

THIRD AMENDMENT TO AMENDED AND RESTATED LEASE

(PARCEL 15)

THIS IS A THIRD AMENDMENT TO AN AMENDED AND RESTATED LEASE AGREEMENT, entered into on \_\_\_\_\_, 2018, 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 the City of Fort Lauderdale 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 Agreement 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, pursuant to Resolution 13-90, the City Commission authorized the proper City Officials to enter into a Second Amendment to the Lease providing for an increase in the overall size of the parcel and an increase in rent; and

WHEREAS, the Lessee has submitted a request to construct a new hangar with a total square footage of 20,000 feet together with a tie down ramp representing a minimum investment of \$4,000,000; and

WHEREAS, in order to accommodate the additional hangar and ramp space, Lessor has agreed to increase the total square footage of the Premises, subject to an increase in rent and other terms and conditions; and

WHEREAS, the Airport Advisory Board recommended approval of this new arrangement at its meeting on October 25, 2018; and

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

WHEREAS, pursuant to Resolution \_\_\_\_\_, 2018, the City Commission authorized the proper City Officials to enter into a Third Amendment to the Lease providing for an increase in the overall size of the parcel and an increase in rent.

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. Exhibits "A" of the Amended and Restated Lease Agreement and the Second Amendment are hereby deleted and replaced with the attached Revised Exhibit "A" showing the expanded legal description and sketch of the Premises. The total square footage of the Premises has been increased to 78,408. Both parties acknowledgment approximately 1.8 acres of vacant land has been added to the Premises and shall be deemed the Additional Parcel.
3. The following definition is added to paragraph 3.

"Effective Date" means the date that the last party executes this Third Amendment.

4. Paragraph 4 is deleted and replaced with the following.

The parties acknowledge and agree that the Term of this Lease Agreement shall commence on January 1, 2012 ("Commencement Date") and shall terminate on January 1, 2048, unless sooner terminated as provided in this Lease.

5. Paragraph 8, RENT, of the Lease Agreement and Second Amendment is deleted and replaced with the following:

**Rent During Construction Period.** During the period of construction which shall not exceed twenty four (24) months starting from the Effective Date (the "Construction Period") of this Third Amendment, the Base Rent for the Additional Parcel only shall be reduced to 0.22 per square foot which shall not be subject to any rental adjustment during the Construction Period for a total annual rent of \$177,385.03, which rent shall be paid in advance in equal monthly installments starting on \_\_\_\_\_.

As to the remainder of the Premises which has a total square footage of \_\_\_\_\_, the Base rent is calculated at \$0.44 per square foot for a total annual rent of \_\_\_\_\_ which shall be paid in advance in equal monthly installments starting on \_\_\_\_\_, 2019 and shall be subject rental adjustments as described below.

**POST CONSTRUCTION RENT.** Both parties acknowledge that the initial Base Rent commenced on the initial Commencement Date of January 1, 2012. Commencing on the date representing the end of the Construction Period and regardless of whether the new improvements have been completed, the Base Rent for the entire Premises, including the Additional Parcel, shall increase to the greater of \$0.44 per square foot or the adjusted rental rate in effect at the time of increase. All rental payments shall be paid in advance in equal monthly installments, plus applicable taxes, on the first day of each month to which applicable according to the following schedule:

(a) As of the Effective Date of this Third Amendment, the annual Base Rent, excluding Base Rent assessed against the Additional Parcel, is One Hundred Fifty Nine Thousand One Hundred Fifty Three and 55/100 Dollars (\$159,153.55), which shall be

subject to adjustment as described below. Commencing on the date representing the end of the Construction Period, the Base Rent shall increase to the greater of \$\_\_\_\_\_ or the adjusted Base Rent as calculated below.

(b) 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 \_\_\_\_\_, 2019 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.

(4) At no time shall the adjusted rent be less than the Base Rent in effect as of the last day of the Construction Period.

(c) 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.

(d) 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.

(e) 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.

(f) 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

6. The **first sentence** only of paragraph 38(a) is deleted and replaced with the following.

The Lessee is required to construct a new hangar which shall consist of no less than 20,000 square feet along with a tie down ramp for parking. A description of the Improvements are described in Exhibit "B". In consideration of extending the term of this Lease, Lessee agrees that the minimum investment for these improvements shall be no less than \$4,000,000.00.

7. Except as modified herein, 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.

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:

\_\_\_\_\_  
Jeffrey A. Modarelli, City Clerk

Approved as to form:  
Alain E. Boileau, City Attorney

\_\_\_\_\_  
Lynn Solomon  
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

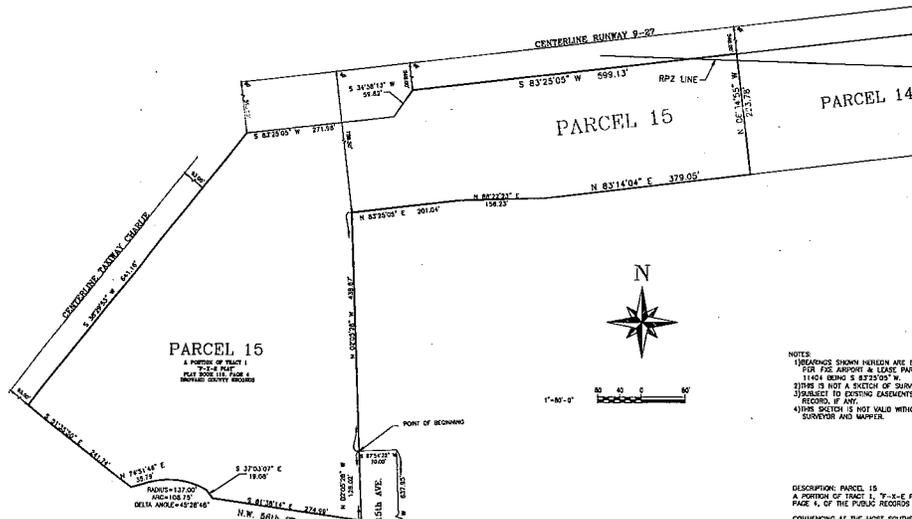
\_\_\_\_\_  
Name of Notary Typed,  
Printed or Stamped  
My Commission Expires:

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

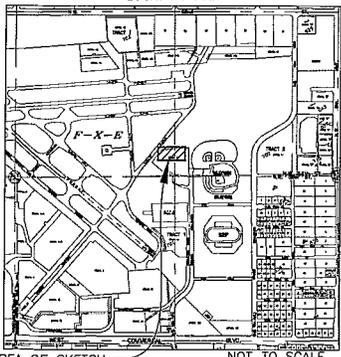
**REVISED EXHIBIT "A"**

**SKETCH AND LEGAL DESCRIPTION  
OF PREMISES**

# SKETCH & DESCRIPTION



LOCATION MAP



AREA OF SKETCH NOT TO SCALE

NOTES:  
 BEARINGS SHOWN HEREON ARE BASED ON GRID BEARINGS USING THE NORTH LINE OF PARCEL 15.  
 FOR THE AIRPORT & LEASE PARCEL MAP CITY OF FORT LAUDERDALE EXECUTIVE AIRPORT PROJECT NO. 11404 BEING S 872305' W.

DESCRIPTION: PARCEL 15  
 A PORTION OF PLAT 1 "7-3-E PLAT", ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 119, PAGE 4, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, BEING DESCRIBED AS FOLLOWS:  
 COMMENCING AT THE MOST SOUTHERLY EAST CORNER OF SAID "7-3-E PLAT"; THENCE NORTH 02°04'28" WEST ALONG THE EAST RIGHT OF WAY LINE OF NORTHWEST 18TH AVENUE, AND THE LIMITS OF SAID "7-3-E PLAT", A DISTANCE OF 214.08 FEET; THENCE SOUTH 87°25'41" WEST A DISTANCE OF 80.00 FEET TO THE WEST RIGHT OF WAY LINE OF SAID NORTHWEST 18TH AVENUE; THENCE CONTINUING SOUTH 87°25'41" WEST A DISTANCE OF 948.85 FEET; THENCE NORTH 02°05'28" WEST A DISTANCE OF 837.85 FEET; THENCE SOUTH 87°25'41" WEST A DISTANCE OF 10.00 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE NORTH 02°05'28" WEST SOUTH OF AS MEASURED AT RIGHT ANGLES, THE CENTERLINE OF FORT LAUDERDALE EXECUTIVE AIRPORT RUNWAY 9-27, A DISTANCE OF 438.87 FEET; THENCE NORTH 87°25'41" EAST, ALONG A LINE PARALLEL WITH AND 785.50 FEET SOUTH OF AS MEASURED AT RIGHT ANGLES, THE CENTERLINE OF FORT LAUDERDALE EXECUTIVE AIRPORT RUNWAY 9-27, A DISTANCE OF 201.04 FEET; THENCE NORTH 86°32'23" EAST A DISTANCE OF 154.22 FEET; THENCE NORTH 87°19'47" EAST A DISTANCE OF 374.03 FEET; THENCE NORTH 09°15'57" WEST A DISTANCE OF 233.78 FEET; THENCE SOUTH 87°25'41" WEST, ALONG A LINE PARALLEL WITH AND 548.25 FEET SOUTH OF AS MEASURED AT RIGHT ANGLES, THE CENTERLINE OF FORT LAUDERDALE EXECUTIVE AIRPORT RUNWAY 9-27, A DISTANCE OF 589.13 FEET; THENCE SOUTH 34°36'14" WEST A DISTANCE OF 58.80 FEET; THENCE SOUTH 87°25'41" WEST ALONG A LINE PARALLEL WITH AND 583.00 FEET SOUTH OF AS MEASURED AT RIGHT ANGLES, THE CENTERLINE OF FORT LAUDERDALE EXECUTIVE AIRPORT RUNWAY 9-27, A DISTANCE OF 241.74 FEET; THENCE NORTH 9°11'46" EAST A DISTANCE OF 33.75 FEET TO A POINT ON A NON-TANGENT CURVE; THENCE NORTHWESTERLY, EASTERLY AND SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 137.00 FEET, A CENTRAL ANGLE OF 45°28'48" AND ARC LENGTH OF 108.75 FEET TO AN INTERSECTION WITH A NON-TANGENT LINE; THENCE SOUTH 37°03'07" EAST A DISTANCE OF 19.86 FEET; THENCE SOUTH 87°25'41" EAST A DISTANCE OF 214.99 FEET; THENCE NORTH 02°05'28" WEST A DISTANCE OF 128.02 FEET TO THE POINT OF BEGINNING.

SAID LANDS SEPARATE, LYING AND BEING IN THE CITY OF FORT LAUDERDALE, BROWARD COUNTY, FLORIDA, CONTAINING 4439.84 SQUARE FEET OR 10.1848 ACRES, MORE OR LESS.  
 BEARINGS SHOWN HEREON ARE BASED ON GRID BEARINGS DERIVED FROM FLORIDA STATE PLANE COORDINATES.  
 CERTIFIED TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.  
 DATED: APRIL 11, 2018  
 REVISED: OCTOBER 11, 2018  
 REVISED: DECEMBER 30, 2018  
 REVISED: JANUARY 19, 2019  
 REVISED: MAY 3, 2018  
 REVISED: MAY 22, 2018  
 REVISED: OCTOBER 10, 2018

MICHAEL W. FOWLER  
 PROFESSIONAL SURVEYOR AND MAPPER NO. 6490  
 STATE OF FLORIDA

CITY OF FORT LAUDERDALE PUBLIC WORKS DEPARTMENT ENGINEERING & ARCHITECTURE	
DATE: 11/17/2018	SCALE: 1" = 40'
DRAWN BY: [Name]	CHECKED BY: [Name]
DESIGNED BY: [Name]	APPROVED BY: [Name]
PROJECT # 11404	SHEET NO. 1 OF 1
FILE # 11404-001-PRCL15.DWG	DATE: 11/17/2018

DESCRIPTION: PARCEL 15

A PORTION OF TRACT 1, "F-X-E PLAT", ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 119, PAGE 4, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHERLY EAST CORNER OF SAID "F-X-E PLAT"; THENCE NORTH  $02^{\circ}04'39''$  WEST ALONG THE EAST RIGHT OF WAY LINE OF NORTHWEST 12TH AVENUE AND THE LIMITS OF SAID "F-X-E PLAT", A DISTANCE OF 2114.58 FEET; THENCE SOUTH  $87^{\circ}55'41''$  WEST A DISTANCE OF 80.00 FEET TO THE WEST RIGHT OF WAY LINE OF SAID NORTHWEST 12TH AVENUE; THENCE CONTINUE SOUTH  $87^{\circ}55'41''$  WEST, A DISTANCE OF 946.65 FEET; THENCE NORTH  $02^{\circ}05'28''$  WEST A DISTANCE OF 637.95 FEET; THENCE SOUTH  $87^{\circ}54'32''$  WEST A DISTANCE OF 70.00 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE NORTH  $02^{\circ}05'28''$  WEST A DISTANCE OF 438.87 FEET; THENCE NORTH  $83^{\circ}25'05''$  EAST, ALONG A LINE PARALLEL WITH AND 759.50 FEET SOUTH OF, AS MEASURED AT RIGHT ANGLES, THE CENTERLINE OF FORT LAUDERDALE EXECUTIVE AIRPORT RUNWAY 9-27, A DISTANCE OF 201.04 FEET; THENCE NORTH  $88^{\circ}22'23''$  EAST A DISTANCE OF 156.23 FEET; THENCE NORTH  $83^{\circ}14'04''$  EAST A DISTANCE OF 379.05 FEET; THENCE NORTH  $06^{\circ}34'55''$  WEST A DISTANCE 223.78 FEET; THENCE SOUTH  $83^{\circ}25'05''$  WEST, ALONG A LINE PARALLEL WITH AND 548.00 FEET SOUTH OF, AS MEASURED AT RIGHT ANGLES, THE CENTERLINE OF FORT LAUDERDALE EXECUTIVE AIRPORT RUNWAY 9-27 A DISTANCE OF 599.13 FEET; THENCE SOUTH  $34^{\circ}38'13''$  WEST A DISTANCE OF 59.82 FEET; THENCE SOUTH  $83^{\circ}25'05''$  WEST ALONG A LINE PARALLEL WITH AND 593.00 FEET SOUTH OF, AS MEASURED AT RIGHT ANGLES, THE CENTERLINE OF FORT LAUDERDALE EXECUTIVE AIRPORT RUNWAY 9-27, A DISTANCE 271.98 FEET; THENCE SOUTH  $38^{\circ}29'53''$  WEST A DISTANCE OF 641.16 FEET; ALONG A LINE PARALLEL WITH AND 93.00 FEET EAST OF, AS MEASURED AT RIGHT ANGLES, THE CENTERLINE OF FORT LAUDERDALE EXECUTIVE AIRPORT TAXIEWAY CHARLIE; THENCE SOUTH  $51^{\circ}35'50''$  EAST A DISTANCE OF 241.74 FEET; THENCE NORTH  $74^{\circ}51'46''$  EAST A DISTANCE 35.79 FEET TO A POINT ON A NON-TANGENT CURVE; THENCE NORTHEASTERLY, EASTERLY AND SOUTHEASTERLY, ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 137.00 FEET, A CENTRAL ANGLE OF  $45'28'48''$  AND ARC LENGTH OF 108.75 FEET TO AN INTERSECTION WITH A NON-TANGENT LINE; THENCE SOUTH  $37^{\circ}03'07''$  EAST A DISTANCE OF 19.08 FEET; THENCE SOUTH  $81^{\circ}38'14''$  EAST A DISTANCE OF 274.99 FEET; THENCE NORTH  $02^{\circ}05'28''$  WEST A DISTANCE OF 128.02 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE, LYING AND BEING IN THE CITY OF FORT LAUDERDALE, BROWARD COUNTY, FLORIDA, CONTAINING 442781 SQUARE FEET OR 10.1649 ACRES, MORE OR LESS.