

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date:	November 20, 2018	 [X] [1	Consent Workshop	=== [r	======================================
Department:				L] : <i>asie</i> g
Submitted By:	Department of Airports				
Submitted For:					
		المرابقة المركب المركب المركب المركبة المركبة والمركبة المركبة المركب والمركبة المركبة المركبة	ی هی هی این این این این این این این این این ای		است درد. باین اینا کار کار این اینا کار این این این این این این این اینا پیش کار این اینا اینا کار این اینا کار این اینا این اینا اینا

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Ninth Amendment (Amendment) to Lease Agreement (Lease) with Atlantic Aviation – West Palm Beach, LLC (Atlantic), providing for the lease of an additional 133,049 +/- square feet of unimproved ground at the Palm Beach International Airport (PBIA) for an initial annual rental of \$93,134.30, commencing on December 1, 2018.

Summary: Atlantic provides fixed-based operator services for general aviation aircraft at the PBIA pursuant to a Lease dated October 18, 2000 (R-2000-1067). The Lease provided Atlantic with the option to lease an additional 133,049 +/- square feet of property previously used by Federal Aviation Administration for the operation of the former air traffic control tower at the PBIA prior to demolition. Atlantic exercised its option to lease the property on September 11, 2018. This Amendment adds the additional property to Atlantic's existing leasehold as required by the Lease. **Countywide (HF)**

Background and Justification: Galaxy Aviation of Palm Beach, Inc. (Galaxy) and Atlantic Aviation FBO, Inc. (Atlantic FBO) entered into an Asset Purchase Agreement dated December 12, 2013, which provided for the purchase of Galaxy's interest in the Lease by Atlantic FBO. Atlantic FBO assigned its interest in the Lease to Atlantic, which was consented to by the County on April 15, 2014 (R-2014-0502).

Attachments:

1. Amendment (3)

Recommended By:

Department Director

Date

Approved By:

///5/18

County Administrator

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>			
Capital Expenditures Operating Costs Operating Revenues Program Income (County) In-Kind Match (County) NET FISCAL IMPACT	(\$77,612)	(\$93,134) (\$93,134)	(\$93,134) 	<u>(\$93,134)</u> 	(\$93,134) 			
# ADDITIONAL FTE POSITIONS (Cumulative)								
ls Item Included in Current Budget? Yes No <u>X</u> Does this item include the use of federal funds? Yes No <u>X</u>								
Budget Account No: Fund <u>4100</u> Department <u>120</u> Unit <u>8451</u> RSource <u>4416</u> Reporting Category								
			••					

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

The rental rate amount associated with the additional 133,049 +/- square feet of unimproved ground is \$0.70 per square foot, totaling \$93,134.30 annually. Rental will commence on December 1, 2018.

C. Departmental Fiscal Review:

III. REVIEW COMMENTS

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

10/29 10/30

B. Legal Sufficiency:

Assistant County Attorney

C. Other Department Review:

Department Director

REVISED 11/17

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

v. and Contro

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

Thursday, October 25, 2018			
Simple View Certificate Images	Documents		
Insured: <u>Atlantic Aviation West Palm</u>	Beach LLC Insured II	D: PBI-AC-00-01	
Status: Compliant			
ITS Account Number: PLC773			
Project(s): Palm Beach County	- Airport Properties - (Active)		
Insurance Policy	Required	Provided	Override
<u>General Liability</u> Expiration: 7/3/2019	Occurrence Form	Occurrence Form	
General Aggregate:	\$10,000,000	\$20,000,000	
Products - Completed Operations Aggregate:	\$10,000,000	\$20,000,000	
Personal And Advertising Injury:	\$10,000,000	\$20,000,000	
Each Occurrence:	\$10,000,000	\$20,000,000	
Fire Damage:	\$0	\$0	
Medical Expense:	\$0	\$0	
<u>Automobile Liability</u> Expiration: 7/3/2019	All Owned Autos Hired Autos Non-Owned Autos	Any Auto not provided not provided not provided	X X X
Combined Single Limit:	\$5,000,000	\$5,000,000	
Workers Compensation/Employers Liability	WC Stat. Limits	WC Stat. Limits	
Expiration: 3/1/2019			
<u>Property, Wind and Flood Insurance</u> Expiration: 3/1/2019	All-Risk and Replacement Cost Ordinance and Law Coverage Loss Payee	All-Risk and Replacement Cost Ordinance and Law Coverage Loss Payee	:
Hangarkeepers Legal Liability Expiration: 7/3/2019	Not less than: \$10,000,000 per aircraft)
Each Occurrence:	\$20,000,000	\$30,000,000	
Aggregate Limit:	\$20,000,000	\$30,000,000	
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

https://its.insurancetrackingservices.com/clientreports/ProblemsSpecificRpt.asp

10/25/2018

AFFIDAVIT OF LIMITED LIABILITY COMPANY

STATE OF TEXAS

COUNTY OF COLLIN

BEFORE ME, the undersigned authority, personally appeared, the undersigned who by me being first duly sworn, depose(s) and say(s) that:

1. The undersigned is the Vice President and Secretary of Atlantic Aviation -West Palm Beach LLC, a limited liability company organized and existing under the laws of the State of Delaware ("Company").

2. Articles of Organization of the Company have been filed, and are on-file with, the Florida Department of State and such articles are incorporated herein by reference.

3. The Company is in good standing and is authorized to transact business in the State of Florida as of the date hereof.

4. The company is a <u>manager managed</u> limited liability company.

5. The undersigned is the Vice President and Secretary of the Company or has been authorized in accordance with the Operating Agreement of the company to act on behalf of the Company and legally bind the Company and execute contracts and other instruments relating to the transaction of business of the Company.

6. The undersigned has the right and authority to enter into that certain <u>Ninth</u> <u>Amendment to Lease Agreement</u> between Palm Beach County, a political subdivision of the State of Florida and the Company (the "Agreement"), which is incorporated herein by reference and made a part hereof, and such other instruments as may be necessary and appropriate for the Company to fulfill its obligations under such Agreement, including amendment(s) and termination of such Agreement.

7. Upon execution and delivery of such Agreement and documents by the undersigned, all of the aforesaid shall be valid agreements of and be binding upon the Company.

8. The transactions contemplated herein will not violate any of the terms and conditions of the Company's member agreement, operating agreement certificate of organization or of any other agreement and amendments thereto of whatever kind between the Company and any third person.

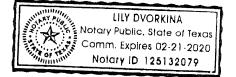
9. The undersigned acknowledges that affiant is familiar with the nature of an oath and the penalties provided by the laws of the State of Florida and that this Affidavit is being given to induce Palm Beach County to enter into the Agreement.

FURTHER AFFIANT SAYETH NAUGHT,

and a Mode

Carole A. Moore, Individually and as Vice President and Secretary

SWORN TO AND SUBSCRIBED before me on this 22nd day of October, 2018, by Carole A. Moore, Vice President and Secretary of Atlantic Aviation -West Palm Beach LLC on behalf of the Company and its Managing Member who is personally known to me and who did take an oath.



orkina

Notary Signature Lily Dvorkina Notary Public, State of Texas

NINTH AMENDMENT TO LEASE AGREEMENT BETWEEN PALM BEACH COUNTY AND ATLANTIC AVIATION - WEST PALM BEACH LLC

THIS NINTH AMENDMENT TO LEASE AGREEMENT (this "<u>Amendment</u>") is made and entered into as of______, 20__, by and between Palm Beach County, a political subdivision of the State of Florida ("<u>County</u>"), and Atlantic Aviation - West Palm Beach LLC, a Delaware limited liability company, whose principal place of business is located at 5201 Tennyson Parkway, Suite 150, Plano, Texas 75024 ("<u>Tenant</u>").

WITNESSETH:

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

WHEREAS, County and Galaxy Aviation of Palm Beach, Inc. ("<u>Galaxy</u>"), entered into that certain Lease Agreement dated October 18, 2000 (R-2000-1067), which was superseded and replaced in its entirety by that certain First Amendment dated March 1, 2005 (R-2005-0455), as amended (the "Lease"); and

WHEREAS, Galaxy and Atlantic Aviation FBO Inc. ("<u>Atlantic FBO</u>"), entered into an Asset Purchase Agreement dated December 12, 2013 ("<u>Purchase Agreement</u>"), which provided for the purchase of Galaxy's right, title and interest in the Lease; and

WHEREAS, Atlantic FBO assigned its right, title and interest in the Lease to Tenant, an affiliate of Atlantic FBO, in accordance with the terms of the Purchase Agreement; and

WHEREAS, County approved a Consent to Assignment of Lease (R-2014-0502) on April 15, 2014; and

WHEREAS, the Seventh Amendment to the Lease (R-2012-0689) provided Tenant with the option to lease Parcel S-8 (as defined in the Lease); and

WHEREAS, Tenant notified County of its intent to exercise its option to lease Parcel S-8 on September 11, 2018 in accordance with the requirements of the Lease; and

WHEREAS, the Lease requires the parties to enter into an amendment to the Lease to add Parcel S-8 to the Premises; 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

Ninth Amendment to Lease Agreement Atlantic Aviation - West Palm Beach LCC Page |1

conditions:

1. <u>Recitals and Definitions</u>. 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. <u>Amendment of Exhibit "A"</u>. Exhibit "A" to the Lease is hereby amended to add the legal description and survey of Parcel S-8 attached hereto as Exhibit "1".

- 3. **Deletion of Exhibit "L".** Exhibit "L" to the Lease is hereby deleted in its entirety.
- 4. <u>Amendment of Definitions.</u> Article 2, <u>Definitions</u>, is hereby amended to delete Articles 2.49, 2.71 and 3.07 in their entirety and replace them with the following:

2.49 "<u>Property</u>" means the real property more particularly described on Exhibit "A" as Parcels S-9, S-5, S-1B, S-1D, S-1E and S-8, subject to easements, rights-of-way and any other encumbrances of record, excluding any improvements constructed thereon.

2.71 "<u>Base Rental</u>" means: (i) the annual rental established on October 1, 2007, for the East Tract and West Tract in Articles 5.01(A) and 5.01(B) and for Buildings 1625-D and 1625-E in Article 5.02; (ii) the annual rental established on October 1, 2010, for Parcels S-5, S-1D and S-1E in Articles 5.01(C) and 5.01(D); (iii) the annual rental established on October 1, 2016 for Parcel S-8 in Article 5.01(E); (iv) the license fee established on October 1, 2010, for the Option Area in Article 4.12(G); and (v) the annual rental established on the dates provided in Article 5.03 for the buildings and improvements identified in Article 5.03. The dates set forth in this Article 2.71 shall be used as the initial Base Rental Year. The then current Base Rental shall be adjusted as provided in Article 5.11(C) on the Appraisal Adjustment Dates.

3.07 "<u>Parcel S-8</u>" means that portion of the Property identified in Exhibit "A" as "Parcel S-8", consisting of approximately 133,049 square feet.

5. <u>Deletion of Definitions.</u> Article 2, <u>Definitions</u>, is hereby amended to delete Articles 3.08, <u>Parcel S-8 Option</u>, and Section 3.09, <u>Parcel S-8 Option Period</u>.

6. <u>Deletion of Parcel S-8 Option.</u> Article 4, <u>Premises and Privileges</u>, is hereby amended to delete Article 4.01(C), <u>Parcel S-8</u>, in its entirety.

7. <u>Parcel S-8 Rental.</u> Article 5, <u>Rental, Fees, Charges and Security Deposit</u>, is hereby amended to add the following to Article 5.01, <u>Ground Rental</u>:

Ninth Amendment to Lease Agreement Atlantic Aviation - West Palm Beach LCC

P a g e | 2

(E) For Parcel S-8, containing approximately 133,049 square feet of ground, the annual rental to be paid by Tenant to County shall be \$0.70 per square foot, or \$93,134.30 annually, payable in equal monthly installments. Notwithstanding the provisions of Article 5.10, rental for Parcel S-8 shall commence on December 1, 2018.

8. Article 30, <u>Miscellaneous</u>, is hereby amended to delete Article 30.11, <u>Notices</u>, in its entirety and replace it with the following:

30.11 <u>Notices.</u> All notices and elections (collectively, "notices") to be given or delivered by or to any party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service or overnight mail, or alternatively shall be sent by United States Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services or overnight mail, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The partied hereby designated the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

County:

Palm Beach County Department of Airports Director 846 Palm Beach International Airport West Palm Beach, Florida 33406-1470

With a copy to:

Palm Beach County Attorney's Office 301 North Olive Avenue, Suite 601 West Palm Beach, Florida 33401 Attn: Airport Attorney

Tenant:

Richard Thacker, Regional Manager Atlantic Aviation - West Palm Beach LLC c/o Atlantic Aviation FBO, Inc. 5201 Tennyson Parkway, Suite 150-A Plano, TX 75024

Ninth Amendment to Lease Agreement Atlantic Aviation - West Palm Beach LCC Page | 3

With a copy to:

John Santom, General Manager Atlantic Aviation - West Palm Beach LLC 3800 Southern Boulevard West Palm Beach, FL 33406

Any party may from time to time change the address to which notice under this Lease shall be given such party, upon three (3) days prior written notice to the other party.

9. <u>Entire Agreement</u>. Except as modified herein, all terms and conditions of the Lease shall remain in full force and effect. In the event of any conflict or inconsistency between the provisions of the Lease and the provisions of this Amendment, the provisions of this Amendment shall govern and control.

10. <u>Effective Date</u>. 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.}

Ninth Amendment to Lease Agreement Atlantic Aviation - West Palm Beach LCC

Page |4

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment as of the day and year first above written.

ATTEST:

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

SHARON R. BOCK

By:_

Clerk and Comptroller

By:_

Mayor

(SEAL)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By:

County Attorney

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

100 Signature

Print Name

in Signature

Print Name

(Seal)

Ninth Amendment to Lease Agreement Atlantic Aviation - West Palm Beach LCC APPROVED AS TO TERMS AND CONDITIONS

By: Director, Department of Airports

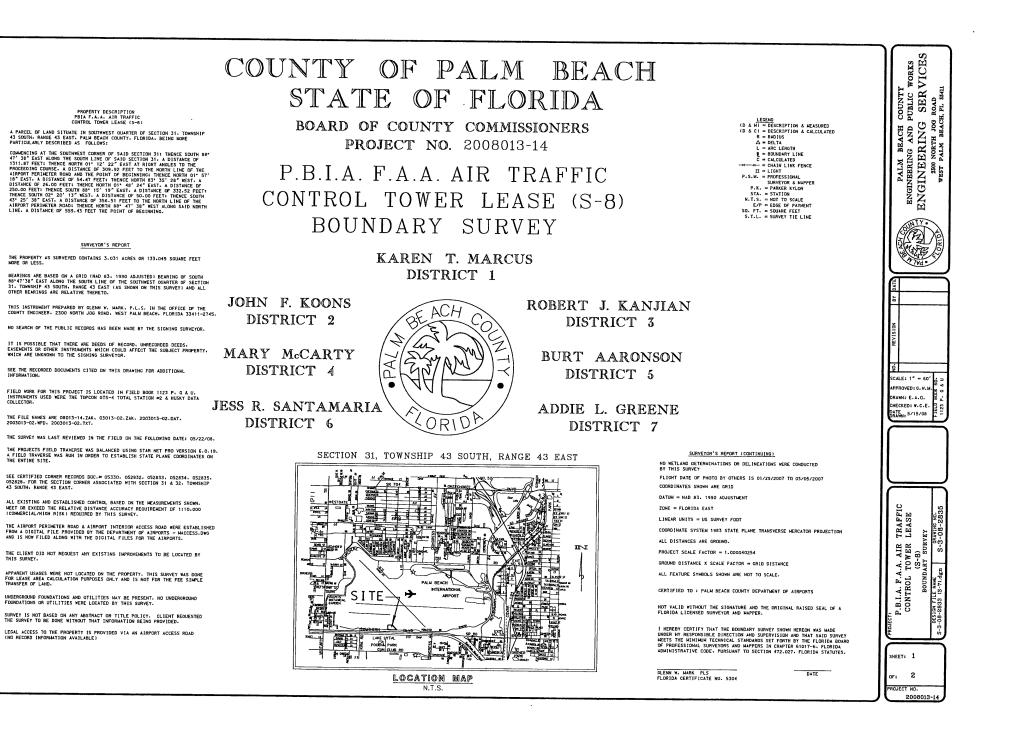
Tenant: Atlantic Aviation - West Palm Beach LLC

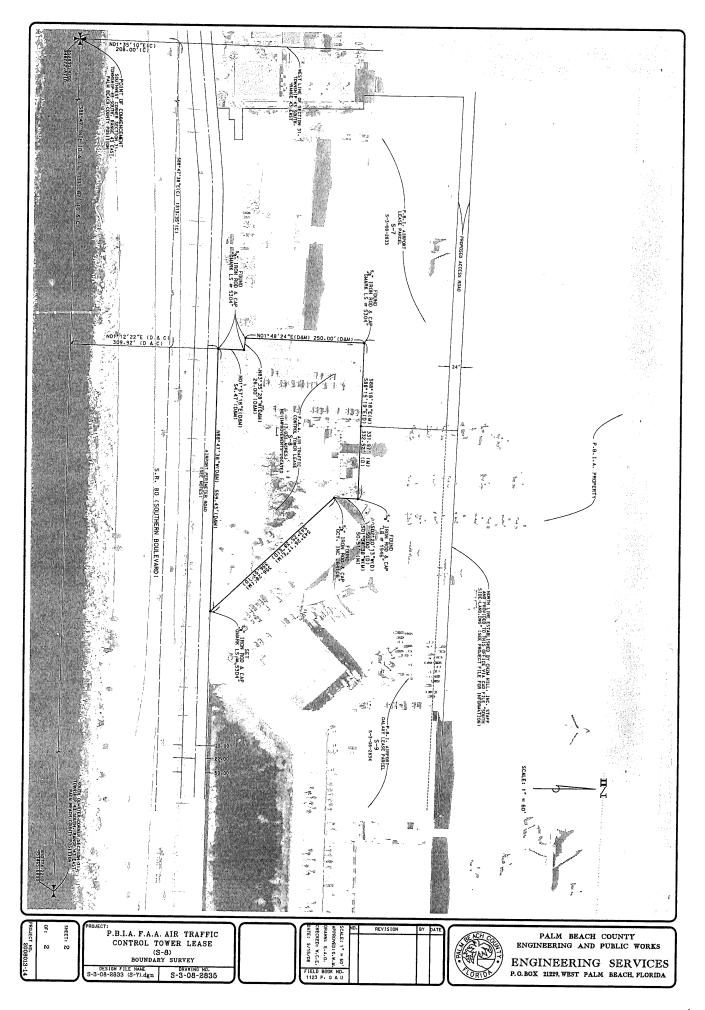
Lak

Signature Carole A. Moore Vice President and Secretary

Page | 5

EXHIBIT "1" Parcel S-8





.

.....

.....