

AIRPORT USE AGREEMENT

This Airport Use Agreement (the "Agreement") is entered into between Martin County, a political subdivision of the State of Florida (the "COUNTY"), and Martin County Fair Association, a not-for-profit corporation duly registered to do business in the State of Florida and located in Stuart, Florida (the "USER") (collectively, the "Parties"), and is effective on the last date of the signatories to this Agreement below.

WITNESSETH:

WHEREAS, the USER wishes to use a portion of the Martin County Airport/Witham Field (the "Airport") for the purposes of parking automobiles during the Martin County Fair scheduled for February 8th through February 16, 2019; and

WHEREAS, the USER would set up the parking area for parking services on February 2, 2019 and then break down and clean up the site on February 23, 2019; and

WHEREAS, the COUNTY is willing to allow such use of a portion the Airport for such purposes;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

- 1) As used herein, "County Administrator" means the County Administrator for Martin County or the County Administrator's designee including but not limited to the Airport Manager for the Airport.
- 2) The COUNTY hereby grants USER the limited right to use those portions of Witham Field not leased to others, and as further defined on the attached Exhibit A, B, C, and D that is incorporated by reference herein (the "Premises"), for the purpose of temporarily parking automobiles during the Martin County Fair. USER agrees to set up the parking area for parking services on February 2, 2019 and then break down and clean up at its own expense. The use will be coordinated with and subject to pre-approval in writing by the Airport Manager or his designee.
- 3) Term. The term this Agreement shall be from February 2, 2019 to February 23, 2019, unless otherwise agreed to by the parties in writing.
- 4) Fees and Deposit. USER agrees to pay COUNTY in the form of a cashier's check the amount of \$1,800.00 for its use of the Premises, that is, \$200 a day for nine days of parking, that is, February 8 through 16, 2019. USER further agrees to remit to COUNTY in the form of a cashier's check payable to Martin COUNTY a deposit in the amount of \$500 that is refundable to USER if the USER returns possession of the Premises in at least the same condition as before the USER took possession. USER agrees to pay the Fees and Deposit to

COUNTY on or before January 30, 2019. Payment of the Fees and Deposit is a condition precedent to USER using the Premises and failure to do so will be a default allowing COUNTY to terminate this Agreement at its sole discretion.

- a) If the USER fails to clean up the Premises following the event or fails to otherwise remove debris, trash, equipment, facilities or any other materials that were not on the Premises prior to the event, the COUNTY shall notify the USER of such failure. The USER shall promptly respond and clean up the Premises within twenty-four (24) hours of such notice. If the USER fails to clean up the Premises within such time, the COUNTY reserves the right to arrange to have the Premises cleaned and the USER agrees to fully reimburse the COUNTY for all expenses within ten (10) days of receipt of an invoice less the deposit. If the COUNTY has to take legal action against the USER to enforce this provision, the COUNTY shall be entitled to its reasonable attorneys' fees and costs if the COUNTY prevails in such action against the USER.
- 5) Notwithstanding the term set forth herein, County Administrator, upon 30-days' notice to USER, may cancel any use of the Premises should County Administrator determine in County Administrator's sole discretion that the Premises are needed for aeronautical purposes or that the County could lease the Premises for fair market value to generate revenue for Airport. COUNTY agrees to refund USER any fees or deposit remitted if this Agreement is cancelled by COUNTY pursuant to this provision.
- 6) The USER hereby agrees it shall:
 - a) Be solely responsible for ensuring that all activity occurring on the Premises are conducted in a safe and professional manner, in accordance with all Airport Minimum Standards and all applicable federal, state and local laws, and regulations.
 - b) Be solely responsible for providing the necessary personnel to install, repair, alter, and remove the equipment, facilities or trash required to conduct the desired activity and to leave the Premises in the same or better condition as existed before the activity.
 - c) Take no action, or allow its employees, contractors, guests, or invitees to take any action that could endanger or be inconsistent with the safe and efficient operation of the Airport.
 - d) Notify the COUNTY in writing of any special instructions which USER desires be issued by the Airport Manager to airport tenants and users, to safely and properly conduct the activity.
 - e) Provide a schedule status to Airport Manager on an as-needed basis, as determined by Airport Manager.
 - f) Be solely responsible for crowd control and security during the entire time this Agreement is in effect. This responsibility includes ensuring that persons do not enter

restricted areas of Witham Field, removing persons from restricted areas during any event, and clearly marking the limits to which the USER and event participants and spectators have authorized access, that is, the parking area.

- g) Supply in writing to Airport Manager a chain-of-command of officials including office, home and cell phone numbers for use by Airport Manager before and during the term of this Agreement. Airport Manager and/or his designees shall be provided access to the subject area.
- h) Be solely responsible for cleanup and adequate waste disposal during the term of this Agreement.
- i) Be solely responsible for securing permits from any governmental entity and supplying a copy of those permits to the Airport Manager.
- j) Defend, indemnify and hold harmless COUNTY and its commissioners, officials, officers, agents, employees and representatives, past, present and future, from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including, but not limited to attorney fees, court costs, and expert fees), of any nature whatsoever arising out of any negligence on the part of the USER, its employees, officers, representatives, or volunteers or anyone else acting on behalf of the USER in connection with the USER's use of the Premises as part of this Agreement. The USER agrees that nothing herein shall be construed to be a waiver of the COUNTY's sovereign immunity, provided by the Florida Constitution or the provisions of Section 768.28, Florida Statutes or a consent by the COUNTY to be sued by a third party.
- k) Provide to the COUNTY with a certificate of insurance providing for a commercial general liability insurance policy with policy limits of at least \$3,000,000 per occurrence to include, but not limited to bodily injury, property damage, products liability, and contractual liability. Commercial automotive liability insurance with policy limits of at least \$1,000,000 combined single limit covering any auto (including hired and non-owned autos) shall be required. The Certificate of Insurance shall name "Martin County and its Board of County Commissioners", as an additional insured, and the Certificate of Insurance shall be provided to the COUNTY. The policies must be specifically endorsed to grant the COUNTY thirty (30) days advance notice of any material change or cancellation of coverage. Insurance covering worker's compensation and employer's liability of the USER employees, if any, shall also be provided. Coverage shall be written on an occurrence form basis and respond as Primary. A per project aggregate limit shall apply or a separate -event liability policy shall be procured to ensure the dedicated limits are provided for the USER. Failure of the USER to provide the Certificates of Insurance at least thirty (30) days prior to the date of the event or receipt by the COUNTY of a notice of cancellation of the insurance policies shall constitute a material breach of this

Agreement and this Agreement may be terminated immediately.

- l) Provide to the COUNTY, waivers of subrogation under the above-required general liability, automotive liability and worker's compensation policies. The USER agrees that there be no exclusion for fellow employees, cross liability or insured vs. insured.
 - m) Require all of USER's contractors or subcontractors, as well as vendors participating in the event, if any, except governmental entities, to have at least \$1,000,000 per occurrence of general liability coverage for their particular function, with limits applying on a per project basis including, but not be limited to personal and advertising injury, bodily injury, property damage, products & completed operations liability, liquor liability (where applicable with limits of at least \$1,000,000) and contractual liability. Coverage shall respond as primary commercial automotive liability insurance with policy limits of at least \$1,000,000 combined single limit covering any auto (including hired and non-owned autos) shall be required. Insurance covering worker's compensation and employer's liability shall also be provided. Each policy should include a waiver of subrogation. All contractors, subcontractors and vendors shall submit a Certificate of Insurance to the COUNTY, specifying the insurance coverage, limits and naming Martin County, its officers, officials, agents, employees and representatives as additional insured. Certificates of Insurance shall be submitted to the Airport Manager prior to contractor or subcontractors being granted access to Witham Field or the Premises.
 - n) Promptly advise the COUNTY of any damage to the Premises or to Witham Field property and/or facilities directly or indirectly resulting from the activity. The USER shall be responsible for repairing any such damage.
- 7) The COUNTY reserves the right to cancel the activity at any time because of any unsafe circumstance that in the opinion of the Airport Manager, in the Airport Manager's sole discretion, determines to necessitate the cancellation of the activity, in which case the USER shall continue to retain liability until all activities have been completed and all equipment and persons have been removed from the Airport. If the Airport Manager cancels the activity due to an unsafe circumstance, the USER shall further release the COUNTY from any claims arising out of the relationship by the Agreement. The COUNTY shall have the right to terminate this agreement at any time in the event of a local, state, or federal declaration of emergency.
 - 8) Either party may terminate this Agreement for any reason upon thirty (30) days' prior written notification to the other party.
 - 9) Additional Provisions.
 - a) Attorney's Fees. Except as otherwise provided herein, the parties expressly agree that each party will bear its own attorney's fees and court costs incurred in connection with this Agreement.

- b) Waive Jury Trial. The parties expressly and specifically hereby waive the right to a jury trial as to any issue in any way connected with this Agreement.
- c) Venue. This Agreement and the terms hereof shall be construed in accordance with the laws of the State of Florida and venue for all actions shall be in the Nineteenth Judicial Circuit in and for Martin County, Florida.
- d) Entire Agreement. This Agreement constitutes the complete, full and wholly independent agreement among the parties to this Agreement with regard to the matter contained herein. This Agreement also supersedes all prior representation, statements, and understandings among the parties to this Agreement with respect to the matter and things addressed herein, either written or oral.
- e) Severability. Should any section or part of any section of this Agreement be rendered void, invalid, or unenforceable by any court of law, for any reason, such a determination shall not render void, invalid, or unenforceable any other section or any part of any section of this Agreement.
- f) Notification. All notices, requests, demands, or other communications hereunder shall be in writing and shall be deemed to have been served as of the delivery date appearing upon the return receipt if sent by certified mail, postage prepaid with return receipt requested at the address listed below, or upon the actual date of delivery, if hand delivered, to the address below. Either party may change the below-listed address at which it receives written notices by so notifying the other party hereto in writing.

FOR COUNTY

TO: Sam Carver
Airport Manager
Martin County Airport/Witham Field
2011 SE Airport Road
Stuart, FL 34996

COPY TO:
Office of the County Attorney
Martin County
2401 SE Monterey Road
Stuart, FL 34996

FOR USER

TO: Jay Spicer
Martin County Fair Association
2616 SE Dixie Highway
Stuart, FL 34996

- g) Waiver. No act of omission or commission of either party, including without limitation, any failure to exercise any right, remedy, or recourse, shall be deemed to be a waiver, release, or modification of the same. Such a waiver, release, or modification is to be effected only through a written modification to this Agreement.
 - h) Assignment. This Agreement may not be assigned by either party.
 - i) Amendments. This Agreement may be amended only by written agreement of the parties. A party requesting amendment of the Agreement must propose such amendment in writing to the other party at least ninety (90) days prior to the proposed effective date of the amendment.
- 8) Any copy of this Agreement fully executed by the COUNTY and the USER, whether printed or electronically scanned or otherwise duplicated, shall be as authentic and effective as an original for any purpose whatsoever.
- 9) The USER certifies the signature of its corporate officials to this Agreement below has been duly authorized by the USER pursuant to a corporate act or other official action of the USER pursuant to its Articles of Incorporation, bylaws, or as otherwise provided by law.

[This space is left blank intentionally.]

IN WITNESS WHEREOF, this Agreement has been executed by and on behalf of Martin County, Florida, by its Chairman of its Board of County Commissioners, its seal affixed hereto, as attested by its Clerk as of the _____ day of _____, 2019 .

(SEAL)

BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA

ATTEST:

By: _____
Edward V. Ciampi, Chairman

By: _____
Carolyn Timmann, Clerk of the
Circuit Court and Comptroller

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

MARTIN COUNTY ATTORNEY'S OFFICE

By: _____

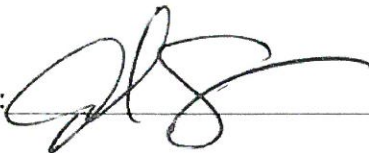
Print Name: _____

Title: _____

ATTEST:

Martin County Fair Association


Secretary

By: 

Print Name: Danny Culbertson

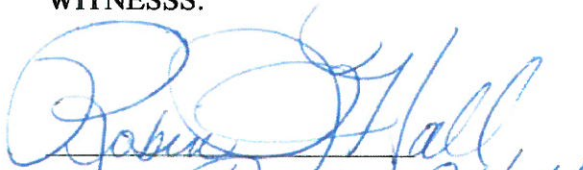
Print Name: JOSEPH SPICER

Title: FAIR MGR.

13 day of DECEMBER, 2018

(CORPORATE SEAL)

WITNESS:


Print Name: Robin S. Hall