

## AGENDA ITEM SUMMARY

☒ Consent      ☐ Regular  
☐ Workshop      ☐ Public Hearing

**Submitted For: Department of Airports**

12/12/17  
Date

## II. FISCAL IMPACT ANALYSIS

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

Fiscal Years	2018	2019	2020	2021	2022
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	* \$-0-	\$-0-	\$-0-	\$-0-	\$-0-
# ADDITIONAL FTE	_____	_____	_____	_____	_____
POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes ☒ No ☐  
Does this item include the use of federal funds? Yes ☐ No ☒

Budget Account No: Fund 4100 Department 120 Unit \_\_\_\_\_ Rsource \_\_\_\_\_  
Reporting Category \_\_\_\_\_

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

\* No fiscal impact.

C. Departmental Fiscal Review: CM Simon

## III. REVIEW COMMENTS

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

[Signature] 11/21/17  
OFMB  
11/20

[Signature] 12/5/17  
Contract Dev. and Control  
12/5/17

### B. Legal Sufficiency:

[Signature] 12/7/17  
Assistant County Attorney

### C. Other Department Review:

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

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

Summary of Certificates

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

Wednesday, November 15, 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>			
Expiration: 4/1/2018			
Combined Single Limit:	\$1,000,000	\$1,000,000	
<u>Workers Compensation/Employers Liability</u>			
Expiration: 4/1/2018			
	WC Stat. Limits	WC Stat. Limits	X
<u>Environmental Liability</u>			
Expiration: 4/1/2018			
Each Occurrence:	\$1,000,000	\$1,000,000	
Aggregate Limit:	\$2,000,000	\$2,000,000	
<u>Aircraft Liability</u>			
Expiration: 4/1/2018			
	Hangarkeepers Legal Liability	Hangarkeepers Legal Liability	
	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 13th day of November, 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 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

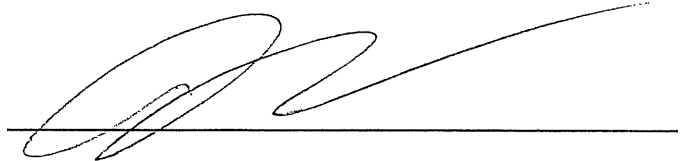
FURTHER RESOLVED, that Jonathan Miller, the President of the Corporation, is hereby authorized and instructed to execute such Agreement and such other instruments as may be necessary and appropriate for the Corporation to fulfill its obligations under the Agreement.

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 13th day of November, 2017.

Corporate Seal

A handwritten signature in black ink, appearing to read 'Michael Faren', is written over a horizontal line.

Michael Faren, Secretary

**CERTIFICATE**  
(Corporation)

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

1. That Mary Vsategui is the Secretary of Professional Bank, 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 18 day of April, 2017, in accordance with the laws of the State of Florida, the Articles of Incorporation and the By-laws of the Corporation:

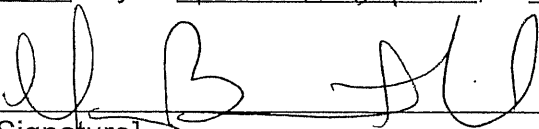
RESOLVED, that the Corporation shall enter into that certain Memorandum of Lease, Estoppel Certificate, and Non-Disturbance Agreement between Palm Beach County, a political subdivision of the State of Florida and the Corporation (the "Agreement"), a copy of which is attached hereto; and be it

FURTHER RESOLVED, that MICHAEL WOODY, the EVP 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 9<sup>th</sup> day of November, 2017

  
[Signature]

Corporate Seal

Mary B. Vsategui, Secretary

**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 \_\_\_\_\_, 2017 (the "Effective Date") by and between Palm Beach County, a political subdivision of the State of Florida ("Landlord"), Galaxy Aviation of Lantana, Inc., d/b/a Stellar Aviation of South Palm Beach, 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 dated June 21, 2016 (the "Lease") (R2016-0759), 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"). Landlord and Tenant entered into a First Amendment to the Lease on July 11, 2017 (R2017-0956).

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 buildings and improvements constructed 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 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, 2020 (or such extended date approved by Department pursuant to Exhibit "D" of the First Amendment to the Lease for completion of the Phase II Improvements), 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 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: (a) all base rent through and including the payment that was due on November 1, 2017; (b) all additional rent through and including the payment that was due on October 25, 2017; and (c) 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, as amended by Amendment No. 1 on February 15, 2017, in the amount of \$34,007.30.

(g) Landlord has no defense, offset, claim, counterclaim, or right of recoupment against its obligations under the Lease.

(h) 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, 2020 (or such extended date approved by Department pursuant to Exhibit "D" of the First Amendment to the Lease for completion of the Phase II Improvements).

(i) 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.

(j) 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.

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

(l) 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.

(m) 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 or within such extended cure periods, if any, as may be provided to leasehold mortgagees 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 all parties.

*[Signature page follows.]*



**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

Witnesses:

By: [Signature]  
Name: STEVEN COINN

By: [Signature]  
Name: TRANS FIREPATRICK

LENDER:

PROFESSIONAL BANK

By: [Signature]  
Name: J. Michael Woody, Jr.  
Title : Executive Vice President

STATE OF Florida  
COUNTY OF Palm Beach

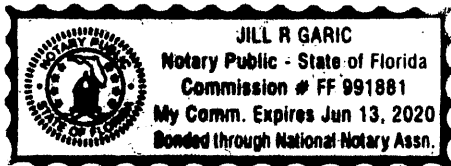
The foregoing instrument was acknowledged before me this 8 day of November, 2017, by J. Michael Woody, Jr., as Executive Vice President of Professional Bank, on behalf of the bank. He ☒ is personally known to me OR ☐ produced \_\_\_\_\_ as identification.

[Signature]  
Notary Public

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

My commission expires: 6/13/20

(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").

AND

A parcel of land for lease purposes located on Lantana Airport property situate in Section 31, Township 44 South, Range 43 East, Palm Beach County, Florida, being more particularly described as follows:

Commence at the South quarter (S 1/4) corner (disturbed) of Section 32, Township 44 South, Range 43 East; thence South 88° 27' 30" East along a line between the disturbed South quarter corner and the Southeast corner of said Section 32, a distance of 471.50 feet; thence North 01° 32' 26" East, a distance of 118.96 feet to a point on the North Right-of-Way line of Lantana Road according to the Florida Department of Transportation Right-of-Way map, Section 93530-2605 (3605) and a point on a curve concave to the South, whose radius point bears South 02° 15' 07" West, a distance of 13810.98 feet (the following six courses follow said North Right of Way line); thence West along the arc of said curve through a central angle of 00° 42' 20", a distance of 170.07 feet; thence North 88° 27' 13" West, a distance of 2099.29 feet to the beginning of a curve concave to the South whose radius point bears South 01° 32' 47" West, a distance of 46938.37 feet; thence West along the arc of said curve through a central angle of 01° 06' 32", a distance of 908.43 feet; thence North 89° 33' 45" West, a distance of 283.91 feet to the beginning of a curve concave to the North whose radius point bears North 00° 26' 15" East, a distance of 44780.19 feet; thence West along the arc of said curve through a central angle of 00° 36' 02.4", a distance of 469.47 feet to a non-tangent line being the Southeast corner of the non-aviation lease parcel according to Palm Beach County drawing number S-3-13-3367; thence North 01° 33' 25" East along the East line of said lease parcel, a distance of 43.29 feet to the point of beginning; thence continue North 01° 33' 25" East along the East line of said lease parcel and its Northerly prolongation, a distance of 630.83 feet to a line lying 455.40 feet South of (as measured at right

angles to) and parallel with the centerline of runway 9-27 according to Palm Beach County and as laid out and in use; thence South 88° 26' 35" East along said parallel line, a distance of 405.98 feet; thence South 01° 33' 25" West, a distance of 115.37 feet; thence South 88° 26' 35" East, a distance of 35.84 feet; thence South 01° 33' 25" West, a distance of 439.17 feet to the existing runway protection zone for runway 3-21 according to Palm Beach County and as laid out and in use; thence South 37° 18' 52" West along said runway protection zone, a distance of 94.05 feet; thence North 88° 26' 33" West, a distance of 386.86 feet to the East line of said lease and the Point of Beginning.

Said parcel contains: 272,491 square feet or 6.2555 acres more or less.