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**City Council Agenda Item**  
**Meeting of April 19, 2016**

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**TO:** The Honorable Mayor and Members of the City Council  
**FROM:** James R. O'Connor, City Manager  
**DATE:** April 12, 2016

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**SUBJECT:** Sun Aviation, Inc. – Addendum to Lease Agreement and Updated Attachment B (Effective: February 16, 2016) for Lot 7D

**REQUESTED BY:** City Manager/Airport Director

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The following is requested as it relates to the above-referenced agenda item:

  X        Request Council review and approval based on the attached supporting documentation.

            No action required. (Information only)

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## MEMORANDUM

**TO:** James R. O'Connor, City Manager  
**VIA:** Wayne R. Coment, City Attorney  
**FROM:** Ericson W. Menger, Airport Director  
**DATE:** April 4, 2016  
**SUBJECT:** **SUN AVIATION, INC., ADDENDUM TO LEASE AGREEMENT AND UPDATED ATTACHMENT B (EFFECTIVE: FEBRUARY 16, 2016) FOR LOT 7D**

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Attached are 3 copies of the above-referenced lease addendum, along with a copy of the revised Attachment B (standard with all airport leases). Both have been updated similar to other airport leases to ensure compatibility with Florida law pertaining to the Department of Revenue.

### **BACKGROUND:**

City staff and tax attorney, Ben Phipps, have reviewed our current airport lease language and recommend the attached proposed changes based upon current Florida law. These changes effectuate the legislative intent that rental for the use of the real estate, which is taxable, is sufficiently distinguished from privilege, franchise, or concession fees paid to airports, which are not taxable. Further, the changes incorporate language designed to establish that construction costs for improvements to the real estate are not rental payments for the use of the real estate or for the right to occupy the premises. Appropriate language addresses the ad valorem taxability of buildings and other improvements leased to airport tenants only when such buildings (and other improvements) are owned by the tenant. These changes clarify and more accurately reflect the original intent of the parties as to the tenant's responsibility for concession, privilege, or franchise fees, and as such, the Addendum is retroactive to the initial date of the original Lease Agreement (May 15, 2007).

These same lease modifications have been made to several other tenants' leases and have received City Council approval.

### **ANALYSIS:**

**Strengths:** These changes effectuate the legislative intent that rental for the use of the real estate, which is taxable, is sufficiently distinguished from privilege, franchise, or concession fees paid to airports, which are not taxable. These changes will result in no reduction in rental to the Airport, or increases to rental payments or concession payments from the Tenant.

**Weaknesses:** Will require similar changes to several other airport leases (in process).

**Opportunities:** Enables Airport staff to enhance the strengths of airport businesses, while complying with changes in applicable regulations.

**Threats:** None

### **RECOMMENDATION:**

Staff respectfully requests that this item be placed on the **April 19, 2016**, City Council Agenda, recommending approval of the Addendum to Lease Agreement (Sun Aviation, Inc.).

EWM/lr

Attachments

cc: Airport Commissioners (via email)  
City Manager's Office  
City Clerk's Office (via email)

**ADDENDUM TO FIXED BASE OPERATOR'S LEASE AGREEMENT**  
**(SUN AVIATION, INC)**  
**Lot 7D**

THIS ADDENDUM to Lease Agreement ("Addendum") is entered into as of the \_\_\_\_\_ day of March, 2016, by and between the **CITY OF VERO BEACH**, a municipal corporation organized under the laws of the State of Florida, whose mailing address is P. O. Box 1389, Vero Beach, Florida 32961-1389 ("LANDLORD"), and **SUN AVIATION, INC.**, a Florida Profit Corporation, whose mailing address is 3350 Cherokee Drive, P.O. Box 1700, Vero Beach, Florida 32961 ("TENANT").

WHEREAS, on May 15, 2007, LANDLORD and TENANT executed a Fixed Base Operator Lease Agreement ("Lease Agreement") for lot 7D consisting of 83,059 square feet of land for property at the Vero Beach Regional Airport ("Airport") as described within said Lease Agreement with an Initial Term of twenty two (22) years four (4) months, commencing on July 1, 2007, and terminating on November 30, 2029, or upon termination of TENANT's primary FBO Lease upon Airport Parcels 6a, 7A, and 7B whichever occurs first; and

WHEREAS, modifications to the TENANT's Lease Agreement are necessary to incorporate certain tax law changes pursuant to Florida Statutes and the Florida Department of Revenue; and

WHEREAS, LANDLORD and TENANT have agreed to this Addendum to clarify and more accurately reflect the intent of LANDLORD and TENANT as to TENANT's responsibility for concession, privilege, or franchise fees when LANDLORD and TENANT entered into the Lease Agreement, and as both parties have performed since its inception. Accordingly, this Addendum is retroactive to the initial date of the Lease Agreement ("*nunc pro tunc*").

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, LANDLORD and TENANT, intending to be legally bound, hereby agree as follows:

1. The foregoing "WHEREAS" clauses are hereby incorporated herein.
2. Section 3 **RENT; RENT ADJUSTMENT** of the Lease Agreement, as amended, shall be further amended to replace in full the initial paragraph in said Section to read as follows:

TENANT shall be subject to rental payments for its leasehold interest for the real property, including any improvements to the real property constructed or installed by TENANT during the term of this Lease Agreement. TENANT shall also be responsible for concession, privilege, or franchise fees, payable to LANDLORD as enumerated herein.

3. Section 3(c) shall be amended to replace in full said section to read as follows:

**Concession Fee 2 (Fuel Flowage)**: For the privilege of operating a fueling facility at the Airport, TENANT shall pay a concession fee at the initial rate of \$0.07 per gallon on fuel flowage, payable on a monthly basis no later than the tenth (10<sup>th</sup>) of the month for the preceding month, in accordance with Airport Leasing Policy, Vero Beach Resolution 2015-30, unless and until that resolution is amended or replaced, at which time TENANT shall pay an amount established by an amending resolution or surrogate document. Failure to pay the concession fee by the due date shall result in the assessment of a late charge of five percent (5%) of the amount then owing or \$50.00 whichever is greater.

5. Section 3(e) dealing with ownership vesting in the LANDLORD at the end of the term shall be deleted in its entirety, with the exception of the fuel tanks and related equipment in

which ownership shall never vest in LANDLORD, but shall remain in TENANT'S ownership and control throughout the Initial Term and renewal term. TENANT shall remove any and all such fuel tanks and related equipment prior to the termination of the Lease Agreement.

7. Section 4 **STANDARD PROVISIONS** is amended to replace in full said section to read as follows:

Attachment B to this Lease Agreement, entitled "Standard Lease Provisions For Airport Tenants" (Effective date: February 16, 2016) and City Resolution 2015-30 "Airport Leasing Policy" (Effective date: September 1, 2015) are incorporated into and made a part of this Lease Agreement, subject to Special Provision Section 7 of the Lease Agreement.

8. References to Attachment "B" in Section 6 **SPECIAL PROVISIONS** are amended to comport with Attachment B to this Lease Agreement, entitled "Standard Lease Provisions For Airport Tenants" (Effective date: February 16, 2016), incorporated into and made a part of this Lease Agreement in paragraph 7, above.

9. LANDLORD and TENANT agree that the terms and conditions of the May 15, 2007 Fixed Base Operator's Lease Agreement shall remain unchanged, except as expressly amended by the foregoing.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum to Lease Agreement on the date and year stated above.

**SIGNATURE PAGES FOLLOW**

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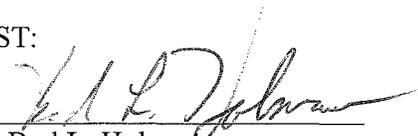
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**TENANT – Sun Aviation, Inc.**  
**(This section to be completed by Tenant only)**

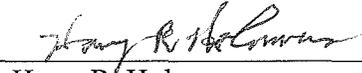
ATTEST:

TENANT: Sun Aviation, Inc.

Sign:

  
Bud L. Holman  
Secretary

Sign:

  
Harry R. Holman  
President

[SEAL]

STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of March, 2016, by Harry R. Holman, as President, and attested by Bud L. Holman, as Secretary, on behalf of the corporation. They are personally known to me or produced \_\_\_\_\_ as identification.

  
NOTARY PUBLIC

Print Name Lisa J Ross

My Commission No.: FF015518

My Commission Expires: 9/2/17



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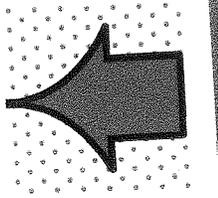
**LANDLORD - CITY OF VERO BEACH**  
(This section to be completed by Landlord only)

ATTEST:

LANDLORD: CITY OF VERO BEACH

\_\_\_\_\_  
Tammy K. Vock  
City Clerk

By \_\_\_\_\_  
Jay Kramer  
Mayor



[SEAL]

STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of February, 2016, by Jay Kramer, as Mayor, and attested by Tammy K. Vock, as City Clerk of the City of Vero Beach, Florida. They are both known to me.

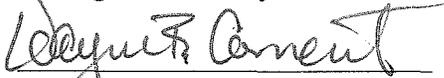
\_\_\_\_\_  
NOTARY PUBLIC  
Print Name  
My Commission No.:  
My Commission Expires:

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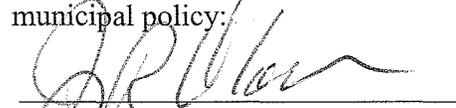
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**CITY MANAGEMENT**  
(This section to be completed by City Management Staff only)

Approved as to form  
and legal sufficiency:

  
\_\_\_\_\_  
Wayne R. Coment  
City Attorney

Approved as conforming to  
municipal policy:

  
\_\_\_\_\_  
James R. O'Connor  
City Manager

Approved as to technical  
requirements:

  
\_\_\_\_\_  
Ericson W. Menger  
Airport Director

Approved as to technical  
requirements:

  
\_\_\_\_\_  
Cynthia D. Lawson  
Finance Director