

Return recorded copy to:
Shari Wallen, Esq.
Assistant City Attorney
City of Fort Lauderdale
100 N. Andrews Avenue, 7th Floor
Fort Lauderdale, Florida 33301

**THIRD AMENDMENT TO THE AMENDED AND RESTATED LEASE AGREEMENT
FOR PARCEL 2A
AT THE FORT LAUDERDALE EXECUTIVE AIRPORT**

THIS IS THE THIRD AMENDMENT TO THE AMENDED AND RESTATED LEASE AGREEMENT, made and entered into on this 16th day of August, 2022, by and between:

CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida, 100 North Andrews Avenue, Fort Lauderdale, FL 33301 (hereinafter, "LESSOR" or "CITY"),

and

MNREH FLORIDA, LLC, a Florida Limited Liability Company, whose principal address is 84 Isla Bahia Drive, Fort Lauderdale, Florida 33316 (hereinafter, "LESSEE")

WHEREAS, the LESSOR is the owner and operator of the Fort Lauderdale Executive Airport (the "Airport"); and

WHEREAS, LESSOR and LESSEE are parties to the Amended and Restated Lease Agreement dated March 15, 2005, and recorded in Broward County Official Records Book 44078, Page 548, as amended by the First Amendment to Amended and Restated Lease Agreement dated July 15, 2008, as amended by the Second Amendment to Amended and Restated Lease Agreement dated July 27, 2021 (herein the "Amended and Restated Lease Agreement"), which provides for the terms of the Lease Agreement, as amended for Parcel 2A, located at the Fort Lauderdale Executive Airport, situated in the City of Fort Lauderdale, Broward County, Florida and legally described in Exhibit "A" attached hereto; and

WHEREAS, the Fort Lauderdale Executive Airport has established a fuel flowage fee policy which applies to all tenants that are authorized to dispense or sell aviation fuel to aircrafts operating on the premises of the Airport; and

WHEREAS, LESSOR and LESSEE wish to amend the Amended and Restated Lease Agreement, to clarify the fuel flowage fee calculation and collection method.

NOW THEREFORE, in consideration of the mutual promises, the parties agree to the following terms and conditions:

1. LESSOR and LESSEE agree to enter into this Third Amendment to the Amended and Restated Lease Agreement.

2. Paragraph 13 of the Amended and Restated Lease Agreement, as amended is hereby deleted and replaced with the following Paragraph:

13. AVIATION FUEL FEES.

(a) The LESSEE has the right to dispense and sell aviation fuels and lubricating oils within the Premises, provided such aviation fuels and lubricating oils shall be the product of a supplier or suppliers holding all necessary permits, licenses, certifications or approvals required by the appropriate government agencies to conduct such operations and to deliver aviation fuels and lubricating oils to the Airport. Lessor shall in no way be prevented from granting exclusive rights for the sale and dispensing of aviation fuels and lubricating oils on premises other than those covered by this Lease under such terms and conditions as it may deem advisable. In connection with the sale or dispensing of such products upon the Premises or otherwise, Lessor assumes no responsibility for acts of any supplier regarding delivery, quality of product, or maintenance of supplier-owned or Lessee-owned equipment. Aviation fuels and lubricating oils shall be stored and dispensed by Lessee in accordance with all City, county, local, state, and federal laws, regulations, rules, and other requirements pertaining to the sale and storage of such fuels and oils, including but not limited to the Minimum Standards, as amended by the City from time to time.

(b) Aviation Fuel Fees - Lessee shall pay Lessor the following fees for all aviation fuel delivered to the Premises each month: Five and one-half percent (5.5%) of the total price per gallon of the first five hundred thousand (500,000) gallons of aviation fuel delivered to the Premises and three and one-half percent (3.5%) of the total price per gallon of aviation fuel delivered to the Premises exceeding five hundred thousand (500,000) gallons of aviation fuel during the period of January 1st through and including December 31st of each calendar year. The first 500,000 gallons of aviation fuel will reset annually beginning January 1st of each

calendar year. Aviation fuel is subject to applicable taxes under Florida Law.

- (c) Lessee shall pay Lessor Aviation fuel fees monthly by no later than the 15th day of each month for the previous month without any additional grace period and accompanied by a monthly report prepared by Lessee, which report shall detail the gallon amounts of any and all fuel delivered to the Premises. Such monthly reports shall pertain only to the Lessee's operations conducted at the Airport and exclude any other operations of the Lessee conducted at other locations. Payment shall be delinquent upon the 16th day of the month, and upon such delinquency, the Lessee is subject to the default provisions in this Lease Agreement.
- (d) The Lessee shall further retain upon the Premises all delivery bills, invoices, and related records pertaining to the delivery to the Premises of aviation fuels and lubricating oils and shall produce and make available such books and records upon request by the Lessor for the purposes of auditing payments to the Lessor as provided in this Amended and Restated Lease. Such books, records and other documents shall be made available for inspection to representatives of Lessor within fifteen (15) days of written notice to Lessee. Lessor shall have the right, upon reasonable notice to Lessee, to audit the Lessee's books and records relating to Lessee's operations in order to determine the correctness and accuracy of the fuel fees paid to Lessor during a Lease year. In the event that any such audit reflects that the total fuel fees actually paid to Lessor during a particular Lease year shall be less than the fuel fees due and owing for such Lease year, then the Lessee shall immediately pay the difference to the Lessor upon written demand therefore by Lessor. If, as a result of any audit, it is established that the fuel fees paid to Lessor during a Lease year shall be three percent (3%) or more less than the fuel fees owed to the Lessor for such Lease year, the entire expense of said audit shall be borne by the Lessee. Lessor shall provide Lessee with a copy of the audit results obtained by Lessor after such written request by Lessee.
- (e) The term delivery to the Premises as used in this subparagraph shall mean delivery of aviation fuel to the Premises; this includes delivery of aviation fuel to Lessee, its employees, agents, sublessees, and independent contractors, but shall not apply when Lessee obtains aviation fuel from Fixed Based Operators at the Airport.

3. Nothing herein is intended to be, or shall be construed to be, an extension of credit to LESSEE. This Third Amendment to the Amended and Restated Lease Agreement does not in any manner alter the LESSEE's obligations for the payment of rent or any other fees not mentioned in this Amendment.

5. Except as specifically modified by this Third Amendment, the Amended and Restated Lease Agreement, as amended remains in full force and effect and is hereby ratified by the LESSOR and LESSEE. If there is any conflict between the Amended and Restated Lease Agreement, the First Amendment to Amended and Restated Lease Agreement, Second Amendment to Amended and Restated Lease Agreement, and the Third Amendment to the Amended and Restated Lease Agreement, the terms and provisions of this Third Amendment to the Amended and Restated Lease Agreement shall govern and control.

6. If any one or more of the covenants set forth in this Third Amendment to the Amended and Restated Lease Agreement should be determined by a court of competent jurisdiction to be contrary to applicable law, such covenant shall be deemed and construed to be severable from the remaining covenants herein contained and shall in no way affect the validity of the remaining provisions of this Amendment.

7. All prior understandings of the Parties relating to the subject matter of this Amendment are set forth herein and no prior understandings or accommodations shall be given effect or shall be valid, unless they are written in the Amended and Restated Lease Amendment, as amended.

8. This Third Amendment to the Amended and Restated Lease Agreement may be executed in several counterparts, each of which shall be deemed to be an original; but such counterparts shall constitute one and the same instrument.

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AGREED AND CONSENTED TO

LESSOR

WITNESSES:

Donna Varisco

Donna Varisco
[Witness print name]

Kimberly Wallen

Kimberly Wallen
[Witness print name]

(CORPORATE SEAL)

CITY OF FORT LAUDERDALE

By: *[Signature]*

Greg Chavarria
City Manager

ATTEST:

[Signature]
DAVID R. SOLOMAN, City Clerk



Approved as to form:

[Signature]
SHARI C. WALLEN
Assistant City Attorney

LESSEE

WITNESSES:

MNREH FLORIDA,LLC, a Florida Limited Liability Company.

Janelle Dennis
Janelle Dennis
[Witness print name]

By: [Signature]
David MacNeil, Manager

[Signature]
PATRICK W. WATSON
[Witness print name]

ATTEST:

[COMPANY SEAL]

By: [Signature]
Print Name: Jarrett A. Kreger
Title: Corporate Representative

STATE OF IL :
COUNTY OF DuPAGE :

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 31ST day of AUGUST, 2022, by David MacNeil, Manager of MNREH FLORIDA, LLC a Florida Limited Liability Company, who freely and voluntarily executed this instrument on behalf of said limited liability company.

(SEAL)



[Signature]
Signature of Notary Public – State of IL

Christine Regep
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known OR Produced Identification _____
Type of Identification Produced _____

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CHRISTINE BRADY
Office 2001
North Pacific State of Illinois
By Commission Expires Sep 17, 2024



COMMISSION AGENDA ITEM
DOCUMENT ROUTING FORM

12

Today's Date: 09/21/2022

DOCUMENT TITLE: MNREH FLORIDA, LLC – THIRD AMENDMENT TO THE AMENDED AND RESTATED LEASE AGREEMENT FOR PARCEL 2A

COMM. MTG. DATE: 08/16/2022 CAM #: 22-0466 ITEM #: CR-2 CAM attached: YES NO

Routing Origin: CAO Router Name/Ext: J. Larregui/5106 Action Summary attached: YES NO

CIP FUNDED: YES NO

Capital Investment / Community Improvement Projects defined as having a life of at least 10 years and a cost of at least \$50,000 and shall mean improvements to real property (land, buildings, or fixtures) that add value and/or extend useful life, including major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, or real.

1) Dept: FXE Router Name/Ext: L. Blanco/5334 # of originals routed: 1 Date to CAO: 9/19/22

2) City Attorney's Office: Documents to be signed/routed? YES NO # of originals attached: 1

Is attached Granicus document Final? YES NO Approved as to Form: YES NO

Date to CCO: 9/23/22

Shari C. Wallen
Attorney's Name

scw/jl
Initials

3) City Clerk's Office: # of originals: 1 Routed to: Donna V./Aimee L./CMO Date: 09/26/22

4) City Manager's Office: CMO LOG #: Sep-52 Document received from: _____

Assigned to: GREG CHAVARRIA
ANTHONY FAJARDO SUSAN GRANT

GREG CHAVARRIA as CRA Executive Director

APPROVED FOR G. CHAVARRIA'S SIGNATURE N/A FOR G. CHAVARRIA TO SIGN

PER ACM: A. Fajardo _____ (Initial/Date) S. Grant _____ (Initial/Date)

PENDING APPROVAL (See comments below)

Comments/Questions: _____

Forward ___ originals to Mayor CCO Date: _____

5) Mayor/CRA Chairman: Please sign as indicated. Forward ___ originals to CCO for attestation/City seal (as applicable) Date: _____

6) City Clerk: Scan original and forwards 1 originals to: L. Blanco/FXE/Ext. 5334

Attach ___ certified Reso # _____ YES NO

Original Route form to J. Larregui/CAO