of Airports

**I. EXECUTIVE BRIEF**

**Motion and Title: Staff recommends motion to receive and file:** License Agreement (Agreement) with Sky Chefs, Inc. (Sky Chefs), commencing on April 1, 2023, and initially expiring April 30, 2023, with automatic renewals on a monthly basis through September 30, 2025, for Sky Chefs to use ramp space for airline catering truck parking at the Palm Beach International Airport (PBI) for payment of a license fee in the amount of \$750.00 per month.

**Summary:** Sky Chefs provides food and beverage services to airlines at PBI through their In-Flight Catering Permit (Permit) (R2016-1676). Sky Chefs requested ramp space to park up to three (3) airline catering trucks used in conjunction with their Permit. Delegation of authority for execution of the standard form License Agreement was approved by the Board in R-2007-2070. **Countywide (AH)**

**Background and Justification:** N/A

**Attachments:** One (1) License Agreement

Recommended By:

*Lana Bube*  
Department Director

4-21-23  
Date

Approved By:

*For* for  
County Administrator

4/28/23  
Date

**II. FISCAL IMPACT ANALYSIS**

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


Fiscal Years	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	<u>(\$750)</u>	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u>(\$750)</u>	<u>\$-0-</u>	<u>\$-0-</u>	<u>\$-0-</u>	<u>\$-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes X No \_\_\_  
 Does this item include the use of federal funds? Yes \_\_\_ No X

Budget Account No: Fund 4100 Department 120 Unit 8320 RSource 2900  
 Reporting Category \_\_\_\_\_


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

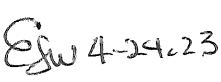
Sky Chefs will pay a license fee of \$750 per month. The fiscal impact above illustrates payment of the license fee for April 2023. The Agreement automatically renews on a monthly basis unless canceled with a final expiration date of September 30, 2025, but renewal beyond April 30, 2023 has not been determined.

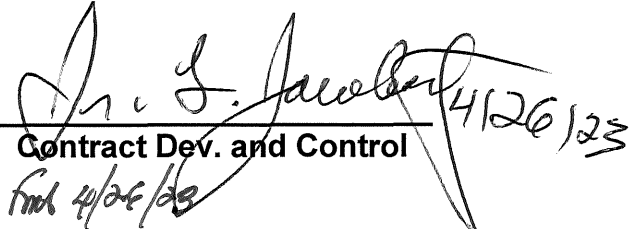
C. Departmental Fiscal Review: 

**III. REVIEW COMMENTS**

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

 4/24/2023  
 OFMB 9A 9/24

 4-24-23

 4/26/23  
 Contract Dev. and Control  
 from 4/26/23

**B. Legal Sufficiency:**

 4/28/23  
 Assistant County Attorney

**C. Other Department Review:**

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

REVISED 11/17

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

## **LICENSE AGREEMENT**

**THIS LICENSE AGREEMENT** (this "Agreement") made and entered into this 1<sup>st</sup> day of April, 2023, by and between Palm Beach County, a political subdivision of the State of Florida, ("County") and Sky Chefs, Inc., a Delaware corporation, whose principal place of business is located at 5040 Riverside Drive, Building 1, Suite 200, Irving, TX 75039, ("Licensee").

### **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**, Licensee provides catering services to airlines at the Airport pursuant to that certain In-Flight Catering Permit dated May 26, 2016 (R2016-1676) (the "Permit"); and

**WHEREAS**, Licensee has requested to use certain real property at the Airport for the temporary parking and staging of catering trucks in connection with the Permit; and

**WHEREAS**, County is the owner of that certain real property as more particularly described on the attached Exhibit "A"; and

**WHEREAS**, County is willing to grant Licensee a revocable license to use the Property for the purposes hereinafter defined.

**NOW THEREFORE**, in consideration of the covenants and agreements hereinafter set forth on the part of the Licensee to be observed and performed, the County hereby grants the Licensee a non-exclusive, revocable license to use the Property (as hereinafter defined) upon the following terms and conditions:

### **ARTICLE 1 BASIC PROVISIONS**

1.01 **Recitals.** The foregoing recitals are true and correct and incorporated herein.

1.02 **Property.** The Property, which is the subject of this Agreement, is an portion of the paved area on the Airport, designated in writing by the Department, sufficient in size to accommodate the parking of no more than three (3) vehicles operated by Licensee, as further provided in Section 4.01 (the "Property"). As of the Effective Date the Property is identified in Exhibit "A", attached hereto and incorporated herein. The Department may, in its sole and absolute discretion, relocate the location of the Property upon written notice to Licensee, without formal amendment hereto.

**ARTICLE 2  
LENGTH OF TERM AND COMMENCEMENT DATE**

The term of this Agreement shall commence on April 1, 2023 (the "Commencement Date") and expire on April 30, 2023, (the "Initial Term"), unless terminated earlier as provided for herein. This Agreement shall be automatically renewed for one (1) month intervals thereafter (the "Renewal Term"), unless terminated earlier as provided for herein; provided, however, no Renewal Term shall extend beyond September 30, 2025; and further provided, either party may elect to not renew this Agreement upon providing no less than five (5) days advance written notice to the other party prior to the expiration of the then current term. The Initial Term and Renewal Term shall be collectively referred to as the "Term". Notwithstanding the foregoing or any other provisions of this Agreement, this Agreement shall automatically terminate upon the expiration or earlier termination of the Permit.

**ARTICLE 3  
LICENSE FEE**

3.01 License Fee. Licensee shall pay County for the use and occupancy of the Property a license fee in the amount of Seven Hundred Fifty and 00/100 dollars (\$750.00) per month, together with applicable sales taxes thereon. The License Fee shall be payable in advance, without demand and without any deduction, holdback or set-off whatsoever, on or before the first day of each and every month throughout the Term of this Agreement with the first payment becoming due and payable as of the Commencement Date. If the Commencement Date occurs on a day other than the first day of a month, the license fee for a fractional monthly period shall be prorated on a per-diem basis [calculated on the basis of a thirty (30) day month. Any license fee due hereunder for any other fractional monthly period shall likewise be calculated and paid on such a per-diem basis.

**ARTICLE 4  
CONDUCT OF BUSINESS AND USE OF PROPERTY BY LICENSEE**

4.01 Use of Property. Licensee shall use the Property solely and exclusively for parking of no more than three (3) of Licensee's operable trucks owned or leased by Licensee in connection with Licensee's operations at the Airport pursuant to the Permit. Licensee shall not use, permit or suffer the use of the Property for any other business or purpose whatsoever. The Department may, at any time, issue written operational or security conditions governing Licensee's use of the Property, which shall be deemed to be incorporated herein upon delivery to Licensee (the "Operational Conditions"). Any such Operational Conditions may be amended at any time by the Department upon delivery of such amended Operational Conditions to Licensee.

4.02 Improvements. Licensee shall make no improvements, alterations or additions to the Property whatsoever, without the prior written consent of the Department, which may be granted or withheld in the Department's sole and absolute discretion.

4.03 Condition of Property. Licensee accepts the Property in its "As is", "Where is" condition as of the Commencement Date. Licensee further acknowledges that County has not made any warranties or representations of any nature whatsoever regarding the Property including, but not limited to, any warranties or representations relating to the physical condition of the Property or any improvements located therein, or the suitability of the Property or any improvements for the Licensee's intended use.

4.04 Waste or Nuisance. Licensee shall not commit or suffer to be committed any waste upon the Property or any nuisance or other act or thing which may result in damage or depreciation of value of the Property.

4.05 Compliance with Laws. Licensee shall, at its sole cost and expense, secure any and all required licenses and permits and shall comply with all local, state and federal laws pertaining to Licensee or its use of the Property, including all applicable zoning, building and fire laws and regulations. Licensee acknowledges and agrees that County has made no representations whatsoever regarding Licensee's ability to use the Property for the purposes set forth in this Agreement. Licensee shall ensure that its invitees, guests and any all other persons entering the Property with or without Licensee's consent or knowledge comply with all applicable laws on the Property. Licensee shall indemnify, defend and save County harmless from any and all penalties, fines, costs, expenses, suits, claims, or damages resulting from Licensee's failure to perform its obligations specified in this Section. The foregoing indemnification agreement shall survive the expiration or earlier termination of this Agreement.

4.06 Non-Discrimination. Licensee shall, at all times during the Term of this Agreement, and any extension thereof, comply with the County and Federal nondiscrimination provisions of the Permit, which provisions are incorporated herein by reference. Any amendments to such provisions to the nondiscrimination provisions of the Permit shall apply equally to this Agreement.

4.07 Surrender of Property. Upon expiration or earlier termination of Licensee's license to use the Property, Licensee, at its sole cost and expense, shall surrender the Property to the County in at least the same condition as the Property was in as of the Commencement Date of this Agreement.

4.08 County's Right to Enter. County shall have the right to enter the Property at any time, without notice, for any purpose whatsoever. County agrees to exercise reasonable efforts to minimize interference with or disruption of Licensee's operations on the Property; provided, however, County shall not be required to expend additional sums of money in order to comply with the foregoing requirement. In the event that a County work activity must take place within the Property during Licensee's operating hours, which will disrupt or interfere with the Licensee's operations, County will endeavor to provide prior notice to Licensee. The notice requirements provided under Section 10.04 shall not apply to this Section.

**ARTICLE 5**  
**REPAIRS AND MAINTENANCE OF PROPERTY/SECURITY**

5.01 Repairs & Maintenance. County shall not be obligated or required to make or conduct any maintenance or repairs whatsoever to the Property. All portions of the Property and all improvements erected on the Property shall be kept in good repair and condition by Licensee. Licensee shall maintain the Property free of trash and debris. Upon expiration or earlier termination of this Agreement, Licensee shall deliver the Property to County in good repair and condition as specified herein, free of all improvements constructed by Licensee, if any. In the event of any damage to the Property, County may complete the necessary repairs or maintenance of the Property and Licensee shall reimburse County for all expenses incurred by County in doing so, plus a twenty five percent (25%) overhead, within fifteen (15) days after written request for reimbursement from County.

5.02 Security. Licensee acknowledges and accepts full responsibility for the security and protection of the Property and any and all personal property and improvements now existing or hereafter placed on or installed in or upon the Property, and for the prevention of unauthorized access to the Property. Licensee fully understands that the police security protection provided by County is limited to that provided to any other business situated in Palm Beach County by the Palm Beach County Sheriff's Office and expressly acknowledges that any special security measures deemed necessary or desirable for additional protection of the Property, shall be the sole responsibility of Licensee and shall involve no additional cost to County.

**ARTICLE 6**  
**INSURANCE**

Licensee shall maintain, on a primary basis and at its sole expense, at all times during the Term of this Agreement, and any extension thereof, the insurance coverages and limits set forth in the Lease Agreement, which insurance coverages are incorporated herein by reference. The requirements contained herein, as well as County's review or acceptance of insurance maintained by Licensee is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Licensee under this Agreement. Any modification to such insurance provisions of the Concession Agreement shall apply equally to this Agreement.

**ARTICLE 7**  
**INDEMNIFICATION**

Licensee shall indemnify, defend and save County harmless from and against any and all third-party claims, actions, damages, liability and expense in connection with: (i) loss of life, personal injury and/or damage to or destruction of property arising from or out of any occurrence in, upon or at the Property; (ii) the occupancy or use by Licensee of the Property or any part thereof; or (iii) any act or omission of Licensee, its agents, contractors, employees or invitees. In the event the County is made a party to any litigation commenced against Licensee or by Licensee against any third party, then

Licensee shall protect and hold County harmless and pay all costs and attorney's fees incurred by County in connection with such litigation, and any appeals thereof. Licensee recognizes the broad nature of this indemnification provision and specifically acknowledges the receipt of separate good and valuable consideration in support thereof. This provision shall survive expiration or earlier termination of this Agreement.

## **ARTICLE 8 ASSIGNMENT**

Licensee may not assign, sublet or rent any portion of the Property.

## **ARTICLE 9 REVOCACTION OF LICENSE/DEFAULT**

9.01 Revocation of License. Notwithstanding any provision of this Agreement to the contrary, the rights granted to Licensee hereunder amount only to a non-exclusive license to use the Property, which license is expressly revocable by County for any reason whatsoever upon notice to Licensee. Upon notice from County of the revocation of the license granted hereby, this Agreement shall terminate and County shall be relieved of all further obligations hereunder accruing subsequent to the date of such termination.

9.02 Termination for Convenience by Licensee. Licensee may terminate this Agreement for convenience upon five (5) days prior written notice to County, 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 those obligations which expressly survive termination of this Agreement.

9.03 Default.

- (a) Failure to perform or observe any of the agreements, covenants or conditions contained in this Agreement to be performed or observed by such party upon five (5) days prior written notice shall constitute a default of this Agreement.
- (b) A default, by Licensee, of any other permit, lease, license or agreement between County and Licensee, which default has not been cured within the applicable cure period provided in such permit, lease, license or agreement shall constitute a default of this Agreement.

## **ARTICLE 10 MISCELLANEOUS**

10.01 Subordination to Bond Resolution. This Agreement and all rights granted to Licensee hereunder are expressly subordinated and subject to the lien and provisions of the pledge, transfer, hypothecation or assignment made by County in the Palm Beach County Airport System Revenue Bond Resolution dated April 3, 1984 (R-84-427), as

amended and supplemented (the "Bond Resolution"), and County and Licensee agree that to the extent permitted by authorizing legislation, the holders of the Bonds or their designated representatives shall exercise any and all rights of County hereunder to the extent such possession, enjoyment and exercise are necessary to insure compliance by Licensee and County with the terms and provisions of this Agreement and Bond Resolution.

10.02 Subordination to State/Federal Agreements. This Agreement shall be subject and subordinate to all the terms and conditions of any instrument and documents under which the County acquired the land or improvements thereon, of which the Property are a part, and shall be given only such effect as will not conflict with nor be inconsistent with such terms and conditions. Licensee understands and agrees that this Agreement shall be subordinate to the provisions of any existing or future agreement between County and the United States of America, the State of Florida or any of their respective 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 federal funds for the development of the Airport.

10.03 Entire Agreement. This Agreement and any Exhibits attached hereto and forming a part thereof as if fully set forth herein, constitute all agreements, conditions and understandings between County and Licensee concerning the Property. All representations, either oral or written, shall be deemed to be merged into this Agreement. Except as herein otherwise provided, no subsequent alteration, waiver, change or addition to this Agreement shall be binding upon County or Licensee unless reduced to writing and signed by them.

10.04 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:

(a) If to the County at:

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



With a copy to:

Palm Beach County Attorney's Office  
Attn: Airport Attorney  
301 North Olive Avenue, Suite 601  
West Palm Beach, Florida 33401

(b) If to the Licensee at:

Sky Chefs, Inc.  
Attn: John H. Hayes  
5040 Riverside Dr., S. 200  
Irving, Texas 75039  
Email: [john.h.hayes@lsg-group.com](mailto:john.h.hayes@lsg-group.com)

With a copy to:

Sky Chefs, Inc.  
Attn: Jean Fignole  
650 SW 34th Street, Suite 114  
Fort Lauderdale, Florida 33315  
Email: [jean.fignole@lsgskycheffs.com](mailto:jean.fignole@lsgskycheffs.com)

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

10.05 Recording. Licensee shall not record this Agreement or any memorandum or short form thereof.

10.06 Waiver of Jury Trial. The parties hereto waive trial by jury in connection with proceedings or counterclaims brought by either of the parties hereto against the other, in connection with this Agreement.

10.07 Governing Law and Venue. This Agreement shall be governed by and interpreted according to the laws of the State of Florida and venue shall be in Palm Beach County.

10.08 Time of Essence. Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.

10.09 Captions. The captions and section designations set forth herein are for convenience only and shall have no substantive meaning.

10.10 Severability. In the event that any section, paragraph, sentence, clause or provision of this Agreement is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

10.11 Waiver. No waiver of any provision of this Agreement shall be effective against any party hereto unless it is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

10.12 Inspector General. Palm Beach 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 the Licensee, 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.

10.13 No Third Party Beneficiaries. No provision of this Agreement 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 Agreement, including but not limited to any citizen or employees of County and/or Licensee.

10.14 Scrutinized Companies. As provided in Section 287.135 Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, the Licensee certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to Section 215.4725 Florida Statutes. When contract value is greater than \$1 million, as provided in Section 287.135, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, Licensee certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes or is engaged in business operations in Cuba or Syria. If the County determines, using credible information available to the public, that a false certification has been submitted by Licensee, this Agreement may be terminated and a civil penalty equal to the greater of \$2 Million Dollars or twice the amount of this Agreement shall be imposed, pursuant to Section 287.135, Florida Statutes. The aforementioned certification must also be submitted at the time of any Agreement renewal, if applicable.

10.15 Effective Date. This Agreement shall become effective when executed by both parties hereto (the "Effective Date").

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

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

**WITNESSES:**

Ray Walter  
Signature  
Ray Walter  
Typed or Printed Name

Shawna Larose  
Signature  
Shawna Larose  
Typed or Printed Name

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

By: Sam Bulse **EW**  
Director of Airports

**APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY**

By: Anne Delgado  
County Attorney

**WITNESSES:**

John Hayes  
Signature  
John Hayes  
Typed or Printed Name

Don Hindeliter II  
Signature  
Don Hindeliter II  
Typed or Printed Name

**LICENSEE:**

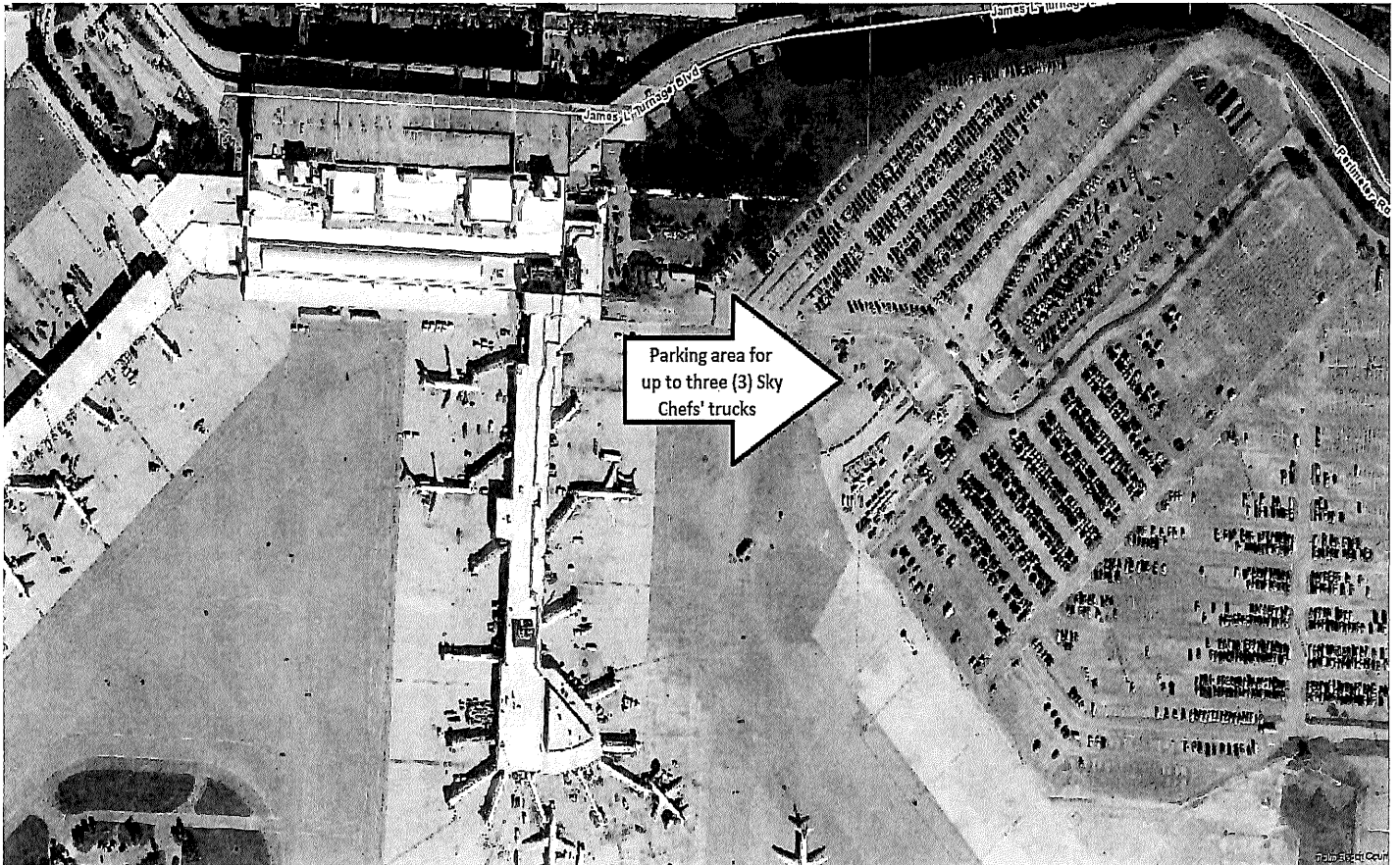
Sky Chefs, Inc.

By: Michael Arterberry  
Signature

Michael Arterberry  
Title: Assistant Secretary \_\_\_\_\_

(Seal)

**EXHIBIT "A"  
THE PROPERTY**



**The Property consists of ramp area for the parking of up to three (3) operable trucks owned or leased by Licensee in connection with the Permit.**

***(subject to relocation pursuant to Section 1.02 of the Agreement)***



**Palm Beach County  
Compliance Summary Report**

Vendor Number	Vendor Name	AM Best Rating	Insurance Carrier	Policy #	Eff. Date	Exp. Date	Coverage	Contract Number	Contract Name
DX00000676	Sky Chefs, Inc.	Modified	Compliant with Minor/Expiring Deficiencies					PBI-SY-19-01	License Agmt
		A+g , XV	Zurich American Insurance Company	BAP011118305	7/1/2022	7/1/2023	Auto Liability		
		A+g , XV	Zurich American Insurance Company	GLO011118205	7/1/2022	7/1/2023	General Liability		
		A+g , XV	American Zurich Insurance Company	WC011118105	7/1/2022	7/1/2023	Workers Comp		

**Risk Profile :** Standard - General Services  
**Required Additional Insured :** Palm Beach County Board of County Commissioners  
**Ownership Entity :**

**WRITTEN CONSENT OF SOLE DIRECTOR OF  
LSG SKY CHEFS USA, INC.  
(In Lieu of Meeting)**

October 14,2020

The undersigned, being the Director (the "Director") of **LSG SKY CHEFS USA, INC.**, a Delaware Corporation (the "Corporation"), acting pursuant to Section 141(f) of the Delaware General Corporation Law (the "Act") does hereby (i) waive any and all requirements for calling, giving notice of, and holding a special meeting, (ii) consent to and confirm the taking of the following actions by the Corporation, such written consent to be (a) evidence of the action taken by the Director as of the date hereof; (b) filed with the minutes of the meetings of the members of the Corporation; and (c) in lieu of a special meeting, and (iii) adopt and consent to the actions contemplated by the following resolutions, effective as of the date first written above:

**WHEREAS**, the Board desires to appoint Michael Arterberry to the office of Assistant Secretary of the Corporation.

**RESOLVED**, that Michael Arterberry is hereby appointed to the office of Assistant Secretary of the Corporation to serve in accordance with the By-Laws and the Act until his successor shall have been elected and qualified or until her resignation, retirement, removal or death;

**RESOLVED**, that all actions heretofore taken by the Board in connection with the subject of the foregoing resolutions be, and all such actions hereby are, approved, ratified and confirmed in all respects as the act and deed of the Corporation.

**IN WITNESS WHEREOF**, the undersigned has caused this Written Consent (in lieu of special meeting) of the Board of Directors of **LSG SKY CHEFS USA, INC.** to be executed by its duly authorized representatives as of the date first written above.



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Erdmann Rauer