

DOCUMENT ROUTING FORM

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NAME OF DOCUMENT: **FXE PARCEL 2 SECOND AMENDMENT TO AMENDED AND RESTATED LEASE AGREEMENT WITH ZELEY AVIATION, INC.**

Approved Comm. Mtg. on **MARCH 19, 2013** CAM# **13-0257** ITEM: **CR-3**

Routing Origin: CAO ENG. COMM. DEV. OTHER _____

Also attached: copy of CAR copy of document ACM Form 4 originals

By: LB forwarded to: **SHARON DREESEN, TRANSPORTATION & MOBILITY**
Initials

1.) Approved as to Content: [Signature]
Department Director 3-20-13

Capital Improvements 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, fixtures) that add value and/or extend useful life, inc. major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, real.

Please Check the proper box: CIP FUNDED YES NO
Capital Improvement Projects

2.) Approved as to Funds Available: by [Signature] Date: 3-25-13
Finance Director
There will be a positive impact to FY 13/14 revenues of approximately \$61,811.61.

Amount Required by Contract/Agreement \$ _____ Funding Source: _____

Dept./Div. _____ Index/Sub-object _____ Project # _____

3.) City Attorney's Office: Approved as to Form: 3 Originals to City Mgr. By: **DJ WILLIAMS-PERSAD**
DJ Williams-Persad [Signature]

4.) Approved as to content: Assistant City Manager:

By: _____ By: _____
Stanley Hawthorne, Assistant City Manager Susanne Torriente, Assistant City Manager

5.) City Manager: Please sign as indicated and forward 3 originals to Mayor.

6.) Mayor: Please sign as indicated and forward 3 originals to Clerk.

7.) To City Clerk for attestation and City seal.

INSTRUCTIONS TO CLERK'S OFFICE

8.) City Clerk: retains one original document and forwards 2 original documents to:

ANGELIA BASTO, FXE

Copy of document to _____ Original Route form to Linda Blanco, CAO
 Attach _____ certified copies of Reso. # _____ Fill-in date

2013 MAR 26 PM 4:25
RECEIVED
FILED
CITY ATTORNEY'S OFFICE

4/3

SECOND AMENDMENT TO AMENDED AND RESTATED LEASE AGREEMENT

(PARCEL 2)

THIS IS A SECOND AMENDMENT TO LEASE AGREEMENT, entered into on March 19, 2013, between:

CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida, hereinafter referred to as "Lessor,"

and

ZELEY AVIATION, INC., a Florida corporation, hereinafter referred to as "Lessee."

WHEREAS, pursuant to Resolution No. 13-48, adopted at its meeting of March 19, 2013, the City Commission of City authorized the proper City officials to enter into this Second Amendment to Amended and Restated Lease Agreement ("Second Amendment"); and

WHEREAS, Lessee leases certain property from Lessor known as Parcel 2 at Fort Lauderdale Executive Airport, under an Amended and Restated Lease Agreement dated September 7, 2011 ("Lease Agreement"); and

WHEREAS, on April 17, 2012, Lessor and Lessee entered into a First Amendment to the Lease Agreement; and

WHEREAS, as provided in the First Amendment to the Lease Agreement, Lessee is required to redevelop Parcel 2 by demolishing two conventional hangars and 22 T-hangars and constructing three new aircraft storage hangars totaling a minimum of 55,000 square feet; and

WHEREAS, Lessee has modified its plans and Lessee is requesting a reduced minimum square footage requirement and amended legal descriptions; and

WHEREAS, Lessor also desires to modify the terms of the Lease with regard to the Base Rent increase in 2023; and

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

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. The above recitals are true and correct and are incorporated herein.
2. Paragraph 4, TERM, of the Lease Agreement is amended to delete the stricken text and to add the underlined text as follows:

4. TERM. The parties acknowledge and agree that the Term of this Lease Agreement shall commence on October 1, 2011 ("Commencement Date"), and shall terminate thirty (30) years thereafter, unless sooner terminated as provided in this Lease and subject to the satisfaction of the following conditions: (a) the completion of construction of the Improvements as depicted on Exhibit "C"; and (b) the provision of evidence to the Lessor that the constructed Improvements on the Premises equal the minimum ~~55,000~~ 20,000 square feet of new hangar facilities, ramp and drainage improvements. However, if the conditions described in this Paragraph have not occurred on or before April 1, 2015, this Lease Agreement shall terminate and be of no further force or effect, the Original Lease shall be applicable and shall be considered to have been continuing as if this Lease Agreement had never been in effect, and the Lessor and Lessee shall be in the same positions and subject to the same terms as the Original Lease.

3. Paragraph 8, RENT, of the Lease Agreement is amended to delete the stricken text and to add the underlined text as follows:

8. RENT. Rent shall commence on the Commencement Date of the Lease Agreement (October 1, 2011). All rental payments shall be paid in advance in equal monthly installments of Nine Thousand Two Hundred Five Dollars and 32/100 (\$9,205.32), plus applicable taxes, on the first day of each month to which applicable according to the following schedule:

(a) One Hundred Ten Thousand Four Hundred and Sixty-Three Dollars and 83/100 (\$110,463.83) is the basic annual rental for the first 24 months of this Lease Agreement, referred to as the "Base Rent."

(b) Commencing on ~~October 1, 2013~~ April 1, 2014, the Base Rent shall be adjusted to One Hundred Seventy-Two Thousand Two Hundred Seventy-Five Dollars and 44/100 (\$172,275.44) 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 beginning ~~October 1, 2013~~ April 1, 2014, the first adjustment to become effective as of ~~October 1, 2014~~ April 1, 2015, 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 (3rd) month preceding each Lease Adjustment Date.

Denominator - The Consumer Price Index for the third (3rd) 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. When Base Rent is adjusted on the 10th and 20th anniversary of the Commencement Date and on July 31, 2023 as provided below, ensuing adjustments at one year intervals based on the Consumer Price Index shall be calculated as provided above, except the Denominator shall be the Consumer Price Index for the third (3rd) month preceding the date of the Base Rent adjustment as provided below.

(2) Base Rent shall be further adjusted on the 10th and 20th anniversary of the Commencement Date of the Lease Agreement to reflect either ten percent (10%) of the appraised value of the land 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 range 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 31, 2023 to include the current fair market value of the leasehold improvements to be determined as follows 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".—For the purposes of this paragraph, "gross rental" shall be determined based upon the prevailing rental market rate as currently being charged for similar premises under similar lease terms at Fort Lauderdale Executive Airport (FXE) as determined by Lessor. 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 "A" of the Lease Agreement is hereby deleted in its entirety and replaced with the attached Exhibit "A."

5. Exhibit "C" of the Lease Agreement is hereby deleted in its entirety and replaced with the attached Exhibit "C."

6. 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.

[This Space Intentionally Left Blank]
[Signature Pages Follow]

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

LESSOR

WITNESSES:

Print Name

Print Name

CITY OF FORT LAUDERDALE,
a municipal corporation.

By 
JOHN P. "JACK" SEILER, Mayor

By 
LEE R. FELDMAN, City Manager

(SEAL)

ATTEST:


JONDA K. JOSEPH, City Clerk

Approved as to form:


Assistant City Attorney

LESSEE

LESSEE

WITNESSES:

Zeley Aviation, Inc., a Florida corporation

Tiffany Ralphs

By [Signature]

[Witness type or print name]

Robert D. Lettman, President

DAVID MARTIN

[Witness type or print name]

(CORPORATE SEAL)

STATE OF UTAH :
COUNTY OF SUMMIT :

The foregoing instrument was acknowledged before me this 7 day of March, 2013 by Robert D. Lettman, as President of ZELEY AVIATION, INC., a Florida corporation, on behalf of the corporation. He is personally known to me or has produced ID OK as identification and did not (did) take an oath.

(NOTARY SEAL)

Notary Public, State of ~~Florida~~ UTAH
Signature of Notary taking
Acknowledgment

[Signature]
Name of Notary Typed,
Printed or Stamped

My Commission Expires: 10/3/2015

613037
Commission Number

