

SECOND AMENDMENT TO AMENDED AND RESTATED LEASE

(PARCEL 15)

THIS IS A SECOND AMENDMENT TO A LEASE AGREEMENT, entered into on \_\_\_\_\_, 2013, between:

THE CITY OF FORT LAUDERDALE, a municipal corporation of Florida, referred to as "Lessor",

and

FXE PARCEL 15, LLC, a Florida Limited Liability Company, referred to as "Lessee".

WHEREAS, pursuant to Resolution No.11-298, adopted at its meeting of October 18, 2011 the City Commission of City authorized the proper City officials to enter into an Amended and Restated Lease Agreement for Parcel 15 at Fort Lauderdale Executive Airport (Airport) (hereinafter "Lease Agreement" or "Lease"), for a term of thirty (30) years; and

WHEREAS, pursuant to Resolution 12-151, adopted at its meeting of August 21, 2012, the City Commission authorized the proper City Officials to enter into a First Amendment to the Amended and Restated Lease providing for an increase in the size of the leased parcel to construct additional ramp space to accommodate aircraft parking and increased ground rent; and

WHEREAS, due to the location of a City force main, Tenant and Airport staff have worked together to achieve a feasible remedy to the situation and determined that the best course of action will be to extend the eastern edge of the northern property line for Parcel 15 by 90 feet to the east to allow the site plan to be amended to move the two north hangars to the east away from the force main and increase the overall size of the parcel; and

WHEREAS, the increased size of the Parcel will result in an new increased rent amount; and

WHEREAS, due to the delays the project has encountered, Lessee has also requested that the effective date of the rent increase be extended by six months; and

WHEREAS, the Lessor declares that amending the Lease Agreement is in the best interest of the City; and

WHEREAS, the Airport Advisory Board recommended approval of this Second Amendment at their April 25, 2013 meeting.

CAM #13-0667  
EXHIBIT 5

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Lease, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, Lessor and Lessee agree as follows:

1. The above recitals are true and correct and are incorporated herein.
2. Exhibit "A" of the Amended and Restated Lease Agreement is hereby deleted and replaced with the attached Revised Exhibit "A" showing the expanded legal description and sketch of the Premises.
3. Paragraph 8, RENT, of the Lease Agreement is amended to delete the stricken text and to add the underlined text as follows:

RENT. Rent shall commence on the Commencement Date of the Lease Agreement January 1, 2012. All rental payments shall be paid in advance in equal monthly installments of Three Thousand Seven Hundred Thirty and 95/100 Dollars (\$3,730.95), plus applicable taxes, on the first day of each month to which applicable according to the following schedule:

(a) Forty-four Thousand Seven Hundred Seventy-One and 37/100 Dollars (\$44,771.37), is the basic annual rental for the first year of this Lease Agreement, referred to as the "Base Rent."

(b) Commencing ~~July 1, 2013~~ December 1, 2013, the Base Rent shall be adjusted to ~~Ninety-Nine Thousand Eight Hundred Four and 54/100 Dollars (\$99,804.54) One Hundred Fourteen Thousand Five Hundred Ninety Three and 49/100 Dollars (\$114,593.49)~~ One Hundred Twenty Thousand Eighty Four and 41/100 Dollars (\$120,084.41) which shall then be the basic annual rental referred to as the "Base Rent".

(c) It is agreed between Lessor and Lessee that the Base Rent specified above shall be subject to an increase at annual intervals, such increase to be calculated in accordance with the following terms and conditions:

(1) Lessor and Lessee agree that the Base Rent for the remainder of the term of this Lease Agreement shall be adjusted, at one (1) year intervals, the first adjustment to become effective as of ~~July 1, 2014~~ December 1, 2014 and with further adjustments to occur at each one (1) year interval thereafter (the "Adjustment Date"). Such adjustments shall be based upon the Cost of Living Index known as the Consumer Price Index (All Items, 1982-84 = 100), United States, All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor. For computation purpose, the Numerator and Denominator are defined as follows:

Numerator - The Consumer Price Index for the third (3<sup>rd</sup>) month preceding each Lease Adjustment Date.

Denominator - The Consumer Price Index for the third (3<sup>rd</sup>) month preceding the Commencement Date of the lease term.

The resulting fraction shall be applied to the minimum guaranteed annual rental (Base Rent) to arrive at the new annual rental. Should the Bureau mentioned above discontinue the publication of an Index approximating the Index contemplated above, then such Index as may be published by another United States governmental agency which most nearly approximates the Index referred to above shall govern and be substituted as the Index to be used, subject to the application of an appropriate conversion factor to be furnished by the governmental agency publishing such Index.

(2) Base Rent shall be further adjusted on the 10<sup>th</sup> and 20<sup>th</sup> anniversary of the Commencement Date of the Lease Agreement to reflect either ten percent (10%) of the appraised value of the land (exclusive of any and all improvements) or the current new annual rental established at the time of the adjustment, whichever is greater, except such adjustment shall be limited to a maximum increase in the Base Rent of fifty percent (50%) of the difference between current market value and Base Rent. Appraised value shall be determined by an appraisal including an analysis of the fair market annual land rental rate for aeronautical land at the Airport based on a comparison with other rental rates for similar aeronautical properties within the competitive market area.

(3) It is agreed between Lessor and Lessee that the Base Rent specified above shall be adjusted commencing on July 1, 2016 per either Paragraph 8(c)(3)a. or 8(c)(3)b. below, at the determination of the Lessee:

a. Ten percent (10%) of the appraised value of Improvements constructed prior to Commencement Date as identified in Exhibit "B";

Or

b. Five percent (5%) of gross rental receipts of Improvements constructed prior to Commencement Date as identified in Exhibit "B". Gross rental receipts shall not include ground rent paid to the Lessor by Lessee or property taxes, if any, payable to a government agency.

(4) At no time shall the adjusted rent be less than the Base Rent specified above.

(d) In addition to the above sums, the Lessee shall cause to be paid to the Lessor the sums provided in Paragraph 13 pertaining to the delivery to the Premises of any octane-rated fuels, jet fuels and lubricating oils (referred to as "Fuel" and "Oil") by Lessee, its sublessees, agents or independent contractors. The sums mentioned below shall not be considered as rent for the Premises, but shall be collected in the same manner as rent, including interest as provided in this Lease Agreement, accruing upon any late payments of such sums.

(e) Late Payment. The Lessor shall be entitled to collect interest at the rate of eighteen (18%) percent per annum from the date due until the date paid on any amounts that are past due beyond any applicable cure period. Lessor's right to require payment of such interest and the obligation of the Lessee to pay the same shall be in addition to and not in lieu of the right of Lessor to enforce other provisions in this Lease, including termination of the Lease Agreement, and to pursue other remedies as provided by law.

(f) Dishonored Checks. In the event Lessee delivers a dishonored check or draft to Lessor in payment of any obligation arising under this Lease Agreement, the Lessee shall incur and pay any charges assessed to City as a result of the dishonored check or draft. In the event Lessee delivers a dishonored check or draft, the Airport Manager may require that future payments be made by cashier's check or other acceptable means by making such demand in writing to Lessee.

(g) Place of Payment. All payments required to be made by Lessee under this Lease Agreement shall be made payable to the "City of Fort Lauderdale," and shall be delivered or mailed to the address below, or to an address as may be substituted therefore by the Lessor:

City of Fort Lauderdale  
Attn: Department of the Treasury  
100 North Andrews Avenue  
Fort Lauderdale, Florida 33301

4. Exhibit "C" of the Amended and Restated Lease Agreement is hereby deleted and replaced with the attached Revised Exhibit "C" showing the updated improvements to be constructed or maintained.

5. In all other respects the Amended and Restated Lease Agreement is unchanged and remains in full force and effect in accordance with the terms thereof.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

**LESSOR**

CITY OF FORT LAUDERDALE, a  
municipal corporation of the State of  
Florida

By \_\_\_\_\_  
LEE R. FELDMAN, City Manager

(CORPORATE SEAL)

ATTEST:

\_\_\_\_\_  
JONDA K. JOSEPH, City Clerk

Approved as to form:

\_\_\_\_\_  
DIANSJHAN WILLIAMS-PERSAD  
Assistant City Attorney

**LESSEE**

WITNESSES:

FXE PARCEL 15, LLC, a Florida limited liability company

\_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
[Witness type or print name]

\_\_\_\_\_  
LYNDA A. ZUR, Managing Member

\_\_\_\_\_

\_\_\_\_\_  
[Witness type or print name]

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2013 by LYNDA A. ZUR, as MANAGING MEMBER of FXE PARCEL 15, LLC, a Florida limited liability company, on behalf of the company and who is personally known to me or has produced \_\_\_\_\_ as identification and did not (did) take an oath.

(NOTARY SEAL)

Notary Public, State of  
Signature of Notary taking  
Acknowledgment

\_\_\_\_\_  
Name of Notary Typed,  
Printed or Stamped  
My Commission Expires:

\_\_\_\_\_  
Commission Number



