

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

Agenda Item: SF-1

AGENDA ITEM SUMMARY

Meeting Date: July 11, 2017

☐ 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: First Amendment to Amended and Restated Fixed Base Operator Lease Agreement (Lease) (R-2016-0759) with Galaxy Aviation of Lantana, Inc. d/b/a Stellar Aviation of South Palm Beach (Stellar), removing the requirement to construct an aviation fuel farm and aircraft wash rack; providing for the extension of construction deadlines; requiring Stellar to pay the County a fuel farm recovery fee the amount of \$.08 per gallon of aviation fuel sold (Recovery Fee); providing opportunity for rental relief based on temporary flight restrictions (TFRs); and modifying the lease term to provide 30 years from substantial completion of the construction of a new terminal building or October 1, 2020, whichever occurs first.

**Summary:** Stellar provides fixed based operator services at the Palm Beach County Park Airport ("Lantana Airport") pursuant to the Lease. Stellar is a Florida corporation with its principal place of business in Lantana, Florida. The Lease requires Stellar to build a fuel farm and wash rack; however, the County received a grant from the Florida Department of Transportation, which will fund 80% of the cost of the improvements. Stellar will be responsible for the operation, maintenance and management of the fuel farm and wash rack and will pay the County the Recovery Fee, which will allow the County to recover its share of the cost of the improvements and provide for future repairs. The fuel farm will include a self-service fuel system, which will provide airport users with a lower cost fuel option. The County will be responsible for the cost of repairs to the fuel farm in excess of \$15,000 per year, which will be reimbursed through rental credit. Because Stellar will not be responsible for funding the fuel farm, the Amendment also provides for a reduction to the Minimum Capital Investment from \$5,525,000 to \$4,750,000. The Lease requires Stellar to complete renovations to the existing terminal building by October 1, 2020, and construction of a new terminal building by October 1, 2019. The Amendment modifies the requirement to provide for the renovation of the existing terminal to be completed by October 1, 2019, and construction of the new terminal to be completed by October 1, 2020. The Lease provides Stellar with 30 years to amortize its investment in the construction of a new terminal building. The Amendment updates the term to reflect the new construction deadline of October 1, 2020. The Amendment authorizes the Department to further extend construction deadlines based on impacts of TFRs imposed during Presidential visits to Mar-a-Lago and authorizes Stellar to provide appropriate rental relief to commercial tenants subject to the approval of the Department. Countywide (HJF)

**Background and Justification:** During TFRs, the Lantana Airport has been closed to aircraft operations with the exception of arrivals from certain gateway airports. Stellar has requested an extension to the deadline to construct a new terminal building and agreed to an earlier deadline for renovation of the existing terminal. This Amendment provides the Department with the ability to extend construction deadlines in the event frequent TFRs occur in future lease years.

**Attachments:**

1. First Amendment (3)

Recommended By: Don Kelly

Department Director

5/31/17  
Date

Approved By: CB

County Administrator

7/5/17  
Date



## II. FISCAL IMPACT ANALYSIS

### A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	<u>(\$13,500)</u>	<u>(\$18,000)</u>
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	_____	_____	<u>(\$13,500)</u>	<u>(\$18,000)</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes \_\_\_\_\_ No X  
 Budget Account No: Fund 4100 Department 120 Unit 8230 Rsource 4460  
 Reporting Category \_\_\_\_\_

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

Revenues for use of the fuel farm will be based on fuel sales. It is anticipated that construction of the fuel farm will be completed by December 31, 2019. In FY2016, Stellar sold approximately 225,000 gallons of aviation fuel or an average of 18,750 gallons per month. The fiscal impact analysis above assumes Stellar will commence payment for the fuel farm on January 1, 2020 based on the average monthly fuel sales for FY2016. Frequent TFRs may impact revenues to the County in future years; however, the Department is unable to estimate these impacts since it is unclear how frequently TFRs will be imposed in the future.

C. Departmental Fiscal Review: CM Swinn

## III. REVIEW COMMENTS

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

[Signature] 6/19/17  
 OFMB [Signature]

[Signature] 6/20/17  
 Contract Dev. and Control

### B. Legal Sufficiency:

[Signature] 6/30/17  
 Assistant County Attorney

### C. Other Department Review:

\_\_\_\_\_  
 Department Director



## Summary of Certificates

This report displays detailed Certificate of Insurance information for a selected Insured. Any items shown in red are deficient.

Tuesday, June 06, 2017

[Simple View](#)[Certificate Images](#)[Documents](#)

Insured: Galaxy Aviation of Lantana Inc.

Insured ID: LNA-GL-14-01

Status: Compliant (with overrides)

ITS Account Number: PLC762

Project(s): Palm Beach County - Airport Properties

Insurance Policy	Required	Provided	Override
<u>General Liability</u>			
Expiration: 4/1/2018			
General Aggregate:	\$2,500,000	\$5,000,000	
Products - Completed Operations Aggregate:	\$2,500,000	\$2,500,000	
Personal And Advertising Injury:	\$2,500,000	\$2,500,000	
Each Occurrence:	\$2,500,000	\$2,500,000	
Fire Damage:	\$0	\$0	
Medical Expense:	\$0	\$0	
<u>Automobile Liability</u>	All Owned Autos	All Owned Autos	
Expiration: 4/1/2018	Hired Autos	Hired Autos	
	Non-Owned Autos	Non-Owned Autos	
Combined Single Limit:	\$1,000,000	\$1,000,000	
<u>Workers Compensation/Employers Liability</u>	WC Stat. Limits	WC Stat. Limits	X
Expiration: 4/1/2018			
<u>Environmental Liability</u>	Additional Insured	Additional Insured	
Expiration: 4/1/2018			
Each Occurrence:	\$1,000,000	\$1,000,000	
Aggregate Limit:	\$2,000,000	\$2,000,000	
<u>Aircraft Liability</u>	Hangarkeepers Legal Liability	Hangarkeepers Legal Liability	
Expiration: 4/1/2018	Additional Insured	Additional Insured	
Each Occurrence:	\$2,500,000	\$2,500,000	
Aggregate Limit:	\$2,500,000	\$2,500,000	

Notifications ([Show All](#))

There were no deficiency letters issued.

Do you have an updated Certificate? Click the button below to submit a Certificate.

[Certificate Submittal](#)

**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. d/b/a Stellar Aviation of Palm Beach, a corporation organized and existing in good standing under the laws of the State 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 6th day of June, 2017, 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 First Amendment to Amended and Restated Fixed Base Operator Lease 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 6th day of June, 2017

  
[Signature]

Corporate Seal

Michael Faren, Secretary



**FIRST AMENDMENT TO AMENDED AND RESTATED  
FIXED BASE OPERATOR LEASE AGREEMENT  
BETWEEN PALM BEACH COUNTY  
AND GALAXY AVIATION OF LANTANA, INC.**

This First Amendment to Amended and Restated Fixed Based Operator Lease Agreement (this "Amendment") is made and entered into this \_\_\_\_\_, 2017 by and between Palm Beach County, a political subdivision of the State of Florida ("County"), and Galaxy Aviation of Lantana, Inc., d/b/a Stellar Aviation of South Palm Beach, a Florida corporation, having its office and principal place of business at 2633 Lantana Road, Suite 18, Lantana, Florida 33462 ("Tenant").

**WITNESSETH:**

**WHEREAS**, County, by and through its Department of Airports, owns and operates the Palm Beach County Park Airport, which is located in Palm Beach County, Florida; and

**WHEREAS**, the parties entered into that certain Amended and Restated Fixed Base Operator Lease Agreement dated June 21, 2016 (R-2016-0759) (the "Lease"); and

**WHEREAS**, the parties acknowledge that frequent temporary flight restrictions imposed during Presidential visits to Mar-a-Lago, prohibiting all aircraft flight operations from the Airport with the exception of arrivals from defined gateway airports, negatively impact Tenant; and

**WHEREAS**, the parties now desire to amend the Lease as provided for herein.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants herein contained, and other good and valuable consideration, the receipt of which the parties hereby expressly acknowledge, the parties hereto covenant and agree to the following terms and conditions:

1. The foregoing recitals are true and correct and are hereby incorporated herein by reference. Terms not defined herein shall have the meanings set forth in the Lease.

2. Section 2.37, Fuel Flowage Fees, Section 2.53, Monthly Percentage Rent, and Section 2.63, Phase IV Improvements, are hereby deleted in their entirety and replaced with the following:

2.37 "Fuel Flowage Fees" has the meaning set forth in Section 5.08(A).

2.53 "Monthly Percentage Payment" means fifty-one and 20/100 percent (51.20%) of monthly Gross Real Estate Revenues for the Hangar Premises, exclusive of the Additional Hangars and Terminal Building; thirty-five percent (35%) of the monthly Gross Real Estate Revenues for the Terminal Building; and sixty-five percent (65%) of the monthly Gross Real Estate Revenues for the Additional Hangars. The parties acknowledge and agree that Monthly Percentage Payment and Percentage Payment as to the Terminal Building shall commence on the first to occur of: (i) the completion of the Phase II Required Improvements; or (ii) October 1, 2020 (or such extended date approved by the Department pursuant to Exhibit "D" for completion of the Phase II Improvements, which extension shall not be unreasonably withheld, conditioned or delayed for reasons beyond the reasonable control of Tenant and as specifically referenced in Section 5 of Exhibit D attached hereto). Payment of the Monthly Percentage Payment and Percentage Payment as to the Terminal Building shall not be retroactive to the Commencement Date.

2.63 Intentionally omitted.



3. Article 2, Definitions, is hereby amended to add the following definitions:
- 2.86 "County Fuel Farm" means the Fuel Farm to be constructed by County pursuant to Section 8.01.
- 2.87 "Fuel Farm Recovery Fees" has the meaning set forth in Section 5.08(B).
- 2.88 "TFRs" means temporary flight restrictions imposed during Presidential visits to Mar-a-Lago, prohibiting all aircraft flight operations from the Airport with the exception of arrivals from defined gateway airports.
4. Section 3.02, Term, is hereby deleted in its entirety and replaced with the following:
- 3.02 Term. The initial term of this Lease commenced on April 1, 2014 ("Commencement Date"), and shall expire thirty (30) years from the first to occur of: (i) the date of substantial completion of the Phase II Improvements; or (ii) October 1, 2020 (or such extended date approved by Department pursuant to Exhibit "D" for completion of the Phase II Improvements, which extension shall not be unreasonably withheld, conditioned or delayed for reasons beyond the reasonable control of Tenant and as specifically referenced in Section 5 of Exhibit D attached hereto) ("Term").
5. Section 4.02, Description of Specific Privileges, Uses and Rights, is hereby amended to delete Sections 4.02(A)(6) and 4.02(A)(9) in their entirety and replace them with the following:
- (6) Delivering and dispensing aviation fuels and lubricating oils. In connection with the sale or dispensing of such products upon the Premises or otherwise, County assumes no responsibility for the acts of any supplier regarding delivery, quality of product, or maintenance of supplier-owned or Tenant-owned or managed equipment. Aviation fuels and lubricating oils shall be sold, stored and dispensed by Tenant in accordance with all federal, state and local laws. Tenant shall provide sufficient quantities of fuel at the Airport to meet the needs of the Airport users and the requirements of the Minimum Standards. No person shall be denied the right to purchase retail fuel from the County Fuel Farm into an aircraft, subject to payment of applicable fees; provided, however, Tenant shall establish, maintain and charge fair, reasonable and non-discriminatory fees for the sale of fuel. Notwithstanding the foregoing, County acknowledges that County shall not have the right to establish or mandate fuel pricing to be charged by Tenant to its customers provided that such pricing otherwise satisfies the requirements of this paragraph.
- (9) Aircraft wash rack services upon County's completion of construction of an aircraft wash rack. No person shall be denied the right to use the aircraft wash rack to be constructed by County pursuant to Section 8.01, subject to the payment of applicable fees, if any; provided, however, Tenant may establish fair, reasonable and non-discriminatory fees for use of the aircraft wash rack; however, Tenant may establish different rates for commercial aircraft washing operators utilizing the aircraft wash rack. Notwithstanding the foregoing, County acknowledges that County shall not have the right to establish or mandate pricing to be charged by Tenant to its customers for use of the aircraft wash rack provided that such pricing otherwise satisfies the requirements of this paragraph.



6. Section 5.03, Minimum Annual Guarantee, is hereby amended to delete Section 5.03(A) in its entirety and replace it with the following:

- (A) Commencing on the first (1<sup>st</sup>) day following the expiration of the Transition Period, and on the first (1<sup>st</sup>) day of each and every month thereafter until July 31, 2017, Tenant shall pay to County one-twelfth (1/12) of the then current Minimum Annual Guarantee, without demand, deduction, holdback or setoff. In the event the Monthly Percentage Payment is greater than one-twelfth (1/12) of the then current Minimum Annual Guarantee, Tenant shall pay the difference to County with the Monthly Report on or before the twentieth (20<sup>th</sup>) day of each and every month for the immediately preceding month, without demand, deduction or setoff, throughout the Term of this Lease. On or before August 20, 2017, Tenant shall pay to County, without demand, deduction or setoff, the Monthly Percentage Payment for July 2017. Commencing on September 20, 2017, and on the twentieth (20<sup>th</sup>) day of each and every month thereafter through the remainder of the Term of this Lease, Tenant shall pay to County, without demand, deduction or setoff, the greater of: (i) one-twelfth (1/12) of the then current Minimum Annual Guarantee, or (ii) the Monthly Percentage Payment for the immediately preceding month.

7. Section 5.03, Minimum Annual Guarantee, is hereby amended to delete Section 5.03(E) in its entirety.

8. Section 5.05, Rental for FBO Premises, is hereby amended to delete Section 5.05(C) in its entirety and replace it with the following:

- (C) Tenant shall pay to County an initial annual ground rental equal to the then current fair market rental value as determined by an appraisal obtained by the County for the FBO Development Area, consisting of approximately 272,491 square feet of unimproved ground, commencing on the first to occur of: (i) the date of substantial completion of the Phase III Improvements; (ii) the date Tenant commences using the FBO Development Area, or any portion thereof, for the conduct of its business (other than construction); or (iii) October 1, 2021 (as such date may be extended as provided below) ("FBO Development Area Rental Commencement Date"). In the event the completion date for the Phase III Improvements is extended in accordance with Exhibit "D", which extension shall not be unreasonably withheld, conditioned or delayed for reasons beyond the reasonable control of Tenant and as specifically referenced in Section 5 of Exhibit D attached hereto, the outside date for commencement of payment of rental for the FBO Development Area of October 1, 2021 shall be extended by the same amount of time. For example, if the date for completion of the Phase III Improvements is extended by one (1) year to October 1, 2024, the outside date for commencement of rental for the FBO Development Area shall be extended by one (1) year to October 1, 2022. County may utilize the most recent appraisal obtained by County pursuant to Section 5.06(A) for purposes of determining the fair market rental value of the FBO Development Area, or may, at its sole option, elect to cause a separate appraisal to be performed, which may occur on a different date than the Adjustment Date; provided that the appraiser is an independent qualified M.A.I. appraiser.

9. Section 5.08, Fuel Flowage Fees, is hereby deleted in its entirety and replaced with the following:



**5.08 Fueling Fees.**

- (A) Tenant shall collect fuel flowage fees, at the then current rate established by County for each gallon of aviation fuel and each gallon of oil, sold or disbursed by or through Tenant at the Airport (hereinafter collectively referred to as the "Fuel Flowage Fees"), except that, unless otherwise advised in writing in advance by the Department, Fuel Flowage Fees shall not be collected for United States government military aircraft. Fuel Flowage Fees shall also be paid by Tenant to County for aircraft owned or operated by Tenant. Tenant acknowledges and agrees that County may adjust Fuel Flowage Fees from time to time, which adjustments may include, but shall not be limited to, adjustments to the rates, method of collection or basis for calculation. Tenant shall collect adjusted Fuel Flowage Fees in accordance with the requirements established by County.
- (B) Upon completion of construction of the County Fuel Farm, Tenant shall pay fuel farm recovery fees of Eight Cents (\$0.08) per gallon of aviation fuel, sold or disbursed by or through Tenant ("Fuel Farm Recovery Fee") at the Airport from the County Fuel Farm. The Fuel Farm Recovery Fee shall also be paid by Tenant to County for aircraft owned or operated by Tenant.
- (C) Fuel Flowage Fees and Fuel Farm Recovery Fees shall be in addition to any other rental, fees or charges payable hereunder, including, without limitation, the Ground Rental, Minimum Annual Guarantee and Percentage Payments. Fuel Flowage Fees and Fuel Farm Recovery Fees shall be paid to County on a monthly basis on or before the twentieth (20<sup>th</sup>) day of each and every month for the preceding month with the Monthly Report, without demand, deduction, holdback or setoff. County shall have the same rights to enforce due and timely payment by Tenant of the fees provided in this Section 5.08 as are available to County with regards to annual rent.

10. Article 5, Rental, Fees, Charges and Security Deposit, is hereby amended to add the following:

**5.17 Temporary Relief.** The parties acknowledge the frequent imposition of TFRs may negatively impact Tenant's ability to retain existing tenants and attract new tenants to the Airport. Notwithstanding any provision of this Lease to the contrary, Tenant may, subject to prior written approval of the Department: (i) provide on a fair, reasonable and non-discriminatory basis short-term, promotional rental discounts to its subtenants for the purpose of retaining existing or attracting new subtenants to the Airport; and/or (ii) agree to abate rental on a per diem basis (all or County's per diem share of such rental) for each day TFRs are in effect for Commercial Operators (as defined in the Minimum Standards) that in good standing under their subleases with Tenant and are unable to reasonably operate their commercial aviation businesses at the Airport during such TFRs. An example rental abatement calculation is attached hereto and incorporated herein as Exhibit "E". Tenant shall separately report any abated rental amounts in the Monthly Reports and shall include a separate schedule in the Annual Report detailing any abated rental amounts.

11. Section 6.02, Monthly Report, is hereby deleted in its entirety and replaced with the following:



**6.02 Monthly Report.** On or before the twentieth (20<sup>th</sup>) day of each month, Tenant shall deliver to County an accurate written accounting statement (the "Monthly Report") to County, in a form and detail satisfactory to County, which includes the following information for the preceding calendar month: (i) the Gross Real Estate Revenues by unit (i.e., hangar, building, etc...), including, without limitation, Gross Real Estate Revenues collected for Short Term Use of the Hangar Premises; (ii) the total Gross Real Estate Revenues; (iii) the Monthly Percentage Payment payable to County; (iv) the total number of gallons of fuel sold or disbursed by type; (v) total number of gallons of oil sold or disbursed; (vi) the Fuel Flowage Fees and Fuel Farm Recovery Fees payable to County; (vii) the total number of gallons of exempt fuel and oil disbursed by type (if any); (viii) any other fees and charges payable to County; (ix) any exclusions from Gross Real Estate Revenues; (x) any credits or charges that are reimbursable by County and (xi) any other information reasonably requested by County regarding Tenant's operations hereunder. The Monthly Report shall also include a running total of the Repair Credit and other reimbursements/credits earned and approved for reimbursement by County and the amount of Repair Credit and other reimbursements/credits claimed or used for the preceding calendar month. The Monthly Report shall be certified by an authorized representative of Tenant. County may require the Monthly Report to be delivered electronically.

12. Section 6.03, Annual Report, is hereby amended to delete Section 6.03(D) in its entirety and replace it with the following:

- (D) A schedule detailing any fees, charges or amounts applicable to the operation of aircraft on the Premises, including, without limitation, Fuel Flowage Fees and Fuel Farm Recovery Fees.

13. Section 8.01, County Redevelopment Area, is hereby deleted in its entirety and replaced with the following:

- (A) Subject to the terms, conditions and limitations of this Section, County agrees to cause: (i) the construction of those certain improvements detailed in the Invitation for Bids, titled "Palm Beach County Park (Lantana) Airport Southside Redevelopment Program Phase 1 and 2", County Project No. LN 17-1 (as such project may be modified or amended by County in its reasonable discretion); and (ii) the construction of an aviation fuel farm (providing storage for at least 12,000 gallons of Jet-A and 12,000 gallons of Avgas storage, 500 gallons of diesel and a self-service fuel rack) in an amount not to exceed the funding provided under that certain Joint Participation Agreement between County and the Florida Department of Transportation (FDOT Project No. 441335-1-94-1) (hereinafter collectively referred to as the "County Redevelopment Plan"). The County Redevelopment Plan shall be completed on or before December 31, 2019, unless otherwise approved by Tenant in writing, which approval shall not be unreasonably withheld, conditioned or delayed for reasons beyond the reasonable control of County.
- (B) The parties shall coordinate during construction to ensure that sufficient vehicular parking and access to the Premises is maintained during the construction of each phase of the County Redevelopment Plan. County shall take reasonable steps to ensure that the construction of the improvements does not unreasonably disrupt or interfere with Tenant's operations on the Premises.
- (C) Tenant acknowledges that the County Redevelopment Plan will be funded through available grant funding sources. Accordingly, County's obligations under this Section shall be subject to and contingent upon the sufficient state grant funding (at no less than eighty percent (80%) of the



total project cost) to complete each phase of the County Redevelopment Plan.

14. Section 8.02, Tenant Construction Requirements, is hereby amended to delete the first sentence of Section 8.02(B) and replace it in its entirety with the following:

(B) Tenant shall expend not less than a total amount of \$4,750,000.00 on the Required Improvements ("Minimum Capital Investment").

15. Article 9, Obligations of Tenant, is hereby amended to add the following:

**9.16 Voluntary Noise Abatement Procedures.** Tenant acknowledges that County has provided Tenant with voluntary noise abatement procedures for the Airport, which County encourages Airport users to utilize in order minimize the effects of aircraft noise and operations on surrounding residential communities, as such procedures may be modified from time to time by County ("Voluntary Procedures"). Tenant agrees to prominently post a copy of the Voluntary Procedures in the Airport Terminal, to provide a copy of the Voluntary Procedures to all prospective subtenants and to make an announcement over the Airport's UNICOM twice daily regarding the Voluntary Procedures. The content of the announcement shall be consistent with the announcement recorded on the Airport's automated weather observing system by County, as may be modified from time to time upon prior written notice to Tenant. In the event County modifies the Voluntary Procedures, County agrees to provide Tenant with copies of such modified Voluntary Procedures.

16. Section 10.05, Rental Credit for Deferred Maintenance/Repairs, is hereby amended to delete Section 10.05(B) in its entirety and replace it with the following:

(B) Except as otherwise provided for herein, Tenant shall be entitled to reimbursement from County in the form of rental credit against the Hangar Premises Rental in an amount not to exceed Two Million Dollars (\$2,000,000) for the reasonable, actual and necessary costs incurred by Tenant during the Term of the Lease for: (i) the repair and maintenance of the buildings and improvements located within the Hangar Premises, (ii) the preparation of the Deferred Maintenance Inventory, (iii) the removal of any personal property, trash or debris, or other similar items abandoned on the Airport upon the surrender of the Premises by the current fixed base operator, Florida Airmotive, Inc.; (iv) the repair or replacement of the Terminal Building stairs to ensure building code compliance; (v) repairs or improvements to the Terminal Building necessary to ensure compliance with requirements of Article 22; and (vi) the restoration of the aircraft parking tie down numbers within the aircraft parking apron areas ("Repair Credit"). Tenant acknowledges and agrees that reimbursement shall be solely in the form of rental credits against Hangar Premises Rental and shall not be in the form of cash reimbursement. In the event the amount payable to County in a particular month is insufficient to fully reimburse Tenant for the Repair Credit claimed, the Repair Credit will be carried over to subsequent months until the amount is fully reimbursed.

17. Section 10.06, Operation of Fuel Farm, is hereby amended to delete Sections 10.06(A), 10.06(D) and 10.06(E) and replace them with the following:

(A) Tenant shall be responsible, at Tenant's sole cost and expense, for the operation and management of the County Fuel Farm and aircraft wash rack constructed by County pursuant to Section 8.01 on behalf of County. Tenant shall be responsible for ensuring that all Fuel Farms, including the County Fuel Farm, located upon the Premises are maintained in good and safe condition consistent with good business practice, industry standards



and in accordance with all federal, state and local laws, rules, regulations and requirements, as now or hereafter amended or promulgated, including, without limitation, FAA advisory circulars, permitting requirements and the Florida Fire Prevention Code. Notwithstanding the foregoing, Tenant shall be entitled to receive rent credit for any repair and maintenance costs, or other costs required to maintain compliance with regulatory requirements, to the County Fuel Farm that exceed \$15,000 per Lease Year, unless such costs are the result of the act or omission of a Tenant Party. Tenant shall provide documentation reasonably acceptable to County documenting all such costs.

- (D) County shall cause to be prepared a Spill Prevention Contingency and Control Plan for the County Fuel Farm ("SPCC Plan") to be delivered to Tenant. Tenant shall be responsible for any updates to such plan and shall provide County with any updated or revised SPCC Plan. Tenant shall monitor fuel inventories in accordance with current state and federal standards, and inventory details shall be provided to County upon request, including total gallons delivered by type and date.
- (E) The parties acknowledge and agree that the County Fuel Farm and aircraft wash rack constructed by County pursuant to Section 8.01 shall be owned by County and managed by Tenant on behalf of County. Upon expiration or earlier termination of this Lease, County may, at County's sole option, require that Tenant assign all right, title and interest to County or, at County's option, to a successor lessee or assignee, to any Fuel Farm located within the Premises that is not owned by County shall become the absolute property of County, or successor lessee or assignee, who shall have every right, title and interest therein. Upon the request of County, Tenant shall provide County with a bill of sale or other evidence of the transfer of ownership of the improvements together with evidence satisfactory to County, or the successor lessee or assignee, that the improvements are free from liens, mortgages and other encumbrances. In the event of the removal, partial removal, or modification of any Fuel Farm upon expiration or earlier termination of this Lease, Tenant shall provide a detailed closure report signed and sealed by a professional geologist or other environmental assessment prepared by an independent environmental consultant acceptable to County, and certified to Palm Beach County Board of County Commissioners, detailing the total scope of work completed and any associated environmental findings.

18. The second sentence of Section 13.08, Property, Wind & Flood Insurance, is hereby deleted in its entirety and replaced with the following:

Tenant shall maintain, at Tenant's sole cost and expense, PF&W Insurance satisfying the requirements listed below, insuring the buildings, betterments and improvements located within: (i) the FBO Premises throughout the Term of this Lease, and (ii) the entire Premises, including the Hangar Premises, commencing October 1, 2020 (or such extended date approved by the Department for construction of the Phase II Improvements, which extension shall not be unreasonably withheld, conditioned or delayed for reasons beyond the reasonable control of Tenant and as specifically referenced in Section 5 of Exhibit D attached hereto).

19. Section 15.01, Title to Improvements, and Section 15.02, Removal of Improvements, are hereby deleted in their entirety and replaced with the following:

**15.01 Title to Improvements.** Tenant acknowledges and agrees that County holds and shall hold sole and absolute title to the buildings and improvements located on the Premises as of the Commencement Date and shall hold sole and absolute title to the County Fuel Farm and aircraft wash rack to be constructed by County pursuant to Section



8.01. Tenant shall be deemed to be the owner of all Tenant Improvements constructed by Tenant during the Term. Upon expiration of or earlier termination of this Lease, all Tenant Improvements, excluding any Fuel Farms constructed by or on behalf of Tenant, title to which has not previously vested in County hereunder, shall become the absolute property of County, and County shall have every right, title, and interest therein, free and clear of any liens, mortgages, and other encumbrances. Upon the request of County, Tenant shall provide County with a bill of sale or other evidence of the transfer of ownership of the improvements together with evidence satisfactory to County that the improvements are free from liens, mortgages and other encumbrances.

**15.02 Removal of Improvements.** Notwithstanding any provision of this Lease to the contrary, County shall be entitled, at its option, upon the expiration or earlier termination of this Lease, to have the Premises returned to County free and clear of some or all Tenant Improvements, at Tenant's sole cost and expense that County has reasonably determined are in poor condition, functionally obsolete or will have a limited economic life remaining after the expiration or earlier termination of this Lease. Notwithstanding the foregoing, County may require Tenant to cause any or all Fuel Farms, other than the County Fuel Farm, located within the Premises to be removed in its sole and absolute discretion. In such event, County shall provide written notification to Tenant of its election to require removal of improvements and County shall notify Tenant at least one hundred eighty (180) days prior to the expiration or termination of this Lease. If Tenant fails to remove the improvements, County may remove the improvements on behalf and for the account of Tenant. Tenant fully assumes and shall be liable to County for payment of all costs of removal of the improvements (whether direct or indirect) incurred by County, plus a twenty five percent (25%) administrative overhead fee, which costs and administrative overhead fee shall be due and payable County within thirty (30) days from the date of the written notice provided by the Department.

20. Article 22, Americans with Disabilities Act, is hereby deleted in its entirety and replaced with the following:

#### **ARTICLE 22 - AMERICANS WITH DISABILITIES ACT**

Tenant shall comply with all applicable requirements of the Americans with Disabilities Act, the State of Florida Accessibility Requirements Manual, and Section 504 of the Rehabilitation Act of 1973 and all implementing rules, regulations and orders, including, but not limited to, 28 CFR Parts 35 and 36 and 49 CFR Parts 27 and 37, and shall cooperate with County to ensure Tenant remains in compliance with such requirements throughout the Term of this Lease.

21. Exhibit "D", Required Improvements, is hereby deleted in its entirety and replaced with the Exhibit "D" to this Amendment.

22. Exhibit "E", Example Rental Abatement Calculation, attached to this Amendment is hereby incorporated into the Lease as Exhibit "E" to the Lease.

23. Except as modified herein, all terms and conditions of the Lease shall remain in full force and effect.

24. This Amendment shall become effective when signed by both parties and approved by the Palm Beach County Board of County Commissioners.

{Remainder of page intentionally left blank.}



IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment, or have caused the same to be executed by their duly authorized representatives, as of the day and year first above written.

ATTEST:

SHARON R. BOCK  
Clerk and Comptroller

By: \_\_\_\_\_  
Deputy Clerk

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

By: \_\_\_\_\_  
Paulette Burdick, Mayor

(SEAL)

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: \_\_\_\_\_  
Assistant County Attorney

APPROVED AS TO TERMS  
AND CONDITIONS

By: Laura Beebe for Bruce Kelly  
Director, Department of Airports

Signed, sealed and delivered in the  
presence of two witnesses for  
TENANT:

[Signature]  
Signature

Aaron Klein  
Print Name

[Signature]  
Signature

Humberto Gonzalez  
Print Name

TENANT:

Galaxy Aviation of Lantana, Inc. d/b/a  
Stellar Aviation of South Palm Beach

By: [Signature]  
Signature

Jonathan Miller  
Print Name

PRESIDENT  
Title

(SEAL)



**EXHIBIT "D"**  
**REQUIRED IMPROVEMENTS**

1. **Phase I Required Improvements.** Tenant shall cause the Terminal Building as identified in Exhibit "A" to be renovated on or before October 1, 2019, unless otherwise approved by Department in writing, which approval shall not be unreasonably withheld, conditioned or delayed for reasons beyond the reasonable control of Tenant and as specifically referenced in Section 5 of this Exhibit D. Renovations shall include a refresh of the building exterior (i.e., repairing any damaged exterior surfaces, painting and signage at a minimum), including exterior porch areas; and refurbishment of the public restrooms and may include upgraded exterior landscaping, interior painting, replacement of worn or damaged flooring and other similar improvements ("Phase I Improvements"). Tenant's renovation plans shall be subject to the approval of the Department, which approval shall not be unreasonably withheld, conditioned or delayed for reasons beyond the reasonable control of Tenant.
2. **Phase II Required Improvements.** Tenant shall cause a new FBO terminal building, parking lot improvements and landscaping enhancements to be designed and constructed at Tenant's sole cost and expense ("Phase II Improvements"). The new FBO terminal building shall be not less than 4,500 square feet of improved space and shall be constructed within the FBO Premises. Tenant shall also provide appropriate furnishings in the public common areas of the new FBO terminal building, at Tenant's sole cost and expense. The improvements provided for in this paragraph shall be completed on or before October 1, 2020, unless otherwise approved by Department in writing, which approval shall not be unreasonably withheld, conditioned or delayed for reasons beyond the reasonable control of Tenant and as specifically referenced in Section 5 of this Exhibit D.
3. **Phase III Required Improvements.** Tenant shall cause aircraft hangars to be designed and constructed at Tenant's sole cost and expense within the FBO Development Area, which hangars may be a combination of t-hangars, corporate and/or conventional aircraft hangars ("Phase III Improvements"). Tenant may construct the aircraft hangars in one (1) or two (2) phases. Each aircraft hangar row shall include common restroom facilities. The improvements provided for in this paragraph shall be completed on or before October 1, 2023, unless otherwise approved by to in writing by Department, which approval shall not be unreasonably withheld, conditioned or delayed for reasons beyond the reasonable control of Tenant and as specifically referenced in Section 5 of this Exhibit D.
4. **Approval Rights.** Tenant acknowledges and agrees that County's approval rights shall extend to and include architectural and aesthetic matters for the Phase I and Phase II Improvements. Tenant acknowledges and agrees that it shall not be deemed unreasonable for County to require commercially reasonable modifications to the types, location, size or height of landscaping, exterior signage or exterior building color schemes or decorative elements; or to disapprove of the use of building materials that do not reflect a high degree of quality, durability or craftsmanship, such as plastic, or aluminum or vinyl siding. The parties agree to work cooperatively and in good faith to avoid any delays in the design approval process. For purposes of this paragraph, the term "commercially reasonable" means modifications a reasonable business entity would make under similar circumstances.
5. **Time Extensions.** The parties acknowledge that frequent TFRs (more than ten (10) days in any Lease Year) negatively impact Tenant's financial ability to fund the Required Improvements and are beyond the reasonable control of Tenant. Accordingly, Tenant shall be entitled to a time extension of one (1) year to each of the construction deadlines set forth in this Exhibit and the outside date for commencement of payment of rental for the FBO Development Area as provided in Section 5.05(C) when more than ten (10) days of TFRs are imposed during any Lease Year. When more than ten (10) TFRs have been imposed in a Lease Year, Tenant may notify the Department in writing of its desire to extend one (1) or more of the construction deadlines set forth in this Exhibit and the outside date for commencement of payment of rental for the FBO Development Area as provided in Section 5.05(C), which notification shall include the specific dates of each of the TFRs. The Department shall review and approve Tenant's extension request within fifteen (15) days of Tenant's written notification, provided that the



information provided in Tenant's written request is accurate as to the number of TFRs occurring in such Lease Year. This Lease shall automatically be considered amended upon the Department's written approval, whereupon the deadlines requested by Tenant to be extended shall automatically be extended by one (1) year without formal amendment hereto. Notwithstanding the foregoing, Tenant acknowledges and agrees that Tenant shall not be entitled to a time extension to construction deadlines provided for herein or the outside date for commencement of payment of rental for the FBO Development Area as provided in Section 5.05(C) based on TFRs if the TFRs are modified to permit general aviation aircraft to operate at the Airport in a manner consistent with general aviation aircraft operating at the Palm Beach International Airport or for TFRs occurring prior to the effective date of the First Amendment to this Lease.



**EXHIBIT “E”**  
**EXAMPLE RENTAL ABATEMENT CALCULATION**

**Example Rental Abatement on Per Diem Basis - County Share Only**

Assumption: TFRs in effect during the month of September 2017 for 3 days.

Hangar	Example Monthly Hangar Rental	County Share (@51.2%)	County Abatement Amount for 3 Days <sup>1</sup>	County Share after Abatement
1	\$ 1,250.00	\$ 640.00	\$ 64.00	\$ 576.00
2	\$ 1,750.00	\$ 896.00	\$ 89.60	\$ 806.40
3	\$ 1,500.00	\$ 768.00	\$ 76.80	\$ 691.20
	\$ 4,500.00	\$ 2,304.00	\$ 230.40	\$ 2,073.60

1. Calculated based on actual number of days in the month of September (i.e., 30 days).