

9.6.12 # 9a.

TO: The Honorable Chairman and Members of the
Board of County Commissioners

FROM: James L. Bennett, County Attorney *JLB*

SUBJECT: Notice of New LawsUIT and Defense of the Same by the County Attorney in the
Case of William M. Bruckner, Jr., an Individual d/b/a Florida Aerial Advertising
v. County of Pinellas
Circuit Civil Case No. 12-9499-CI-13

DATE: September 6, 2012

NOTICE: THIS IS TO ADVISE THE BOARD OF COUNTY COMMISSIONERS THAT THE ABOVE-REFERENCED LAWSUIT WAS FILED AGAINST THE COUNTY AND THE COUNTY ATTORNEYS OFFICE WILL DEFEND THE SAME.

DISCUSSION: Plaintiff filed the above-referenced action asserting alleged violation of his constitutional and other rights with regard to Resolution No. 01-45 relating to banner towing at the St. Petersburg-Clearwater International Airport.

A copy of the Complaint (without attachments) is attached hereto.

JLB:CDP
Attachment

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**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR
PINELLAS COUNTY, FLORIDA
CIVIL DIVISION**

**WILLIAM M. BRUCKNER, JR., an individual
d/b/a/ FLORIDA AERIAL ADVERTISING**

CASE NO. : 12-09499CI-13

Plaintiff,

v.

**COUNTY OF PINELLAS,
A Political Subdivision of the State of Florida,**

Defendant.

**VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF,
DAMAGES AND REQUEST FOR JURY TRIAL**

Plaintiff, WILLIAM M. BRUCKNER, JR., d/b/a FLORIDA AERIAL ADVERTISING (hereinafter referred to as "BRUCKNER"), acting as Pro Se litigant, hereby sues the Defendant, COUNTY OF PINELLAS, a political subdivision of the State of Florida (hereinafter the "COUNTY"), and the owner/operator of the ST PETERSBURG-CLEARWATER INTERNATIONAL AIRPORT (hereinafter "PIE"), and for his Complaint against Defendant, COUNTY, would state as follows:

I. PRELIMINARY STATEMENT

1. This is an action brought by the Plaintiff, WILLIAM M. BRUCKNER, JR. d/b/a FLORIDA AERIAL ADVERTISING, for Declaratory and Injunctive relief with respect to the Defendant COUNTY and it's PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS' (hereinafter the "BOCC") that adopted RESOLUTION No. 01-45

(hereinafter the "RESOLUTION") a true and correct copy thereof is attached hereto as Exhibit "A."

2. BRUCKNER operates an aerial advertising business that utilizes single engine aircraft to tow banners in the air to display various types of communication in the form of words, pictures or both. The aerial banners are towed behind the aircraft as it flies over pre-designated areas so that viewers upon the ground below may receive the intended communication. The banner towing performed by Florida Aerial Advertising is an act of pure commercial speech.

3. The COUNTY, by and through its BOCC, has entirely prohibited BRUCKNER from conducting banner towing operations at PIE. The BOCC RESOLUTION NO. 01-45 resolved that "Banner-towing" operations are prohibited at the St. Petersburg-Clearwater International Airport.

4. The instant Complaint centers on the simplest of concepts: The RESOLUTION creates an unconstitutional prohibition and/or restraint on commercial speech without protecting any legitimate government interest.

5. Furthermore, the COUNTY has engaged in a systematic course of conduct to prevent Plaintiff from accessing his right to use the St. Petersburg-Clearwater International Airport for legitimate business and commercial activities that involve commercial speech.

6. The acts of the COUNTY in adopting the RESOLUTION, were arbitrary and capricious in that it unfairly discriminates against banner towing *only*, and does not prohibit other forms of aerial advertising such as airships "lighter than air" aircraft. The COUNTY is depriving BRUCKNER the right to operate his Banner-towing operation at the airport *on reasonable terms and without unjust discrimination.*

7. The Resolution, as applied to BRUCKNER is a direct violation of his rights under the First, Fifth, and Fourteenth Amendments to the United States Constitution, and their related counterparts under Florida state law. BRUCKNER seeks damages and further relief pursuant to 42 U.S.C. 1983 and 42 U.S.C. 1988, which relief is predicated on the acts taken by the COUNTY in their efforts to impose an unconstitutional prior restraint of Plaintiff's First Amendment rights, and otherwise harm the operation of BRUCKNER'S business.

8. The challenged RESOLUTION will be shown to be facially invalid under applicable federal law, as well as unconstitutional "as applied" to BRUCKNER because, facially, the prohibition on banner towing restrictions was not adopted with a valid legislative predicate, failed to provide for adequate alternatives of communication and failed to recognize lesser restrictive provisions that would not result in a complete and total prohibition on the legal and legitimate commercial activities of banner towing.

9. BRUCKNER alleges that the RESOLUTION was improperly adopted, and is also unduly restrictive and over-broad, being otherwise utilized to eliminate entirely safe operations, posing no threat to the public health, safety, or welfare.

II. JURISDICTIONAL STATEMENT

10. BRUCKNER seeks Declaratory and Injunctive Relief against Defendant, COUNTY, under 42 U.S.C. § 1983, because the COUNTY, under color of State Law, through its conduct and through the imposition and enforcement of the RESOLUTION has violated and threatened continued violation of the rights secured to BRUCKNER by the Constitution of the United States and other applicable provisions of federal and state law

11. This cause of action includes a prayer for damages in excess of \$15,000, exclusive of costs, interests and attorney's fees, and the jurisdiction of this Court is invoked pursuant to Section 26.012(2) (a), Florida Statutes.

12. The jurisdiction of this Court is also invoked pursuant to 86.011, Florida Statutes, which authorizes Circuit Courts to enter declaratory judgments within their monetary jurisdictional limits. Since this Court has sole jurisdiction over the monetary damages at issue, this Court also has sole jurisdiction over the action for declaratory and injunctive relief.

13. The jurisdiction of this Court is also invoked pursuant to 26.012 (3), F.S., which authorizes Circuit Courts to issue injunctions.

14. This cause of action also arises under the First, Fifth and Fourteenth Amendments to the Constitution of the United States and pursuant to 42 U.S.C. §§ 1983 and 1988 and comparable statutes and sections of the Constitution of the State of Florida.

15. This Court has concurrent jurisdiction with the United States District Court under 42 U.S.C. 1983 and 28 U.S.C. 1343 pursuant to *Howlett v. Rose*, 110 S.Ct. 2430 (1990).

16. It is acknowledged that the administrative procedure for review of a restriction to operations may be accomplished through the provisions of the Federal Aviation Regulations, specifically 14 C.F.R. Part 16. The United States Supreme Court considered the question of whether exhaustion of administrative remedies was a prerequisite to maintaining an action pursuant to 42 U.S.C. 1983. In *Patsy v. Board of Regents of the State of Florida*, 547 U.S. 496, 102 S. Ct. 2557 (1982), The petitioner in that case, a state employee, brought an action against the university that employed her under 42 U.S.C 1983, claiming she had been denied employment opportunities based on her race and sex. The district court granted the employer's motion to dismiss, and the appellate court remanded for a determination of whether the employee

could be required to exhaust administrative remedies. On further review, the Supreme Court reversed, holding that exhaustion of administrative remedies was not a prerequisite to a 1983 action. Hence, BRUCKNER should be allowed to prove his case at trial.

17. The administrative provisions of 14 C.F.R. Part 16 do not provide for actual or pecuniary damages upon a finding that the airport acted improperly. The only avenue for recovery of damages available to the Plaintiff is through the civil court process. Hence, the Plaintiff should be allowed to prove his case at trial.

III. PARTIES

18. BRUCKNER is the owner of Florida Aerial Advertising located at St. Petersburg –Clearwater International Airport. Florida Aerial Advertising flies aircraft towing banners in and around the airspace near St Petersburg-Clearwater International Airport in the Counties of Pinellas, Manatee, Sarasota, Pasco, Hillsborough and other neighboring counties. The majority of advertising clients hire Florida Aerial Advertising to fly their messages adjacent and parallel to the shores of Florida’s famed Clearwater Beach and other populated outdoor venues.

19. The COUNTY of Pinellas owns and operates the St Petersburg-Clearwater International Airport (hereinafter “PIE”) which is classified as a primary airport and is the base of operation for multiple types of aircraft. The majority of aircraft are single engine planes. Additionally, there are multi engine planes, some jet airplanes, a small number of helicopters, military and Coast Guard aircraft, as well as “lighter than air” airships and/or blimps. PIE also conducts multiple operations each day, most of which are transient and local

general aviation, some military operations, limited commercial and "lighter than air" airships whose activities include aerial advertising.

20. Mr. Noah Lagos is the Executive Director of PIE and is charged with both the day to day operations of PIE, primarily the operation of the St. Petersburg/Clearwater International Airport, and also with advising the governing body of the BOCC with respect to its operating policies. All actions of Defendant Lagos were actions under color of state law for the purposes of 42 U.S.C., Section 1983. By naming the BOCC, Lagos is considered to be acting as an agent thereof, in his official capacity. Lagos knew, or should reasonably have known, that his actions complained of herein, as an agent of BOCC, violated Plaintiff's rights and privileges as guaranteed by the Constitution Laws of the United States.

21. Federal Aviation Administration records indicate that PIE is obligated under airport development agreements with the Federal Government. Specifically, since 1982, the COUNTY has entered into numerous Airport Improvement Program ("AIP") grant agreements with the FAA and has received a total of \$42,665,944 through fiscal year 2003 in federal airport development assistance directly from the FAA. In addition, the airport has incurred obligations in the form of restrictive deed covenants arising from conveyances of land executed under the powers and authority contained in the provisions of the Surplus Property Act (SPA) of 1944, as amended, 49 USC §47151-153.

22. As the owner of PIE, which was developed with Federal grant assistance, the COUNTY OF PINELLAS is required to operate the airport for the use and benefit of the public and to make available to all types, kinds, and classes of aeronautical activity on reasonable terms, and without unjust discrimination, access to and use of the airport.

23. At all times material hereto, the COUNTY was and is a political subdivision of the State of Florida, whose authority to enforce applicable rules, regulations, codes and statutes pertaining to the operation of any public airport is duly governed and limited by the Code of Federal Regulations, the United States Constitution and the Constitution of the State of Florida. By naming the COUNTY as a Defendant, Plaintiff intends to include parties and officials acting on behalf of the COUNTY, including the COUNTY Commission, all COUNTY Airport officials, all COUNTY law enforcement and regulatory agencies, employees, and all others acting in any agency capacity and/or in concert with the COUNTY or at the formal direction of the COUNTY, or in any way acting "under color of state or federal law," as it pertains to the adoption, application, and/or enforcement of the RESOLUTION.

IV. GENERAL ALLEGATIONS

A. FACTUAL BACKGROUND

24. Based on information and belief the Federal Aviation Administration Flight Standards organization conducted an Aeronautical Study of PIE and determined that the unobstructed open area, generally East of the touchdown zone of runway 17 Left, was adequate for Banner-tow operations at PIE.

25. During 1999, Defendant COUNTY offered Plaintiff, BRUCKNER an agreement entitled "PROPOSED PERMIT FOR COMMERCIAL BUSINESS AT AIRPORT" (hereinafter "PROPOSED PERMIT") a true and correct copy thereof is attached hereto as **Exhibit "B."** The PROPOSED PERMIT declared that BRUCKNER had requested the non-exclusive right to conduct banner towing operations at PIE. Defendant COUNTY, by and through its' BOCC, as

the owner and operator of PIE declared that Plaintiff BRUCKNER'S Banner-towing activities would to be in the best interests of the public, as stated in the document.

"WHEREAS, COMPANY has requested a non-exclusive privilege to conduct certain commercial activities as hereinafter more fully described at the St. Petersburg-Clearwater International Airport, hereinafter referred to as **AIRPORT**, and

"WHEREAS, COUNTY, as owner of said **AIRPORT** deems the conduct of said commercial activities to be in the best interests of the public; and

"NOW, THEREFORE, COUNTY does hereby grant to **COMPANY** the following described, non-exclusive commercial operating privileges at the **AIRPORT**.

To conduct banner towing operations at St. Petersburg-Clearwater International Airport, subject to the following conditions, terms, and covenants of **COMPANY**." **PROPOSED PERMIT Exhibit "B" page 1.**

26. **BRUCKNER** has information and believes based on that information that the acts and conduct of the Defendant **COUNTY**, through its offering **BRUCKNER** the unconscionable **PROPOSED PERMIT**, were all done in an effort to deter **BRUCKNER** from operating **FLORIDA AERIAL ADVERTISING** at **PIE**. The **PROPOSED PERMIT** offered by Defendant **COUNTY**, by and through its' **BOCC**, purported to grant **BRUCKNER** a non-exclusive license to conduct Banner-tow operations at **PIE** subject to certain terms and conditions.

27. The terms and conditions as set forth by the **COUNTY** in its' **PROPOSED PERMIT** were unconscionable and oppressive as applied to Plaintiff and his commercial activities. The **PROPOSED PERMIT** requires Plaintiff to maintain \$10,000,000.00 (ten million) worth of liability insurance. Further, the **PROPOSED PERMIT** required an Environmental Impact study before beginning any banner towing operations. The astronomical amount of insurance required, and the requirement of an environmental impact study particularly on banner-

towing operations involving the take-offs and landings of a single engine aircraft, when contrasted to that of commercial jet aircraft is completely unreasonable and could only be calculated to deter BRUCKNER from accepting the terms of the PROPOSED PERMIT.

28. The acts and conduct of Defendant COUNTY were intentional in as much as the inclusion of unconscionable terms in the PROPOSED PERMIT were specifically calculated to either deter Plaintiff BRUCKNER from accepting the terms of the PROPOSED PERMIT thereby denying him the right to operate at PIE and/or by making BRUCKNER'S commercial activities absolutely cost-prohibitive making it impracticable and impossible for Plaintiff BRUCKNER to operate at PIE.

29. BRUCKNER began negotiations with Defendant COUNTY in an effort to modify the oppressive terms in its PROPOSED PERMIT. After exhaustive negotiations between the parties regarding the terms and conditions of the PROPOSED PERMIT, Defendant COUNTY, acting in concert with its airport director, DAVID METZ embarked on a course of conduct to systematically have Banner-towing operations at PIE unjustifiably declared unsafe. Defendant COUNTY through METZ acting under color of authority, solicited letters from its Air Traffic Controllers at PIE that, in their "opinion," Banner-towing operations would compromise the safety of other operations in use at PIE.

30. On or about December 15, 2000, Sandra L. Bathon, Air Traffic Manager St. Petersburg-Clearwater Air Traffic Control Tower ("ATCT") at PIE, caused a letter to be sent to DAVID METZ, Airport Director at PIE, regarding the "introduction of banner-towing into the current operation at PIE (hereinafter the "BATHON LETTER") a true and correct copy thereof is attached as **Exhibit "C."**

31. The BATHON LETTER set forth the opinion that “the introduction of banner towing into the current operation at St Petersburg-Clearwater International Airport would **negatively impact safety and efficiency.**”

32. The BATHON LETTER was not officially an FAA Aeronautical Study. Sandra Bathon, in her duties as the ATCT manager at PIE is not qualified by the FAA as an inspector authorized to conduct *any* Aeronautical Safety Study or review of said studies.

33. Thereafter, Defendant COUNTY Airport Manager DAVID METZ, under color of authority abused used his position as PIE Airport Director to further his personal vendetta against Plaintiff, BRUCKNER, when Defendant METZ sought and obtained the approval of the FAA Flight Services District Office Tampa manager Charles V. Nolan to confirm his intention to deny Plaintiff BRUCKNER the right to operate at PIE.

34. Charles V. Nolan is not a qualified and credentialed FAA Aviation Safety Inspector and as such does not have the authority to render an opinion about the safety of banner towing operations at PIE. See Charles V. Nolan letter of January 18, 2001 to DAVID METZ Airport Director at PIE, a true and correct copy thereof is attached hereto as **Exhibit “D.”** This was directly contrary to the position taken by the COUNTY, and its BOCC, in the PROPOSED PERMIT granting BRUCKNER the non-exclusive commercial operating privilege at PIE:

“To conduct banner towing operations at St. Petersburg-Clearwater International Airport, subject to the following conditions, terms, and covenants . . .”
PROPOSED PERMIT page 1.

35. On or about February 28, 2001, DAVID METZ sent a letter to Plaintiff BRUCKNER denying Plaintiff’s subsequent request to conduct Banner Towing operations at

PIE. See METZ letter of February 28, 2001 to BRUCKNER, a true and correct copy of which is attached hereto as **Exhibit "E."**

36. On or about March 13, 2001, Defendant COUNTY, by and through its' BOCC, adopted the RESOLUTION prohibiting Banner-towing operations at PIE. (See **Exhibit "A"**). The acts and conduct of Defendant COUNTY by adopting said RESOLUTION were arbitrary and capricious, showing a total disregard of Plaintiff BRUCKNER'S rights to have reasonable access to the use of PIE.

37. BRUCKNER, by and through his counsel, filed a Complaint under Federal Aviation Administration Rules of Practice for Federally Assisted Airport Proceedings pursuant to 14 Code of Federal Regulations Part 16 (hereinafter "COMPLAINT") a true and correct copy is attached hereto as **Exhibit "F."** Plaintiff, BRUCKNER as the owner of FLORIDA AERIAL ADVERTISING filed the COMPLAINT against PIE claiming that PIE violated the Assurances to which an airport agrees to as a condition of receiving Federal financial assistance.

38. After Plaintiff filed his Part 16 COMPLAINT and before a final determination was issued in the matter, the National Air Traffic Controllers Association, PIE local, hereinafter ("NATCA") after learning that Plaintiff, BRUCKNER had filed his complaint, issued an apparently gratuitous letter to DAVID METZ, Airport Director at PIE. The unsupported opinion of the NATCA on the matter was that banner towing was unsafe at PIE, stating, "We the controllers at [PIE] Air Traffic Control Tower feel that a banner towing operation could not be conducted safely at this airport." They opined that the layout of the crossing runways, the amount of commercial and private jet traffic, U.S. Coast Guard aircraft and the ever growing number of student pilot operations would make the complications involved in banner pick-up

and drop-off too difficult for them to accomplish. See NATCA letter received April 8, 2001, by Airport Director's Office, a true and correct thereof is attached hereto as **Exhibit "G."**

39. The Directors determination of Plaintiff's COMPLAINT against PIE was that the FAA found that PIE was not currently then in violation of the applicable federal law and its federal grant and surplus obligations, and thereby dismissed Plaintiff's COMPLAINT against PIE.

40. On or about June 26th 2002, Plaintiff, BRUCKNER suffered severe economic hardship and other damages as a result of the acts and conduct of Defendant, COUNTY and its Airport Director, DAVID METZ.

41. Plaintiff was faced with the threat of either going out of business or subjecting the business and its operation to the substantial risks incumbent with operating from a private, unimproved, and uncontrolled airfield. Plaintiff chose the lesser of the two evils at a substantial loss to his business.

42. In addition to the loss of business due to the distant location of the field to the service area where banners are flown, BRUCKNER suffered the complete loss of an aircraft involved in an accident, and a human life, was lost when a Florida Aerial Advertising pilot was killed flying at the private uncontrolled airfield after towing banners on June 6, 2002.

43. The tragic loss of human life and total loss of the aircraft could well have been avoided if the pilot was flying out of an airport equipped with an air traffic control tower attributable to the COUNTY'S unlawful prohibition of BRUCKNER'S business at PIE.

44. The non-improved airfield that BRUCKNER was forced to utilize is often unsuitable for take-offs and landings due to flooding after heavy rain typical for the area. By contrast, PIE offers improved paved runways not subject to the flooding, controlled by an air

traffic control tower with radar, offering a substantially safer environment for banner towing operations.

45. As a direct and proximate result of the acts and conduct of Defendant, COUNTY, DAVID METZ and each of them, Plaintiff BRUCKNER has suffered injuries and harm, all to his damage in an amount that is not fully ascertained and is to be established through discovery.

46. During 2004, Plaintiff, once again requested the FAA to address the issue of Banner-towing at PIE. In response to Plaintiff's request, Richard Ducharme, the FAA Area Director for Eastern Terminal Operations (Supervisor to the Air Traffic Control Tower Chief & Controllers), stated in a letter to Plaintiff BRUCKNER the following statement; ". . . in reference to the opinion forwarded from our local ATC folks to the airport operator identifying challenges with increased air traffic demand and concerns over aircraft types and fleet mixes, please be assured that our system is capable of meeting these challenges." A true and correct copy of the September 27, 2004, Ducharme letter to Plaintiff BRUCKNER is attached hereto as **Exhibit "H."**

47. Mr. Ducharme wrote Plaintiff a follow-up letter, stating, in part, that the findings contained in the Directors determination of Plaintiff's COMPLAINT against PIE were valid, stating as follows: "The findings and conclusions in that document remain FAA's official position on this matter. Based on several FAA safety analyses of PIE, FAA concluded in the Determination that certain restrictions on banner-towing operations at PIE do not violate federal law. The October 26, 2004, Ducharme letter to Plaintiff BRUCKNER is attached hereto as **Exhibit "I."**

48. Plaintiff BRUCKNER, pursuant to new FAA policies known as the "FAA Customer Service Initiative," contacted Orlando FAA District Offices and requested a second

opinion of the suitability of PIE for banner towing. On or about January 26, 2005, the United States Department of Transportation FAA Orlando Flight Standards District Office personnel conducted a suitability survey of PIE on behalf of Plaintiff's request for a second opinion. The Orlando Flight Standards District Office dispatched a qualified safety inspector and his supervisor on site to the PIE airport. The purpose of the on-site visit to PIE was twofold: First, to ensure effective oversight and regulatory compliance of a banner-tow operator and airplane that had been assigned to the Orlando FSDO in March of 2003, and second, to evaluate whether or not banner towing operations could be conducted safely at PIE.

49. On February 23, 2005, The FAA Orlando Flight Standards District Office hereinafter ("FSDO") manager, Mr. Larry Freiheit, wrote a letter to Bruckner that thoroughly considered the physical layout and all other pertinent variables of the airport at PIE, and determined that it *"[it] would be operationally adequate for banner-tow pickup and drop (ingress/egress) requirements. Within the PIE airport boundaries are open areas that meet or exceed dimensional requirements."*

50. In addition, the Orlando FSDO 2005 survey of PIE considered *"a previous survey by FAA Flight standards [1986] determined that an unobstructed open area, generally east of the touchdown zone of runway 17L was adequate for banner-tow operations at PIE."* The Plaintiff BRUCKNER has been trying to obtain an operating permit since 1986 when the first safety survey was conducted.

51. Also considered in the Orlando FSDO 2005 survey of PIE was the fact that Airship operations (dirigible blimps) are currently conducted at PIE, and that, *"Airships are unique aircraft and as such, their approach and landing operations normally require other air*

traffic accommodations or adjustments. The combination of operational speeds and required approach paths allow little flexibility for fixed wing aircraft in the vicinity.”

52. Finally the Orlando FSDO 2005 survey of PIE concluded that, *“In consideration of the foregoing, we have determined that at this time banner-towing operations can be conducted safely at the St. Petersburg/Clearwater International Airport(PIE).”* A true and correct copy of the February 23, 2005 letter from Larry Feiheit of the FAA Orlando Flight Standards District Office to Plaintiff, Bruckner is attached hereto as **Exhibit “J”**.

53. On or about March 3, 2005, Richard Sheppard, a qualified and credentialed FAA Aviation Safety Inspector (hereinafter “ASI”) from the Orlando FSDO, conducted yet another survey at PIE while performing two “lighter than air” flight checks at PIE.

54. Mr. Sheppard, a credentialed FAA Orlando FSDO ASI, was asked to conduct a survey of the St. Petersburg/Clearwater International Airport. The object of the survey was the East side of Runway 17L-35R, to see if simultaneous operations of banner-towing fixed wing aircraft and “lighter than air” aircraft could be conducted in a safe manner. At the time of the survey, two airships were moored in the area in question. The Aviation Safety Inspector *“could not identify any hazard to either operation.”* See The April 6, 2005 “Inspector’s Statement” a true and correct copy of which is attached hereto as **Exhibit “K”**.

55. On May 20, 2005, Plaintiff’s counsel gave Notice to Defendant, COUNTY that Plaintiff, Bruckner had retained counsel to *“secure an appropriate and reasonable agreement to facilitate his endeavor of operating a banner tow operation at the St. Petersburg-Clearwater International Airport.”* See The May 20, 2005, Luke Lirot letter to Noah Lagos Executive Director at PIE attached hereto as **Exhibit “L”**.

56. Defendant COUNTY refuses and continues to deprive Plaintiff, BRUCKNER of his right to exhibit commercial speech and operate his lawful banner tow business out of PIE. See the May 23, 2005 Michael A. Zas letter to Luke Charles Lirot. **Exhibit "M"**

57. Ms. Diane L. Crean of the FAA ETSU acknowledges receiving the Orlando FSDO 2005 survey of PIE and stated "*we provided the information from Flight Standards that they had determined that at this time banner-towing operations can be conducted safely at the St. Petersburg/Clearwater International Airport.*" *As such the St. Petersburg/Clearwater International Airport Air Traffic Control Tower will provide air traffic control service to banner-towing operations as soon as the airport authority approves the operations.*" See the text of the email to jahaves@msn.com from dianecrean@faa.gov of Wednesday, June 8, 2005 4:16 p.m. a true and correct copy of which is attached hereto as **Exhibit "N"**

58. In addition to the safety survey conducted by qualified Inspectors from the Orlando Flight Standards District on or about January 26, 2005, The **DEFENDANT COUNTY and St. Petersburg/Clearwater Airport Director Noah Lagos** requested yet another aeronautical study No.2005-ASO-668-NRA ATLANTA, St. Petersburg-Clearwater (PIE), a true and correct copy of the memorandum is attached hereto as **Exhibit "O"**. This third aeronautical study conducted by the Federal Aviation Administration concluded that "*As a result of the inspection, it has been determined that banner tow operations could be conducted safely at the PIE airport with the Airport Manager's approval and a Letter of Agreement between Air Traffic Control and the banner tow operator. The proposed area for the banner tow operations is sufficient to provide the minimum recommended distance from the nearest taxiway or runway in accordance with current FAA guidance.*"

59. A fundamental principle of the law is that which declares that for every wrong there is a remedy. The Florida Declaration of Rights provides that the courts are open to every person for the redress of any and justice is to be administered without sale denial or delay. See *Doyle v. City of Coral Gables*, 33 So. 2D 41 (Fla. 1947). To exhaust the administrative issues through the pursuit of a "Part 16" action, would deny the Plaintiff of any remedy. Since dismissal of this action would result in the inability to pursue damages after a successful Part 16 proceeding, since the actions for which Plaintiff seeks redress occurred since 1986. Hence the Plaintiff should be allowed to prove his case at trial.

60. To date, Defendant COUNTY and its Airport Authority have not approved the operations of Plaintiff. Plaintiff has no other alternative but to seek the assistance of this Court to obtain appropriate relief. Plaintiff is in immediate danger of the loss of his business and his right to exercise expressions of commercial speech.

61. The activities of BRUCKNER in operating his aerial advertising business are expressions of commercial speech that are protected expression pursuant to the First Amendment to the Constitution of the United States, and the companion provisions of the Florida Constitution.

62. The Plaintiff believes that providing the commercial speech and other media to the public is a beneficial commercial activity, which enhances an individual's conscious ability to assimilate and consider various issues involving commercial speech advertisements, politics, events and other forms of communication. Plaintiff considers said banner towing and other media to further commercial speech in the community.

63. Plaintiff would assert that the unsupported, vindictive approach of the Defendant, COUNTY, and its BOCC, by adopting the all-out prohibition of banner towing at PIE was

arbitrary and capricious. The RESOLUTION was based on an improper predicate in that its only support is derived from the “*opinions*” of Air traffic controllers at PIE who are neither authorized nor qualified to evaluate the safety of Banner towing operations at PIE. After the RESOLUTION was adopted by the DEFENDANT, TWO independent aeronautical safety studies have conclusively determined that banner tow operations can be conducted safely at PIE. The second study was requested by the DEFENDANT COUNTY and the Airport Director Mr. Noah Lagos. The Defendant COUNTY, and its BOCC and the Airport Director did not like the results of the two independent safety surveys and continue to ignore the studies and conspire maliciously to deprive the Plaintiff of his rights to this day.

64. Defendant, COUNTY’S RESOLUTION imposes a “prior restraint,” as well as a “chilling effect” on all aspects of the First Amendment protected commercial speech communications at issue herein.

65. At no public hearing held by Defendant, COUNTY, pursuant to the adoption of the RESOLUTION, was there any substantial competent evidence of local data, or any data, evidence, or testimony, whatsoever, introduced by Defendant COUNTY to indicate that any of the prohibited “banner towing operations” had any greater negative impact on airport operations than any other type or class of specific use at the airport.

66. The alleged compromise to the safety and efficiency of airport operations at PIE sought to be furthered by the RESOLUTION is not only factually *unsupported* but discriminatory when compared to other permitted uses such as blimps and lighter than air airship operations who also conduct aerial advertising.

67. Plaintiff has a clear legal right to the use and operation of the subject airport to operate his business without interference by the Defendant, its agents, servants or employees, is

dictated not only by the Constitutional issues but by the Code of Federal Regulations as well.

68. Such lawful and expressive activities may be prohibited only after Plaintiff has been afforded due process of law, as guaranteed by the Fourteenth Amendment to the United States Constitution and Plaintiff has been denied due process of law by the imposition of the RESOLUTION challenged herein, comprising an unconstitutional prior restraint and improper chilling effect on a First Amendment protected form of expression.

69. Plaintiff asserts that his position, as set forth in this Complaint, is legally sound and supported by fact and law. The Defendant's actions, however, have created a bona fide controversy between the parties, and Plaintiff is in doubt as to his rights, privileges and immunities with respect to the subject provisions challenged herein. Plaintiff requires, therefore, a declaratory judgment declaring his rights, privileges and immunities. There is a clear, present, actual, substantial and bona fide justifiable controversy between the parties.

70. Plaintiff is and will be threatened with prosecution for any violation of the challenged RESOLUTION for which Plaintiff stands to suffer severe penalties, thus limiting the Plaintiff's freedom of expression, destroying the goodwill developed by the Plaintiff, and causing the Plaintiff severe financial hardship, as well as other forms of irreparable harm.

71. Plaintiff has no adequate remedy at law. No amount of money damages could adequately compensate the Plaintiff for the irreparable harm described herein, specifically the deprivation of constitutionally protected rights.

72. Plaintiff and his agents, employees, customers, and the public at large will suffer irreparable injury if injunctive relief is not granted, and Defendant is permitted to enforce the RESOLUTION herein against the Plaintiff. The loss of rights guaranteed by the First Amendment is so serious that, as a matter of law, irreparable injury is presumed and in such an

instance involving the loss of First Amendment rights, damages are both inadequate and unascertainable.

73. The public interest would best be served by the granting of injunctive relief, and, indeed, the public interest is disserved by permitting the enforcement of invalid legislation which interferes with and restrains the Plaintiff and the public's rights under the First Amendment to the United States Constitution.

74. All conditions precedent to the institution and maintenance of this cause of action have occurred or have been performed.

75. The acts, practices and jurisdiction of Defendant as set forth herein, were and are being performed under color of state law and therefore constitute state action within the meaning of the Fourteenth Amendment to the Constitution of the United States and 42 U.S.C. § 1983.

76. As a direct and proximate result of the acts, practices, and customs of Defendant, COUNTY, Plaintiff is suffering actual, consequential, and special damages, in addition to the irreparable harm described herein.

COUNT I

THE CHALLENGED LEGISLATION VIOLATES THE FIRST AMENDMENT

77. Plaintiffs would incorporate herein Paragraphs 1 through 70, as it fully alleged.

78. Defendant's RESOLUTION violates the rights guaranteed Plaintiff by the United States Constitution, on its face and as applied, in that it abridges and restrains the Plaintiff's rights to free expression, imposes a prior restraint, and imposes a "chilling effect" on Plaintiff's First Amendment rights.

COUNT II

THE CHALLENGED LEGISLATION VIOLATES THE EQUAL PROTECTION DOCTRINE

79. Plaintiff would incorporate herein Paragraphs 1 through 73, as it is fully alleged.

80. Defendant's RESOLUTION violates the rights guaranteed Plaintiff by the United States Constitution, on its face and as applied, in that it denies equal protection of the law in that the legislation/resolution is arbitrary, oppressive and capricious and unreasonably requires the Plaintiff to submit to controls not imposed on other similarly situated businesses or aircraft.

COUNT III

THE CHALLENGED LEGISLATION FAILS TO PROVIDE ADEQUATE ALTERNATIVE AVENUES OF COMMUNICATION

81. Plaintiff would incorporate herein Paragraphs 1 through 70, as it fully alleged.

82. Defendant's violates the rights guaranteed Plaintiffs by the United States Constitution, on its face and as applied, in that it fails to provide sufficient alternative avenues of communication by completely prohibiting banner towing at PIE.

COUNT VIII

THE CHALLENGED LEGISLATION IS A VIOLATION OF THE POLICE POWER AND FAILS TO SUBSTANTIALLY ADVANCE ANY GOVERNMENT INTEREST

83. Plaintiff would incorporate herein Paragraphs 1 through 70, as it fully alleged.

84. Defendant's RESOLUTION violates the rights guaranteed Plaintiffs by the United States Constitution, on its face and as applied, in that the RESOLUTION is an unlawful exercise of the State's Police Power and that the COUNTY Commission adopted the scheme without competent substantial evidence. Any evidence relied upon by the COUNTY in enacting the subject legislation was not reasonably related to the perceived ills that the COUNTY claimed to address or to any legitimate governmental objective. The challenged legislation was adopted on the basis of "shoddy data," "shoddy findings," and Plaintiff intends to "challenge the findings"

upon which the RESOLUTION is based through the submission of evidence and testimony refuting any allegations that the subject business poses any threats to PIE operations.

COUNT IX
DAMAGES

85. Plaintiff would incorporate herein Paragraphs 1 through 70, as it fully alleged.

86. As a direct and proximate result of the acts and conduct alleged herein, Plaintiff is suffering actual, consequential, special and other damages, in addition to the irreparable harm described herein.

DEMAND FOR JURY TRIAL

87. The Plaintiff herein would demand a jury trial on all issues.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court GRANT the following relief:

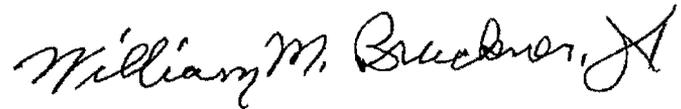
a) Declaring the COUNTY OF PINELLAS challenged RESOLUTION prohibiting banner towing at ST PETERSBURG-CLEARWATER INTERNATIONAL AIRPORT to be in violation of the aforementioned federal constitutional and statutory provisions, and facially unconstitutional in whole or in part;

b) Declaring the COUNTY OF PINELLAS challenged RESOLUTION prohibiting banner towing at ST PETERSBURG-CLEARWATER INTERNATIONAL AIRPORT to be in violation of the aforementioned federal constitutional and statutory provisions, and unconstitutional "as applied" in whole or in part;

c) Ordering a preliminary and permanent injunction against enforcement of all aspects of the challenged Resolution;

- d) Awarding any and all costs as authorized by law; and
- e) Such other and further relief as this Court deems fit, just, and equitable.

Respectfully submitted,

A handwritten signature in black ink that reads "William M. Bruckner, Jr." with a stylized flourish at the end.

William M. Bruckner, Jr.
Plaintiff acting as Pro Se Litigant
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St. Petersburg, Florida 33714
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