

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: November 22, 2016

☒ Consent ☐ Regular
☐ Workshop ☐ Public Hearing

Department:

Submitted By: Department of Airports

Submitted For: Department of Airports

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Memorandum of Lease, Estoppel Certificate, and Non-Disturbance Agreement ("Memorandum of Lease") with Galaxy Aviation of Lantana, Inc., ("Galaxy") and Professional Bank ("Lender").

Summary: Galaxy provides fixed based operator services at the Palm Beach County Park Airport ("Lantana Airport") pursuant to an Amended and Restated Fixed Base Operator Lease Agreement dated June 21, 2016 (R-2016-0759) ("Lease"). Galaxy is in the process of obtaining a leasehold mortgage for the construction of leasehold improvements at the Lantana Airport. The purpose of the Memorandum of Lease is to place the public on notice as to specific terms and conditions of the Lease, verify the status of the parties' obligations under the Lease and to confirm that County will not disturb the Lender's possession of the leasehold property in the event of a foreclosure, provided that there are no defaults of the tenant's obligations under the Lease. Countywide (HJF)

Background and Justification: Galaxy has agreed to construct various leasehold improvements, including a fuel farm, an aircraft wash rack, aircraft hangars and a new terminal building, at the Lantana Airport. The Memorandum of Lease is required in order for Galaxy to obtain financing from the Lender for construction of leasehold improvements at the Lantana Airport.

Attachments:

1. Memorandum of Lease, Estoppel Certificate, and Non-Disturbance Agreement (3)

Recommended By:  10/25/16
Department Director Date

Approved By:  11/21/16
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2017</u>	<u>2018</u>	<u>2018</u>	<u>2020</u>	<u>2021</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT *	<u>\$-0-</u>	<u>\$-0-</u>	<u>\$-0-</u>	<u>\$-0-</u>	<u>\$-0-</u>
# ADDITIONAL FTE	_____	_____	_____	_____	_____
POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No _____
Budget Account No: Fund _____ Department _____ Unit _____ Rsource _____
Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

* No fiscal impact.

C. Departmental Fiscal Review: cm Sumner

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

OFMB ET 10/24
m. 10/26

Contract Dev. and Control
3/1/16

B. Legal Sufficiency:

Assistant County Attorney
11/1/16

C. Other Department Review:

Department Director

REVISED 9/03
ADM FORM 01
(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

**THIS INSTRUMENT WAS PREPARED BY
AND AFTER RECORDING MAIL TO:**

**CLINT J. GAGE, ESQ.
DICKINSON WRIGHT PLLC,
430 EAST LAS OLAS BOULEVARD
SUITE 730
FT. LAUDERDALE, FL 33301**

MEMORANDUM OF LEASE, ESTOPPEL CERTIFICATE, AND NON-DISTURBANCE AGREEMENT

This Memorandum of Lease, Estoppel Certificate, and Non-Disturbance Agreement (this "Agreement") is made as of October 19, 2016 (the "Effective Date") by and between Palm Beach County, a political subdivision of the State of Florida ("Landlord"), Galaxy Aviation of Lantana, Inc., a Florida corporation ("Tenant"), and Professional Bank, a Florida banking corporation ("Lender").

Background Information

A. Landlord is the fee owner of that certain real property located in Palm Beach County, Florida, and more fully described on Exhibit A, attached hereto and made a part hereof.

B. Landlord and Tenant have entered into that certain Amended and Restated Fixed Base Operator Lease Agreement (R2016-0759) effective as of December 17, 2013 (the "Lease"), whereby Landlord has leased to Tenant the Premises as defined in the Lease and as more particularly described on the attached Exhibit A (the "Leased Property").

C. Tenant has obtained a loan from Lender, which loan is secured in part by a leasehold mortgage on Tenant's interest in the Lease (the "Mortgage").

D. Landlord and Tenant desire to enter into this Agreement for recording in the Official Public Records of Palm Beach County, Florida.

Agreement

1. *Memorandum of Lease.* The Lease provides that Landlord leases to Tenant the Leased Property, together with all improvements thereon, subject to the Existing Leases (as defined in the Lease), and easements, rights-of-way and any other encumbrances of record, for a term commencing on April 1, 2014 and ending 30 years from the first to occur of (a) the date of substantial completion of the Phase II Improvements (as defined in the Lease), or (b) October 1, 2019, unless otherwise terminated in accordance with the terms of the Lease.

2. *Estoppel Certificate.* Landlord certifies and acknowledges as follows, all as of the Effective Date:

(a) Except as the public record discloses, Landlord: (i) is landlord under the Lease; (ii) has not conveyed, mortgaged, or assigned the Leased property or Landlord's interest in the Lease; and (iii) has not agreed to do so.

(b) To the best of Landlord's knowledge, Tenant is the tenant under the Lease. Landlord has received no written notice that Tenant has assigned the Lease.

(c) The Lease: (i) is in full force and effect; (ii) has not been amended, cancelled, supplemented, surrendered, or terminated except as this Agreement states; and (iii) contains the entire agreement between Landlord and Tenant (and any parties related to either of them) about the Leased Property and the Lease.

(d) To the best of Landlord's knowledge, Tenant is not in default under the Lease, nor has any event occurred that, with passage of time or giving of notice or both, would constitute such a default. Landlord has given Tenant no notice of any uncured default. There are no legal proceedings pending (or threatened) against Tenant by Landlord.

(e) Landlord has no present right to terminate the Lease. Landlord has neither given nor received any notice of termination of the Lease.

(f) Tenant is current (subject to routine audit adjustments) in payment of: (i) all base rent through and including the payment that was due on October 1, 2016; (ii) all Monthly Percentage Payments (as defined in the Lease) through and including the payment that was due on September 20, 2016; and (iii) all other amounts for which Landlord has billed Tenant. Landlord holds no security deposit, prepaid rent, or other funds of any kind for the Lease, except: Letter of Credit Number 117, issued by Professional Bank on October 6, 2016, in the amount of \$25,500.

(g) The "Commencement Date" of the Lease was April 1, 2014. The "Expiration Date" of the Lease will be 30 years after the first to occur of (a) the date of substantial completion of the Phase II Improvements (as defined in the Lease) or (b) October 1, 2019.

(h) To the best of Landlord's knowledge, Landlord is not in default under the Lease. Landlord has received from Tenant no notice of default under the Lease that has not been cured.

(i) Landlord's current correct address for notices is as follows: Department of Airports, Palm Beach County, 846 Palm Beach International Airport, West Palm Beach, Florida, 33406-1470, Attention: Deputy Director, Airports Business Affairs. Copies of such notices must be sent only to: Palm Beach County Attorney's Office, 301 North Olive Avenue, Suite 601, West Palm Beach, Florida 33401, Attention: Airport Attorney.

(j) No tenant other than Tenant and Tenant's subtenants have any leasehold interest in the Leased Property.

(k) The lease by and between the Department of Airports, Palm Beach County, Florida, as lessor, and Florida Airmotive Inc., as lessee, and all rights thereunder of the said lessee and of any person claiming by, through or under said lessee, said lease being attached to Resolution No. R-86-712, recorded January 4, 1990 in Official Records Book 6314, Page 867, and as affected by the Settlement Agreement attached to the Order recorded in Official Records Book 25117, Page 503, is no longer in full force or effect, and such tenant is not in occupancy of, the Leased Property.

(l) The certifications made in this Section 2 are made with the understanding that such certifications will be relied upon by Lender.

3. *Non-Disturbance.*

(a) If Lender shall foreclose the Mortgage and succeed to Tenant's interest under the Lease, Landlord agrees that, for so long as there are no defaults in the tenant obligations under the Lease beyond any applicable notice and cure period, Landlord shall recognize Lender as the tenant under the Lease and shall not disturb Lender's possession of the Leased Property pursuant to the terms of the Lease.

(b) Landlord hereby consents to the Mortgage. For the avoidance of doubt, any provision of the Lease restricting Tenant's right to transfer or assign Tenant's rights under the Lease shall not be deemed to prohibit Lender from foreclosing the Mortgage and succeeding to Tenant's interest under the Lease.

(c) Tenant will not terminate or cancel the Lease, nor modify, change, supplement, alter or amend the Lease either orally or in writing without the express written consent of Lender, and any such surrender, termination, cancellation, modification, change, supplement, alteration or amendment of the Lease without the prior written consent thereto by Lender shall be void and of no force and effect.

(d) Landlord shall deliver to Lender a notice of any default by Tenant under the Lease and Lender shall have the right to cure any such default within the cure

period provided to Tenant under the Lease. Lender's address for notice shall be: Professional Bank, 396 Alhambra Circle, Suite 255, Coral Gables, Florida 33134, Attention: J. Michael Woody, Jr., Executive Vice President, or any other address of which Lender may inform Landlord from time to time upon three (3) days prior written notice to Landlord.

4. *Miscellaneous.*

(a) This Agreement has been executed for recording purposes only, and shall not be deemed to amend or supplement the Lease. In the event of any conflicts between the provisions of this Agreement and the provisions of the Lease, the provisions of the Lease shall prevail.

(b) This Agreement may be executed with counterpart signature pages or in one or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same instrument. This Agreement shall be governed by, and construed under, the laws of the State of Florida.

(c) This Agreement shall be binding upon and inure to the benefit of the respective heirs, personal representatives, successors and assigns of the parties hereto.

(d) This Agreement may be modified only in writing duly executed by the parties.

[Signature page follows.]

In Witness Whereof, the parties hereto have executed this Agreement the day and year first above written.

TENANT:

GALAXY AVIATION OF LANTANA, INC.

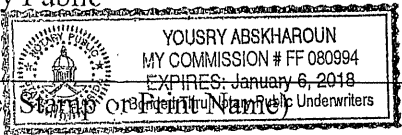
By : [Signature]
Name: Jonathan Miller
Its: PRESIDENT

WITNESSES:

By : [Signature]
Name: Andrea Miller
By : [Signature]
Name: Araceli

STATE OF Florida
COUNTY OF palm beach

The foregoing instrument was acknowledged before me this 20th day of October, 2016, by Jonathan H. Miller, as President of Galaxy Aviation of Lantana, Inc., a Florida corporation, on behalf of the corporation. He is personally known to me OR produced Florida Drivers License identification.

10/20/16
Notary Public

(Type Stamp or Print Name)

My commission expires:

(NOTARY SEAL)

LANDLORD:

ATTEST:

SHARON R. BOCK

**PALM BEACH COUNTY, a political
subdivision of the State of Florida by
its Board of County Commissioners**

By: _____
Clerk and Comptroller

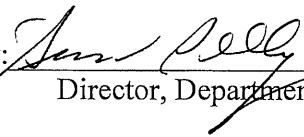
By: _____
Mayor

(SEAL)

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS
AND CONDITIONS**

By: _____
County Attorney

By:  _____
Director, Department of Airports

LENDER:

PROFESSIONAL BANK

By: J. Michael Woody, Jr.
Name: J. Michael Woody, Jr.
Its: Executive Vice President

WITNESSES:

By: Steven Connor
Name: Steven Connor
By: Jill R. Garic
Name: Jill R. Garic

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 19 day of October, 2016, by J. Michael Woody, Jr., as Executive Vice President of Professional Bank, a Florida banking corporation, on behalf of Professional Bank. He ☒ is personally known to me OR ☐ produced _____ as identification.

Jill R. Garic
Notary Public

Jill R. Garic
(Type, Stamp or Print Name)

My commission expires: 6/13/2020

(NOTARY SEAL)

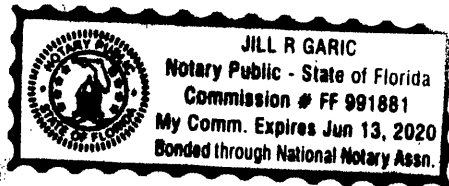


Exhibit A

Legal Description of Leased Property

A parcel of land located on Lantana Airport property situate in Section 32, Township 44 South, Range 43 East, Palm Beach County, Florida, being more particularly described as follows:

Commencing at NGS B Station "Beachport" as shown on survey entitled "Lantana Airport Leasehold Boundary Survey" prepared by the Palm Beach County Engineering and Public Works Department, Roadway Production Division, Project No. 2013013-03, dated April 8, 2013, (and attached to said Lease as Exhibit "A"), thence South 20° 15' 18" West, a distance of 633.30 feet to the Point of Beginning; thence South 88° 26' 23" East, a distance of 2540.35 feet; thence South 01° 30' 12" West, a distance of 406.78 feet; thence North 88° 26' 23" West, a distance of 1544.40 feet; thence South 01° 33' 37" West, a distance of 147.27 feet; thence North 88° 26' 23" West, a distance of 1316.13 feet; thence North 31° 33' 09" East, a distance of 639.71 feet to the Point of Beginning.

Said portion of land being more particularly described by said Amended and Restated Fixed Base Operator Lease Agreement as the Hangar Premises (the real property described in the above-referenced Lantana Airport Leasehold Boundary Survey as the "Terminal Building," "Hangar Premises No.1," "Hangar Premises No. 2" and "Hangar Premises No. 3,"); the Aircraft Parking Apron; and the FBO Premises (described in said Boundary Survey as "FBO Premises").

Commonly known as: 2633 Lantana Rd. #18, Lake Worth, Florida 33462

Parcel Nos.: N/A

C E R T I F I C A T E
(Corporation)

The undersigned hereby certifies that the following are true and correct statements:

1. That Michael Faren is the Secretary of Galaxy Aviation of Lantana, Inc., a corporation organized and existing in good standing under the laws of the State of Florida, hereinafter referred to as the "Corporation", and that the following Resolutions are true and correct copies of certain Resolutions adopted by the Board of Directors of the Corporation as of the 17 day of October, 2016, in accordance with the laws of the State of Florida, the Articles of Incorporation and the By-laws of the Corporation:

RESOLVED, that the Corporation shall enter into that certain Memorandum of Lease, Estoppel Certificate, and Non-Disturbance Agreement between Palm Beach County, a political subdivision of the State of Florida and the Corporation (the "Agreement"), a copy of which is attached hereto; and be it

FURTHER RESOLVED, that Jonathan Miller, the President of the Corporation, is hereby authorized and instructed to execute such Agreement and such other instruments as may be necessary and appropriate for the Corporation to fulfill its obligations under the Agreement.

2. That the foregoing resolutions have not been modified, amended, rescinded, revoked or otherwise changed and remain in full force and effect as of the date hereof.

3. That the Corporation is in good standing under the laws of the State of Florida, and has qualified, if legally required, to do business in the State of Florida and has the full power and authority to enter into such Agreement.

IN WITNESS WHEREOF, the undersigned has set his hand and affixed the Corporate Seal of the Corporation the 17 day of October, 2016.



[Signature]

Corporate Seal

Michael Faren, Secretary
Galaxy Aviation of Lantana, Inc.

CERTIFICATE
(Corporation)

The undersigned hereby certifies that the following are true and correct statements:

1. That Mary Benevente is the Secretary of Professional Bank, a Florida banking corporation, hereinafter referred to as the "Corporation", and that the following Resolutions are true and correct copies of certain Resolutions adopted by the Board of Directors of the Corporation as of the 14th day of October, 2016, in accordance with the laws of the State of Florida, the Articles of Incorporation and the By-laws of the Corporation:

RESOLVED, that the Corporation shall enter into that certain Memorandum of Lease, Estoppel Certificate, and Non-Disturbance Agreement between Palm Beach County, a political subdivision of the State of Florida, Galaxy Aviation of Lantana, Inc., and the Corporation (the "Agreement"), a copy of which is attached hereto; and be it

FURTHER RESOLVED, that J. Michael Woody, Jr., the Executive Vice President of the Corporation, is hereby authorized and instructed to execute such Agreement and such other instruments as may be necessary and appropriate for the Corporation to fulfill its obligations under the Agreement.

2. That the foregoing resolutions have not been modified, amended, rescinded, revoked or otherwise changed and remain in full force and effect as of the date hereof.

3. That the Corporation is in good standing under the laws of the State of Florida, and has qualified, if legally required, to do business in the State of Florida and has the full power and authority to enter into such Agreement.

IN WITNESS WHEREOF, the undersigned has set his hand the 14th day of October, 2016.

Professional Bank

By: Mary Benevente

Name: Mary Benevente

Title: Secretary