

ENROLLED ORDINANCE 173-002

APPROVE AMENDMENT NO. 2 TO FIRST AMENDED AND RESTATED
HANGAR LAND LEASE AGREEMENT BETWEEN WAUKESHA
COUNTY AND STEIN'S AIRCRAFT SERVICES, LLC

WHEREAS, Stein's Aircraft Services, LLC (SAS) entered into Amendment No. 1 to the First Amended and Restated Land Lease Agreement with Waukesha County in April 2015 which authorized SAS to become a fuel and oil sales aeronautical service provider at Waukesha County Airport; and

WHEREAS, Waukesha County agreed to amend the covenants and standards for SAS's current hangar to allow fuel and oil sales until April 1, 2018 while SAS constructed a new hangar in the New Terminal Development Area and relocate all fuel and oil sales to that hangar; and

WHEREAS, Waukesha County agreed to waive fuel farm land lease payments until December 31, 2020 from SAS in consideration of SAS's investment in fuel farm infrastructure which at the termination of the contract would become property of Waukesha County; and

WHEREAS, SAS failed to build and move its fuel and oil services operations to a hangar in the New Terminal Development Area by April 1, 2018 and, as a consequence, pursuant to Article 2A of the 2015 Amendment No.1, its authorization to sell fuel was automatically terminated and SAS is contractually obligated to pay the County the sum of three (3) years hangar lot land lease payments; and

WHEREAS, Waukesha County desires to encourage competition at the Waukesha County Airport in order to provide good customer service and increase fuel flow revenues to the County; and

WHEREAS, SAS and Waukesha County have negotiated an Amendment No. 2 to the First Amended and Restated Land Lease Agreement removing SAS's obligation to pay three (3) years' rent for failing to build a new hangar by April 1, 2018, extending SAS's deadline to build a new hangar, requiring SAS to notify the County of their commitment to construct a new hangar on lot 2641 Aviation Drive by December 31, 2018, and granting an extension of its authorization to provide fuel and oil services until June 30, 2019 in exchange for SAS beginning to pay partial fuel farm lease payments to Waukesha County.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that Amendment No. 2 to the First Amended and Restated Land Lease Agreement between Waukesha County and Stein's Aircraft Services, LLC ("Amendment No. 2") is hereby approved.

BE IT FURTHER ORDAINED that the Waukesha County Director of Public Works, or her designee, is authorized to execute Amendment No. 2 and any such other documents necessary to effectuate its intent.

FISCAL NOTE

APPROVE AMENDMENT NO. 2 TO FIRST AMENDED AND RESTATED HANGAR LAND LEASE AGREEMENT BETWEEN WAUKESHA COUNTY AND STEIN'S AIRCRAFT SERVICES, LLC

This ordinance amends an existing contract between the County and Stein's Aircraft Services (SAS) signed in 2015 (enrolled ordinance 170-20). Under the current contract, the County agreed to allow SAS to construct a fuel farm at the Waukesha County Airport and begin selling fuel to customers. The County agreed to waive lease payments that SAS would owe for the fuel farm through 2020, taking into account the investment SAS was making in fuel farm infrastructure (which would become County property at the end of the contract in 2033) and that SAS would be contractually required to complete construction of a hangar by April, 1 2018. The value of these forgone land lease payments, prior to the required date for hangar completion, is about \$110,000 (over 36 months waived). The original contract also stated that if SAS did not build the hangar by April 1, 2018, SAS would be required to payback three years' worth of land lease payments for the land set aside for the new hangar (approximately \$100,000).

As of April 1, 2018, SAS has not fulfilled their contractual obligation to build a hangar, and their permission to perform fuel operations has been suspended per the provisions of the current agreement. If the provisions of this ordinance are approved, the timeline for building will be extended (details below), and SAS will be permitted to resume fueling operations.

Under the amendment, SAS will be required to begin making land lease payments for the fuel farm beginning June 2018, starting at \$1,500 per month through June 2019, increasing to \$2,000 per month through March 2020, and at the original contract amount thereafter (\$3,226 per month). During this time, the County will also resume receiving fuel flowage revenue (\$0.10 for every gallon sold at the airport), which is estimated to be about \$20,000 annually.

Under this amended contract, SAS will be given until December 31, 2018 to notify the County whether they intend to build a hangar or not. If SAS agrees to build the hangar, they must execute a land lease agreement by March 30, 2019 and begin construction within 90 days.

If SAS chooses not to build a hangar, they will be permitted to continue fueling through June 2019, but will cede the permanent land improvements SAS built for the fuel farm as stipulated in the current contract (i.e., concrete slab, fencing, and other related equipment) to the County, which was originally estimated to be worth about \$225,000. This amended contract would also waive the requirement for SAS to payback three years' worth of land lease payments for the land set aside for the new hangar (\$100,000, mentioned previously). If SAS does not build the hangar, the County will also not receive the annual land lease revenues going forward (\$35,788, in 2018 dollars.)




Lawrence M. Dahl
Accounting Services Manager
5/7/2018


APPROVE AMENDMENT NO. 2 TO FIRST AMENDED AND RESTATED
 HANGAR LAND LEASE AGREEMENT BETWEEN WAUKESHA
 COUNTY AND STEIN'S AIRCRAFT SERVICES, LLC

Presented by:
 Public Works Committee


Approved by:
 Executive Committee

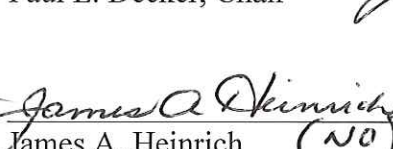
Approved by:
 Finance Committee

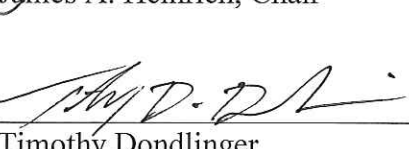

 David W. Swan, Chair


 Paul L. Decker, Chair

 (NO)
 James A. Heinrich, Chair

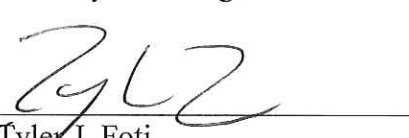

 Keith Hammitt

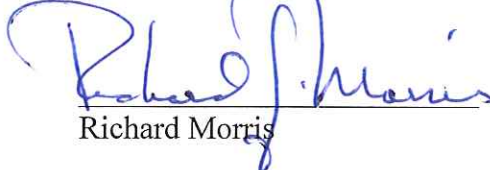
 (NO)
 James A. Heinrich


 Timothy Dondlinger

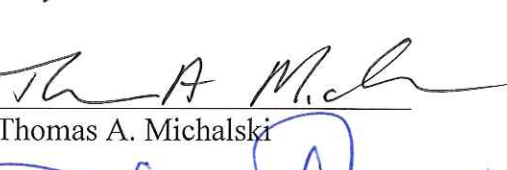
 (NO)
 Darlene M. Johnson


 Christine M. Howard

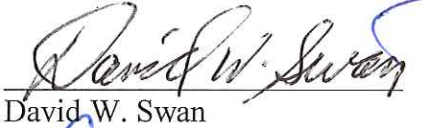

 Tyler J. Foti

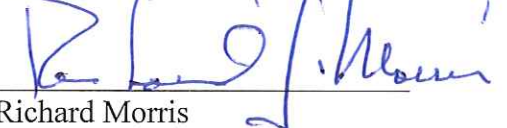

 Richard Morris


 Larry Nelson


 Thomas A. Michalski

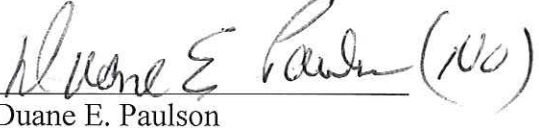
absent
 Thomas J. Schellinger


 David W. Swan


 Richard Morris

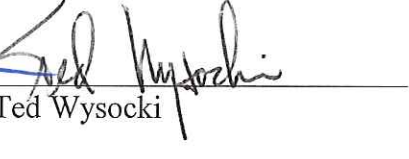

 Steve Whittow


 Peter M. Wolff


 (NO)
 Duane E. Paulson

 (NO)
 Chuck Wood
 JENNIFER GRANT


 David D. Zimmermann


 Ted Wysocki

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: 5/22/18, 
 Kathleen Novack, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: X
 Vetoed: _____

Date: 5/24/18, 
 Paul Farrow, County Executive

AMENDMENT NO. 2

To

FIRST AMENDED AND RESTATED
HANGAR LAND LEASE AGREEMENT

BETWEEN

WAUKESHA COUNTY

AND

STEIN'S AIRCRAFT SERVICES, LLC
2651 AVIATION DR.
WAUKESHA, WI 53188

WHEREAS, Waukesha County ("County") as landlord and Stein's Aircraft Services, LLC ("Lessee") as tenant are parties to that certain First Amended and Restated Hangar Land Lease Agreement dated June 1, 2013 and Amendment No. 1 dated on or about April 1, 2015 (the "Lease") pursuant to which Lessee currently leases from County certain land at the Waukesha County Airport, Crites Field ("Airport") as more particularly described in Article 2 of the Lease (the "Leased Premises");

WHEREAS, among other things, the Lease obligated Lessee to lease a hangar lot within the New Terminal Area Ramp Development District and complete construction of a hangar from which to base provision of the aircraft fuels and oil aeronautical services authorized by this Agreement no later than April 1, 2018;

WHEREAS, Lessee has not executed a land lease agreement with the County for the lease of 2641 Aviation Drive and did not complete construction of a hangar on 2641 Aviation Drive from which to provide aircraft fuels and oil aeronautical services by April 1, 2018;

WHEREAS, pursuant to the terms of the Lease, Lessee's authorization to perform aircraft fuels and oil service therefor automatically terminated effective April 1, 2018;

WHEREAS, County is willing to permit Lessee to resume sales of aircraft fuels and oil service upon the terms and conditions of the Lease as modified by this Amendment No. 2; and

NOW, THEREFORE, the County and Lessee agree to the second amendment of the Lease as follows:

1. Article 2A of the Lease is deleted in its entirety and replaced in total as follows:

ARTICLE 2A
OBLIGATION TO LEASE/BUILD

Lessee acknowledges that it is the County's desire, consistent with the Airport Master Plan and the Declarations of Covenants and Restrictions for Buildings and Structures of Waukesha County Airport Development District – New Terminal Area Ramp Development (on file with the Airport Manager), to require aircraft fuels and oil aeronautical service providers like Lessee to confine their aircraft fuels and oils operations to the New Terminal Area Ramp Development District (as defined therein). Accordingly, Lessee shall execute, perform and maintain with the County, a lease option agreement to lease Lot #2641 Aviation Drive from the County within the New Terminal Area Ramp Development District (the "New Parcel") for the construction of a new hangar from which to provide aircraft fuels and oil aeronautical services.

Lessee shall notify County, in writing, no later than December 31, 2018 of its intent to execute a land lease agreement for the New Parcel from the County. If Lessee determines it will execute a land lease agreement with County, the land lease agreement shall be executed no later than March 30, 2019. Construction of the hangar on the New Parcel shall commence within ninety (90) days of the date of the land lease agreement, weather permitting. If Lessee fails to notify County by December 31, 2018 of an intent to execute a land lease and build a new hangar, fails to execute a land lease agreement no later than March 30, 2019 for the New Parcel, fails to commence construction within ninety (90) days of the date of the land lease agreement, or fails to complete construction in a timely manner and move aircraft fuels and oil service to the new hangar, Lessee's authorization to sell aircraft fuels and oil service shall automatically terminate effective June 30, 2019 without further notice to Lessee. Any such termination shall not affect other aeronautical services authorized by this Lease.

2. Article 2B of the Lease is created to read:

ARTICLE 2B
PERMITTED AERONAUTICAL SERVICES

- A. Lessee may perform the following, and only the following, aeronautical services at the Airport: (1) aircraft airframe, engine and accessory maintenance and repair, (2) flight training, (3) unscheduled air charter and unscheduled air taxi, (4) specialized commercial flying services, and (5) aircraft fuels and oil service. Lessee's right to provide aircraft fuels and oil service from the Hangar Parcel shall automatically terminate in accordance with Article 2A or the transfer of aircraft fuels and oil service operations to the New Parcel.
- B. Lessee's right to perform aircraft fuels and oil service is further conditioned upon timely payment of any amounts due from Lessee to the County under this Lease between June 1, 2018 and June 30, 2019 (the "Extension Period"). In the event that a payment due to the County under this Lease during the Extension Period falls more than thirty (30) days past due, then the County will issue a past due notification letter to Lessee providing a ten-day notice of termination of Lessee's right to perform aircraft fuels and oil service sales unless Lessee brings all past due balances under the Lease to current status within ten (10) days of receipt of the letter from the County. Additionally, in the event Lessee is thirty (30) days

past due on three (3) payments for any amounts due under the Lease for which a ten-day notice is sent to Lessee, County may terminate Lessee's right to perform aircraft fuels and oil service sales. Past due notification letters should be sent to: Stein's Aircraft Services, P.O. Box 249, Sommers Wisconsin 53171, with a duplicate copy mailed to Mike & Laurie Stein, 3815 Lighthouse Drive, Racine, WI 53402. All payment defaults during the Extension Period shall be governed by this paragraph and the notice, cure and termination provisions of Articles 12 and 13 of the Lease shall not apply to the extent they are inconsistent herewith.

- C. All other defaults during the Extension Period shall be governed by Article 12, Defaults and Remedies and Article 13, Additional Termination Rights of this Lease.

Article 3 of the Lease is deleted in its entirety and replaced in total as follows:

ARTICLE 3 FEES AND RENTALS

The Lessee shall pay the following fees and rentals:

- A. Annual rental for the Hangar Parcel of \$28,616.51 (calculated at \$0.2907 per square foot times 98,440 square feet, and \$0.00 cents per square foot times 25,857 square feet for the Reserved Area), with the prorated amount for the year 2013 to be \$19,469.80 to be paid as follows: \$5,161.54 Due April 1, 2013 (includes credit of \$1,992.59 received as 2013 payment for operating agreement dated July 8, 2010), and two payments of \$7,154.13 due on July 1, 2013 and October 1, 2013.

For the year 2014, the annual rental payment for the Hangar Parcel shall be adjusted on the basis of the percentage by which the average of the United States Consumer Price Index - Urban (or its successor or replacement index) for the previous twelve calendar months ending June, 2013 increased over the average for the prior twelve calendar months ending June, 2012. The same adjustment in the amount of annual rent shall be made according to the same formula for each succeeding year (i.e., the annual rent for year 2015 will be adjusted based upon the percentage increase of the index average from the twelve month average ending June 2013 to the twelve month average ending June 2014). Notwithstanding the foregoing, the percentage increase over the prior year's annual rental payment shall not be less than 3.5% or greater than 10%.

Commencing with the year 2014, the annual rental payments for the Hangar Parcel shall be made in four equal installments on January 1, April 1, July 1, and October 1 of each year. During any holdover period pursuant to Article 30 of this Lease, rent shall be paid monthly on the first day of each month at a rate of 1/12 the annual rental payment which would otherwise be due under the formula set forth in this Article 3.

- B. Annual rental for the Additional Land of \$36,415.15 (calculated at \$1.1762 per square foot times 30,960 square feet, with the prorated amount for year 2015 to be \$27,311.36)

to be paid in 12 equal monthly installments to be paid not later than the 5th day of each month. Said payment may be made in conjunction with the fuel flowage fee payment for the preceding month required under Section D below.

Beginning in year 2016, the annual rental for the Additional Land shall be adjusted on the basis of the percentage by which the average of the United States Consumer Price Index - Urban (or its successor or replacement index) for the previous twelve calendar months ending June, 2015 increased over the average for the prior twelve calendar months ending June, 2014. The same adjustment in the amount of annual rent shall be made according to the same formula for each succeeding year. Notwithstanding the foregoing, the percentage increase over the prior year's annual rental payment for the Additional Land shall not be less than 2.5% or greater than 10%.

Notwithstanding the foregoing, provided that all other required payments are made under this Agreement and Lessee is otherwise in full compliance with the terms and conditions of this Agreement, Lessee shall pay discounted rent on the Additional Land in the amount of One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) per month for the period from June 1, 2018 through June 30, 2019. In the event Lessee completes construction of its hangar on the New Parcel pursuant to the terms of the Lease and continues to sell aircraft fuels and oil service, Lessee shall pay Two Thousand and 00/100 Dollars (\$2,000.00) per month from July 1, 2019 through March 31, 2020. Thereafter, payment of annual rent for the Additional Land shall commence with the monthly payment due April 1, 2020 at the full rate set forth in the preceding paragraph. Said discounted rent is in express recognition of Lessee's investment in those certain improvements at the Airport Fuel Farm which will become property of the County in accordance with Article 35.

- C. An initial installation fee of \$1,000.00 to be paid not later than April 30, 2015. Failure to pay said fee when due shall be grounds for termination of this Agreement.
 - D. A monthly fuel flowage fee of \$0.10 (10 cents) for each gallon of fuel delivered to Lessee's fuel tank system, or such greater amount as shall be established from time to time (the "Fuel Flowage Fee"). Payment of the Fuel Flowage Fee shall be made not later than the 5th day of each month for fuel that was delivered the previous month. Any late payment shall be subject to interest in the amount of 1.5% per month. With each payment, Lessee shall furnish a statement and documentation showing the number of gallons delivered for the applicable payment period. The amount of the Fuel Flowage Fee is subject to change at the discretion of the Waukesha County Board of Supervisors.
4. All other provisions of the Lease not modified by this amendment shall remain in full force and effect.

This AMENDMENT NO. 2 is entered into and effective as of this ____ day of May, 2018.

WAUKEHSA COUNTY

STEIN'S AIRCRAFT SERVICES, LLC

BY: _____
Kurt S. Stanich
Airport Manager

BY: _____
Mike Stein
Owner/Member

BY: _____
Laurie Smet-Stein
Owner/Member

**ACKNOWLEDGEMENT & CONSENT
OF LENDER**

The foregoing AMENDMENT NO. 2 to the First Amended and Restated Hangar Land Lease Agreement dated _____ between Waukesha County and Stein's Aircraft Services, LLC is acknowledged and consented to by Lessee's lender, Wisconsin Business Development Finance Corporation ("Lender"). Lender acknowledges and agrees that any lien of mortgage or otherwise it may have with respect to loans made to Lessee in no way attach to the fee simple interest of the County in the Leased Premises, including the "Additional Land."

Dated this ___ day of _____, 2018.

WISCONSIN BUSINESS DEVELOPMENT
FINANCE CORPORATION

BY: _____
Name:
Title:

**ACKNOWLEDGEMENT & CONSENT
OF LENDER**

The foregoing AMENDMENT NO. 2 to the First Amended and Restated Hangar Land Lease Agreement dated _____ between Waukesha County and Stein's Aircraft Services, LLC is acknowledged and consented to by Lessee's lender, North Shore Bank ("Lender"). Lender acknowledges and agrees that any lien of mortgage or otherwise it may have with respect to loans made to Lessee in no way attach to the fee simple interest of the County in the Leased Premises, including the "Additional Land."

Dated this ___ day of _____, 2018.

NORTH SHORE BANK

BY: _____
Name:
Title:

D1 - Foti	AYE	D14 - Wood	AYE
D2 - Zimmermann	AYE	D15 - Mitchell	AYE
D3 - Morris	AYE	D16 - Crowley	AYE
D4 - Batzko	AYE	D17 - Paulson	Absent
D5 - Dondlinger	AYE	D18 - Nelson	AYE
D6 - Walz	AYE	D19 - Cummings	AYE
D7 - Grant	NAY	D20 - Schellinger	Absent
D8 - Michalski	AYE	D21 - Gaughan	AYE
D9 - Heinrich	NAY	D22 - Wysocki	AYE
D10 - Swan	(M) AYE	D23 - Hammitt	(2) AYE
D11 - Howard	AYE	D24 - Whittow	AYE
D12 - Wolff	AYE	D25 - Johnson	NAY
D13 - Decker	AYE		

173-0-015

Passed (20 Y - 3 N - 2 Absent)

Majority Vote

