

FIRST AMENDMENT TO LEASE AND PROPERTY OPERATION AGREEMENT

This First Amendment to Lease and Property Operation Agreement (this “First Amendment”) is entered into as of February __, 2024, by and between **The City of Clearwater, Florida**, a Florida municipal corporation (“**Lessor**”) and **FlyUSA PV, LLC**, a Florida limited liability company (“**Lessee**”)(collectively, Lessor and Lessee shall be referred to as the “Parties” and each individually as a “Party” herein.)

RECITALS

WHEREAS, Lessor and Lessee entered into that certain Lease and Property Operation Agreement dated January 17, 2023 (the “Agreement”) relating to the Clearwater Airpark located at 1000 N. Hercules Avenue, Clearwater, Florida 33765 and more particularly described in the Agreement (the “Premises”); and

WHEREAS, Lessor and Lessee desire to modify and amend the Agreement to revise the provisions relating to term length and rent.

NOW, THEREFORE in consideration of the Premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. Recitals and Capitalized Terms. The recitals set forth herein are true, accurate and correct and are incorporated herein by reference. All capitalized terms, unless otherwise defined or modified hereby, shall have the same meaning as set forth in the Agreement.

2. Amendments to Article 3. Notwithstanding anything in the Agreement to the contrary, Article 3 of the Agreement is hereby deleted in its entirety and replaced with the following:

“3.1 Initial Term. Unless terminated earlier pursuant to the terms and conditions of this Agreement, the initial term of this Agreement shall begin on March 1, 2023, and shall continue until February 29, 2053 (the “Initial Term”).

3.2 Renewal Periods.

a) Upon the expiration of the Initial Term and provided that Lessee is not then in default, the Parties may mutually agree to renew this Agreement for up to five (5) five (5) year renewal periods (each a “Renewal Period”).

b) Lessee shall provide Lessor with written notice of Lessee’s intent to renew this Agreement no later than one hundred and twenty (120) days

prior to the expiration of the Initial Term or, if renewed previously, one hundred and twenty (120) days prior to the expiration of any of the aforementioned renewal terms (“Notice of Renewal”). In the event Lessee does not agree to renew this Agreement within the notice period, this Agreement shall be subject to termination at the end of the current term at the discretion of Lessor without penalty to Lessor.”

3. Amendments to Article 11. Notwithstanding anything in the Agreement to the contrary, Article 11, Sections 11.1 and 11.2 of the Agreement are hereby deleted in their entirety and replaced with the following:

“11.1 Rent. Rent shall be due in monthly installments (the “Monthly Rent”). For the first ten (10) years of the Initial Term, the Monthly Rent shall be in the amount of twenty thousand dollars (\$20,000.00). The Monthly Rent shall increase annually by the higher of 3% or the increase in the CPI-U, based on the twelve (12) month period ending two (2) months prior to the effective date of the increase. Additionally, beginning in eleventh (11th) year of the initial term and for the remainder of the length of this Agreement, the Monthly Rent shall experience a one-time increase of twenty-five thousand dollars (\$25,000.00) per month for a new total of forty-five thousand dollars (\$45,000.00) per month. Lessee agrees to pay the pro rata share of any partial year during the beginning or end of this Agreement. The Monthly Rent shall be due on or before the first day of each calendar month for that calendar month’s rent payment. Lessee agrees to pay Lessor’s sales tax on all rent payments. Lessor shall invoice Lessee for the Monthly Rent via U.S. Mail with invoices deemed “received” five (5) calendar days after mailing or through such other means mutually agreed upon by the Parties in writing.

11.2 Deferred Rent Increase. Notwithstanding Section 11.1, for each twenty-five thousand dollars (\$25,000.00) that Lessee reimburses Lessor in excess of two million four hundred thousand dollars (\$2,400,000.00) (the “Monetary Threshold”) towards FDOT Projects (as identified in Article 12, Section 12.2), there will be a one (1) month delay in commencement of the twenty-five thousand dollar (\$25,000.00) per month rent increase scheduled to become due at the beginning of the eleventh (11th) year of this Agreement. Should Lessee’s reimbursement costs exceed the Monetary Threshold after the eleventh (11th) has begun, the twenty-five thousand dollar (\$25,000.00) rent increase shall be suspended beginning the next calendar month for a period of one (1) month per every twenty-five thousand dollars (\$25,000.00) reimbursed to Lessor over the Monetary Threshold. In any event, Lessee shall remain responsible for reimbursing all of Lessor’s costs for the aforementioned FDOT Projects. Nothing in this section obligates Lessor to construct any of the FDOT Projects outlined in Article 12, Section 12.2. Such obligations solely arise under Article 12.”

4. **Miscellaneous.** Except as modified herein, the Agreement remains unchanged and is hereby expressly ratified and confirmed. In the event of a conflict between the Agreement and this First Amendment, this First Amendment shall control and govern. This First Amendment shall not be effective unless fully executed by Lessor and Lessee.

5. **Remaining Provisions Enforceable.** If any provision of this First Amendment shall be found invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining portions hereof shall in no way be affected or impaired.

6. **Authority.** Each Party represents and warrants that it has the power and authority to execute this First Amendment and that there are no third-party approvals required to execute this First Amendment or to comply with the terms or provisions contained herein.

7. **Counterparts.** This First Amendment may be executed in counterparts, each of which will be deemed an original, and both of which together shall be deemed to constitute one and the same instrument. Each of the Parties hereto shall be entitled to rely upon a counterpart of the instrument executed by the other Party and sent by facsimile transmission or other electronic format.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals on the date and year first above written.

[SIGNATURE PAGES FOLLOW]

(LESSOR SIGNATURE PAGE)

LESSOR:

THE CITY OF CLEARWATER, FLORIDA,
a Florida municipal corporation.

Brian Aungst, Sr.

Mayor

Date: _____

By: _____

Jennifer Poirrier

City Manager

Date: _____

Approved as to form:

Attest:

Matthew J. Mytych, Esq.

Assistant City Attorney

Date: _____

Rosemarie Call

City Clerk

Date: _____

(LESSEE SIGNATURE PAGE)

LESSEE:

FLYUSA PV, LLC,
a Florida limited liability company.

By:_____

Name: Barry L. Shevlin

Title: Manager

Date:_____

STATE OF FLORIDA)
COUNTY OF)

The foregoing instrument was acknowledged before me by ☐ physical presence or ☐ online notarization, this _____ day of _____, 2024, by Barry L. Shevlin, as Manager of FlyUSA PV, LLC, a Florida limited liability company, on behalf of the company. He/She is personally known to me or produced _____ as identification.

Print Name:_____
Notary Public