

RESOLUTION NO. 22-

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA, DELEGATING TO THE CITY MANAGER THE AUTHORITY TO APPROVE AND EXECUTE AMENDMENTS TO THE LEASE AGREEMENTS FOR PARCELS 2A, 7B, 8AB, 8H, 11ABCD, 15, AND O AT THE FORT LAUDERDALE EXECUTIVE AIRPORT; PROVIDING FOR CONFLICTS, PROVIDING FOR SEVERABILITY, AND PROVIDING FOR AN EFFECTIVE DATE.

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

WHEREAS, FXE established a fuel flowage fee policy to cover costs for management and operations of the Airport, which is captured in each aviation Lease Agreement with tenants that provide fuel on the premises of FXE; and

WHEREAS, the tenants of Parcels 2A, 7B, 8AB, 8H, 11ABCD, 15, and O are authorized to dispense or sell aviation fuel to aircrafts operating on the premises of the Airport; and

WHEREAS, the Airport collects a monthly fuel flowage fee by applying a calculation of five and one-half percent (5.5%) of the per gallon cost on the first five hundred thousand (500,000) gallons of fuel delivered to each tenant authorized to sell fuel, and three and one-half percent (3.5%) of the per gallon cost of each gallon exceeding five hundred thousand (500,000) gallons; and

WHEREAS, Paragraph 13 of the lease agreements for Parcels 2A, 7B, 8AB, 11ABCD, 15, and O includes provisions pertaining to the aviation fuel flowage fee; and

WHEREAS, Paragraph 10 of the lease agreement for Parcel 8H includes terms regarding the fuel flowage fee; and

WHEREAS, City staff recommends that the City Commission amend the lease agreements for Parcels 2A, 7B, 8AB, 8H, 11ABCD, 15, and O to clarify the fuel flowage fee calculation and fuel flowage fee collection method; and

WHEREAS, City staff recommends that the City Commission authorize the City Manager to approve and execute amendments to the lease agreements for Parcels 2A, 7B, 8AB, 8H, 11ABCD, 15, and O, at the Fort Lauderdale Executive Airport, subject to the approval of the City Attorney's Office.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA:

SECTION 1. The City Manager is hereby delegated the authority to approve and execute amendments to the Lease Agreements for Parcels 2A, 7B, 8AB, 8H, 11ABCD, 15, and O, at the Fort Lauderdale Executive Airport in substantially the form attached hereto as Exhibit "A", subject to the approval of the City Attorney's Office.

SECTION 2. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 3. If any clause, section, or other part of this resolution shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this resolution shall not be affected thereby, but shall remain in full force and effect.

SECTION 4. This Resolution shall be in full force and effect upon final passage and adoption.

ADOPTED the _____ day of _____, 2022.

Mayor
DEAN J. TRANTALIS

ATTEST:

City Clerk
DAVID R. SOLOMAN

APPROVED AS TO FORM:

City Attorney
ALAIN E. BOILEAU

Dean J. Trantalis	_____
Heather Moraitis	_____
Steven Glassman	_____
Robert L. McKinzie	_____
Ben Sorensen	_____

EXHIBIT A

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

_____ **AMENDMENT TO THE LEASE AGREEMENT FOR PARCEL NO. ____**
AT THE FORT LAUDERDALE EXECUTIVE AIRPORT

THIS IS THE _____ AMENDMENT TO THE LEASE AGREEMENT, made and entered into on this _____ day of _____, 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

_____, a _____,
whose principal address is _____
(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 Lease Agreement dated _____ as amended, (herein the "Lease Agreement") and recorded on _____, Instrument Number _____ in the Broward County Public Records, which provides for the terms of the Lease Agreement for Parcel No. _____, 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 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 _____ Amendment to the Lease Agreement.

2. Paragraph ____ of the Lease Agreement 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 cost to Lessee 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 cost to Lessee 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 Amendment does not in any manner alter the LESSEE's obligations for the payment of rent or any other fees not mentioned in this Amendment.

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

5. If any one or more of the covenants set forth in this Amendment 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.

6. 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 this Lease Amendment.

7. This Amendment 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:

CITY OF FORT LAUDERDALE

By: _____

Greg Chavarria
City Manager

[Witness print name]

[Witness print name]

ATTEST:

(CORPORATE SEAL)

DAVID R. SOLOMAN, City Clerk

Approved as to form:

SHARI C. WALLEN
Assistant City Attorney

LESSEE

WITNESSES:

_____, a _____
corporation

By _____
Print Name: _____
Title: _____

[Witness print name]

[Witness print name]

ATTEST:

[COMPANY SEAL]

By _____
Print Name: _____
Title: _____

STATE OF _____ :
COUNTY OF _____ :

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20__, by _____ as _____ of _____, a _____ corporation.

(SEAL)

Signature of Notary Public – State of _____

Print, Type, or Stamp Commissioned Name of
Notary Public

Personally Known _____ OR Produced Identification _____
Type of Identification Produced _____