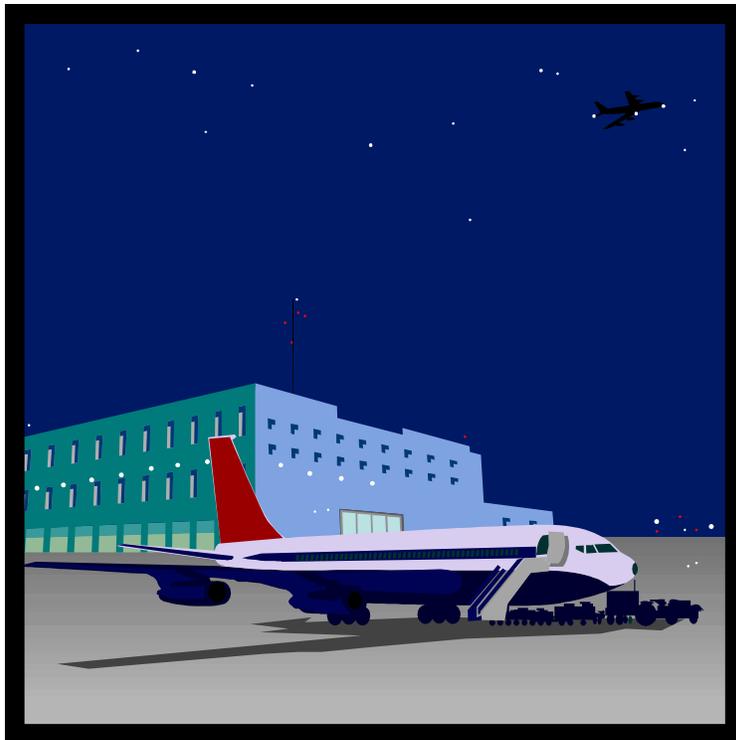


**CITY OF FORT LAUDERDALE
INTERNAL AUDIT OFFICE
AUDIT REPORT**

**Review of
Selected Airport Lease Agreements
Aviation/Non-Aviation**



**AUDIT NO. 03/04-XX-10
DATED May 13, 2004**

MEMORANDUM NO. 04-51

DATE: May 13, 2004

TO: Acting Community and Economic Development Director/Faye Outlaw

SUBJECT: Review of Selected Airport Lease Agreements Aviation/Non-Aviation

Enclosed is the “subject” Final Report of Audit.

Allyson C. Love
Internal Audit Director

Attachment - Final Report of Audit

c: City Commission
City Attorney/Harry Stewart
Acting City Manager/Alan Silva
Assistant City Manager/Bud Bentley
Finance Director/Terry Sharp
Acting Airport Manager/Clara Bennett

ACL/cs

REPORT OF AUDIT NO. 03/04-XX-10

DATE: March 29, 2004

TO: Acting Community & Economic Development Director/Faye Outlaw

VIA: Internal Audit Director/Allyson C. Love

FROM: Staff Auditor/Rubiela N. Mendieta/522-2604x11

SUBJECT: *Review of Selected Airport Lease Agreements – Aviation/Non-Aviation (Revised)*

BACKGROUND

The City of Fort Lauderdale (City) Community and Economic Development Department, Executive Airport (herein “Airport”) leases, develops, operates, maintains, and promotes the Airport, Industrial Airpark, Foreign Trade Zone 241, and the Downtown Helistop. The mission of the Airport is to attract businesses to the area, help those businesses prosper and benefit the community.

The Airport is a City-owned and operated facility; however, no taxpayer dollars are used in its operations, maintenance or improvement. The Airport is self-sustained. Operating revenues are derived from land leases and fuel flowage fees. Surplus revenue is used for capital improvement projects or placed in the Airport Enterprise Fund.

Aviation businesses located on the Airport grounds employ more than 2,100 local residents and generate approximately \$149 million in economic impact in the community each year. Office and manufacturing businesses in the Airport’s Industrial Airpark generate \$155 million a year in economic activity and employ an additional 2,200 people.

Over 125 individual businesses are located within the Industrial Airpark. The Airport leases land to hangar and building developers who rent space to individual businesses. The Airport is home to more than 700 aircraft, including 115 corporate jets and 37 helicopters. In addition, six full service fixed base operators (FBOs) provide fueling, maintenance, avionics, and other services to a variety of based and visiting aircraft.

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Executive Airport tenants pay \$1.3 million in real estate taxes annually. In addition, the Airport pays more than \$460,000 a year to the City in lieu of taxes.

SCOPE

The overall objective of our review was to determine the adequacy of management procedures used to monitor Lessee/Tenant compliance with lease agreements. Specifically, we judgmentally selected six lease agreements and tested whether the rights and obligations of the parties involved were fulfilled. We also reviewed the adequacy of management controls relative to the monitoring of the lease agreements.

We selected the following lessees for our review.

Aviation Leases:

- World Jet, Inc. (Lots 50/51)
- The 94th of Fort Lauderdale and Specialty Restaurants/AOG Aircraft Services (Parcel 8A/B)
- Executive Jet Center/Aero Toy store (Parcel 9A/B)

Non-Aviation Leases:

- Yankee Boulevard Industrial Park (Parcel 13)
- 1001 Executive Park Associates (Lots 32/33)
- Fort Lauderdale Crown Center (Lots 29, 30, 34 & 35)

The review covered transactions and documents for the period of October 2002 through September 2003 during the months of October and November 2003 and was performed according to generally accepted government auditing standards.

OVERALL EVALUATION

The results of our review revealed management procedures utilized to monitor compliance with lease agreement(s) need improvement. Internal control procedures were not in place to amend obsolete lease terms and were not adequate to verify Lessees complied with insurance requirements.

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Furthermore, we noted prior year audit recommendations were not implemented and one Lessee does not have a valid Broward County Occupational License. Lastly, the City could improve the internal controls used over the assessment and collection of late fees.

FINDING 1

Internal control procedures are not in place to amend lease terms when certain provisions are no longer applicable based on the type of Lessee who occupies lease premises.

The Third Amendment to the original lease dated 10/17/89, Paragraph 11, Percentage Rent states as additional rental hereunder, Lessee agrees to pay to Lessor for each year during the term of this lease, a percentage rent, such rent to be the amount by which two percent (2%) of the Lessee's monthly gross receipts, as hereinafter defined, exceeds the Minimum Guaranteed Monthly Rental...

In August 1975, the City entered into an agreement with The 94th of Fort Lauderdale, Inc. (as Lessee) and Specialty Restaurants Corporation (as Guarantor), which included a provision to assess/collect an additional 2% of Lessee's monthly gross receipts, exceeding the minimum guaranteed monthly rental. This was included since the premises were to be used as a restaurant, shops, aircraft exhibition... and such other uses as may be approved by the Lessor. Starting April 1981, the lease has been sublet/assigned to other parties (current Lessee - AOG Aircraft Services) who are not in the restaurant business.¹ Thus, the requirement to receive a percentage of gross receipts is no longer applicable.

The Airport Manager was not aware of the stipulation to collect a percentage of gross receipts; therefore, no actions were taken to amend the lease to remove the requirement once the lease was sublet/assign to non-restaurant type businesses.

Timely amendments to lease agreement terms to modify obsolete requirements will ensure lease terms agree with current practices.

¹ In 1981, the Lessee sublet to R.J.M. Construction Corp. and subsequently sublet/assigned to other parties.

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RECOMMENDATION 1

The Airport Manager should amend the lease agreement between the City and the 94th of Fort Lauderdale, Inc. (Sublessor) and Specialty Restaurants Corp (Guarantor) and AOG Aircraft Services, Inc. (Sublessee) to delete the provision to require 2% of gross receipts.

MANAGEMENT COMMENT

Management concurred with the finding and recommendation and stated: "The Airport will incorporate this recommendation into a future lease amendment in coordination with the City Attorney's Office." Estimated completion date December 31, 2004.

FINDING 2

Internal control procedures were not adequate to verify Lessees complied with the specific terms and conditions of prescribed insurance requirements.

Lease agreements include insurance requirements for All Fixed Base Operators and Airport Tenants according to the City's Resolution 78-4 adopted February 7, 1978.

Lease agreement terms titled "Insurance" (a) Fire and Extended Coverage. The Lessee, at its expense, shall provide full fire and extended coverage and glass breakage insurance on the buildings leased, and on any improvements constructed on the leased premises by the Lessee or the Lessor, for the benefit of the Lessor and the Lessee, in an amount satisfactory to the Lessor up to 100% but not less than 90% of the replacement value of the said property and improvements.

Our review of 6 Certificates of Insurance of selected lease agreements revealed several areas of noncompliance, as follows: (1) The City was not listed as additional insured; (2) deductibles were exceeded and/or evidence of meeting deductible threshold was not provided; (3) cancellation notice of material changes clause was not always included; and (4) the premises value of Airport properties was not available to validate insurance coverage was adequate (**Schedule 1**).

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Airport staff does not have procedures in place to verify Lessees/Tenants meet all the insurance requirements and appraisals of the value of aviation/non-aviation properties on airport land are obtained to determine if the insurance coverage equals at least 90% of the replacement value of the property.

Enforcement of insurance requirements will limit the City's liability exposure and provide assurance the City's assets are protected.

RECOMMENDATIONS AND MANAGEMENT COMMENTS

The *Airport Manager* should:

Recommendation 2. *Verify Lessees comply with all insurance clause requirements per Resolution 78-42 and its corresponding lease agreement terms.*

Management Comment. *Management concurred with the finding and recommendation and stated:* "Currently, the Airport maintains a binder containing Certificates of Insurance for all Lessees. Procedures will be written to ensure the compliance with each of the lease agreements and each Certificate of Insurance will be reviewed for accuracy. The tenants that were found to be in noncompliance by the auditors have been contacted by fax. The Airport has received a proper Certificate of Insurance from Executive Jet Center/Aero Toy Store concerning the deductible. A follow up letter will be sent requesting a corrected Certificate of Insurance for those that are in noncompliance." **Estimated completion date June 30, 2004.**

Recommendation 3. *Initiate actions to obtain a current appraisal of each of the Airport real property fixed assets subject to this provision in order to determine if the insurance covers at least 90% of the replacement value.*

Management Comment. *Management concurred with the recommendation and stated:* "The Airport will meet with the new Risk Manager once he/she is hired to review this recommendation and establish a practical procedure for assessing replacement value of improvements.

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Additionally, the Airport is in the process of developing a revised set of Minimum Standards that will amend Resolution 78-42 and will review any proposed changes to the insurance provisions with the new Risk Manager.”
Estimated completion date December 31, 2004.

FINDING 3

The Airport Manager has not fully implemented the prior audit recommendations to amend the lease agreement with Florida Atlantic University (FAU) in relation to its insurance coverage and payment due dates.

Internal audit released Final Report of Audit 99/00-XX-09 dated February 1, 2000, which identified issues related to the lease agreement with FAU. During this review, Internal Audit accomplished work to follow up on the status of implementation of the recommendations during this audit and noted the following recommendations were not implemented:

Report of Audit 99/00-XX-09 Audit Recommendations	Management Response	Status
<u>Recommendation 4.</u> Amend the lease agreement between the City and FAU (parking facility) to require rent payments on an established date at the end of each month.	The Airport recommends the City Manager’s Office (CMO) meet with an FAU representative to discuss the audit recommendation to develop a resolution to the issue without amending the lease. We will coordinate the meeting and anticipate a resolution by calendar year-end.	Not Implemented
<u>Recommendation 6.</u> Consider amending the lease agreement between the City and FAU (parking facility) to delete the option prior to the next renewal/review period to pay the City \$2,400/year in lieu of obtaining	The Airport recommends the CMO and Risk Manager meet with an FAU representative to discuss the auditor’s	Not Implemented

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certificate of insurance.	recommendation regarding the insurance issue and anticipate a resolution by calendar year end. Estimated completion date 12/21/00.	
Recommendation 7. If recommendation 6 implemented, the lease agreement between the City and FAU (Parking facility) should also require FAU to obtain their own certificate of insurance (fire/comprehensive/workmen's compensation) and indemnify and hold harmless the City.	Management comment to recommendation 6 also applies to this recommendation.	Not Implemented

Based on discussion with the Airport Administrative Assistant, we learned actions were not taken as indicated by management to address the recommendations contained in the original report of audit.

Implementation of audit recommendations will ensure corrective actions are taken to address previous conditions/issues.

RECOMMENDATION 4

The Airport Manager should take the necessary actions to implement the recommendations contained in the original report of audit.

MANAGEMENT COMMENT

Management concurred with the finding and recommendation and stated: "The Airport will take steps to implement the recommendations made in Audit 99/00-XX-09 dated February 1, 2000, in accordance with the management response outlined above." **Estimated completion date July 31, 2004.**

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FINDING 4

The City did not require, from a Lessee, evidence to show a valid Broward County Occupational License was obtained.

Per Lease Agreement dated January 15, 1985, Provision 3(e)(2): The Lessee agrees to obtain at its expense all permits and licenses which may be required by any governmental unit. Upon the Lessor's request, at reasonable intervals, the Lessee shall promptly furnish to the Lessor evidence satisfactory to the Lessor showing Lessee's compliance with its obligations under this section.

Broward County Code Revenue Collection Division and Broward County Ordinances 72/13 and 88-35 and the Florida State Statute Chapter 205 requirements, a license is required for the privilege of engaging in or managing any business, profession or occupation in Broward County.

As of November 25, 2003, Parcel 13 – Yankee Blvd. Industrial Park Lessee, East Group Properties, does not have a Broward County Occupational License.

Airport does not have a written procedure in place to validate whether non-aviation Lessees have the required licenses and permits.

A proper system to verify lease terms are complied with will ensure Lessees have met all legal requirements to engage in business within the corporate limits of the City.

RECOMMENDATIONS AND MANAGEMENT COMMENTS

The *Airport Manager* should:

Recommendation 5. *Establish written procedures to verify all Lessees maintain current/valid occupational licenses issued by the City and the County per applicable regulations and lease agreement terms.*

Management Comment. *Management concurred with the finding and recommendation and stated:* “The Airport is taking steps to prepare written procedures to verify that all Lessees maintain current/valid occupation licenses issued by the City and County.” **Estimated completion June 30, 2004.**

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Recommendation 6. *Request, in writing, that the Lessee obtain the required Broward County Occupational License.*

Management Comment. *Management concurred with the recommendation and stated:* “The Airport sent information to the Lessee on April 28, 2004 regarding the required Broward County Occupational License and will follow up with the Lessee to ensure that it is received as soon as possible.” **Estimated completion date June 30, 2004.**

FINDING 5

Internal controls procedures were not in place to determine if late fees should be assessed, late fees were not always assessed when payments were received late and were not always calculated accurately. Furthermore, the late fee assessment is not punitive to encourage timely payments.

Lease agreements between the City and Lessees generally include a grace period clause and an interest of 10% per annum for payments determined to be late. A grace period clause will determine how delinquent charges should be assessed which could be from billing date to payment received date or from due date to payment received date. Tenants should be assessed delinquent charges based on the date payment was received by the City.

During the audit, we noted the following conditions (**Schedule 2**).

- ✓ The City Treasurer’s Office receives payments on behalf of the Airport and processes them into the City’s Financial Accounting Management Information System (FAMIS). Our analysis of 117 rent and fuel flowage fee payments revealed *three* seemed to be received after the established due dates/grace periods and late fees were not assessed. For these payments, the receipt date noted in FAMIS is the only means to identify the actual receipt date. Use of the FAMIS posting date as receipt date can call into question the appropriateness of the late fee assessment, if late fees had been billed. The Treasurer’s Office does not have a procedure to require payments be date stamped when received.
- ✓ Airport did not calculate the late fees accurately on nine (8%) of 117 payments received late and we identified one Lessee, World Jet, Inc., was

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not billed a late fee. The Airport Senior Accounting Clerk calculated late fees inclusive of sales tax, which resulted in a higher assessment. Sales tax should not be included in the computation of late fees.

- ✓ One Tenant's (1001 Executive Park/Lots 32 & 33) lease agreement does not include a grace period/interest clause to allow late fees to be assessed for delinquent payments.
- ✓ Lease agreements between the City and Lessees usually include a grace period clause to assess Lessee(s) interest of 10% per annum for payments determined to be late. However, the 10% per annum interest amount is not punitive to encourage Lessee(s) to submit payments when due.

Implementation of a system to accurately record payment receipt dates will assure the City is receiving interest revenues when applicable and increasing the late fee assessment will provide incentive for Lessee(s) to pay timely.

RECOMMENDATIONS AND MANAGEMENT COMMENTS

The *Airport Manager* should:

Recommendation 7. *Request the City Treasurer establish a written procedure to require Airport Tenant payments be date stamped, when received, in order to document the actual date of receipt.*

Management Comment. *Management concurred with the finding and recommendation and stated:* "The Airport will forward the audit recommendation to the City Treasurer." **Estimated completion date July 31, 2004.**

Recommendation 8. *Require the Senior Accounting Clerk to assess late fees on base rent and fuel flowage fee exclusive of sales tax.*

Management Comment. *Management concurred with the recommendation and stated:* "The Airport is developing a set of written procedures that will ensure an accurate calculation of the late fees in the future." **Estimated completion date May 1, 2004.**

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Recommendation 9. *Request the Senior Accounting Clerk invoice World Jet Inc. (Lot 50/51) for late fees totaling \$78.82 related to the base rent and fuel for the months of February 2003 and August 2003, respectively.*

Management Comment. *Management concurred with the recommendation and stated:* “Procedures were written to determine when late fees should be assessed and how they should be calculated. The World Jet file did not have a copy of all the stamped rent checks. As stated in the procedures either the date in FAMIS or a date stamped check will determine the number of days late for both rent and fuel fees. The February late fee for World Jet rent was not invoiced, although August late fee was invoiced in October 2003. Late fees for fuel flowage reports were not invoiced unless the tenant was later than the 20th of the month. The tenants will be notified that any reports received after the 15th will be invoiced for late fees.”
Estimated completion date June 30, 2004.

Recommendation 10. *Request the City Attorney to amend the lease agreement between the City and 1001 Executive Park Associates, Inc. in order to add a grace period/interest clause. This will allow the City to assess delinquent charges, when appropriate.*

Management Comment. *Management concurred with the recommendation and stated:* “The terms of this Lease were approved by the City Commission and the Federal Aviation Administration and signed and executed by the City of Fort Lauderdale and the Lessee. The Airport will make this a point of negotiation as the opportunity to amend the lease arises in the future.” **Estimated completion date June 30, 2004.**

Recommendation 11. *Consider, via the City Attorney and Treasurer, that the late fee amount be increased to provide incentive for Lessee to pay timely. Once approved, this should be incorporated into all future airport lease agreements.*

Management Comment. *Management concurred with the recommendation and stated:* “All terms of Airport Leases are approved by the City Commission and the Federal Aviation Administration (for non-aeronautical leases). The Airport assesses late fees consistent with these approved terms contained in the leases. The assessment of late fees is not currently a critical issue for the Airport as the Lessees have a good history of making timely lease payments, in accordance with the terms of their

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respective leases. Should consistent late payments become an issue, the Airport will review late fee amounts with the City Attorney and City Treasurer and incorporate any necessary revision of terms in future lease agreements.” **Estimated completion date June 30, 2004.**

EVALUATION OF MANAGEMENT COMMENTS

Management comments provided and actions taken and/or planned are considered responsive to the recommendations.

**City of Fort Lauderdale -Internal Audit Office
Executive Airport Test of Insurance Clause Compliance**

SCHEDULE 1

Resolution 78-42							
Lessee	Fire and Extended Coverage				Has Comprehensive Insurance (Theft, fire & windstorm)/ Is it >= 90% value (I) ?	Workers Compensation Insurance?	Is Liability Insurance >= \$1 Million?
	Was Best's Rating B+- Class VII?	Was City Named as an Additional Insured?	Is deductible <= \$5,000?	Was a 30 day Notice of material changes to policy included?			
Non-Aviation							
Yankee Boulevard Industrial Park (Parcel 13)	Yes	Yes	Yes	Yes	Yes/Unknown	Yes	Yes
1001 Executive Park Associates (Lots 32/33)	Yes	Yes	No information on deductible provided.	No	No/Unknown	N/A	Yes
Fort Lauderdale Crown Center (Lots 29, 30, 34 & 35)	Yes	Yes	No information on deductible provided.	No	Yes/Unknown	N/A	Yes
Aviation							
Execuport International (Sublet of Specialty Restaurant & AOG) (Parcel 8A)	Yes	No	No information on deductible provided.	Yes	Yes/Unknown	Yes	Yes
Executive Jet Center/ Aero Toy Store (Parcel 9A/B)	Yes	Yes	No	No	Yes/Unknown	Yes	Yes
World Jet, Inc. (Lots 50 & 51)	Yes	Yes	No information on deductible provided.	Yes	No/Unknown	Yes	Yes

Legend:

- (I) Property values not known to verify value compliance.
- N/A Not applicable since no employees employed by Lessee.

Executive Airport Monthly Tenant Rent and Fuel Flowage Fees Not Received by Due Date from World Jet Inc. (Lots 50/51)																
Ref #	Period	Lessee Rent Due Date	Late Fees Bill Date	Date Received per Treasury	Date of Receipt per FAMIS	Date of Receipt Per FXE (a)	# of Days Late	Lease Grace Period (b)	Days Late	*	FAMIS \$\$	Late Fee	\$\$ Billed	Over (Under) Billed \$\$		
Base Rent																
1	09/01/02	09/15/02	10/11/02	Not recorded	10/11/02	10/08/02	38	(15)	38		\$ 7,133.42	\$ 74.27	\$ 79.42	\$ 5.15		
2	10/01/02	10/15/02	11/13/02	Not recorded	11/06/02	10/30/02	30	(15)	30		7,450.88	61.24	65.67	4.43		
3	11/01/02	11/15/02	12/12/02	Not recorded	12/13/02	12/09/02	39	(15)	39		7,239.24	77.35	82.89	5.54		
4	12/01/02	12/15/02	01/13/03	Not recorded	01/16/03	01/13/03	44	(15)	44		7,239.24	87.27	93.34	6.07		
5	01/01/03	01/15/03	03/12/03	Not recorded	02/20/03	02/20/03	51	(15)	51		7,239.24	101.15	106.32	5.17		
6	02/01/03	02/15/03	Not billed	Not recorded	02/26/03	02/26/03	26	(15)	26		7,239.24	51.57	0.00	(51.57)		
7	03/01/03	03/15/03	05/14/03	Not recorded	04/18/03	04/15/03	46	(15)	46		7,239.24	91.23	92.50	1.27		
8	04/01/03	04/15/03	05/14/03	Not recorded	04/23/03	04/17/03	17	(15)	17		7,239.24	33.72	34.13	0.41		
9	05/01/03	05/15/03	06/12/03	Not recorded	06/16/03	06/12/03	43	(15)	43		7,239.24	85.28	88.30	3.02		
Subtotal Base Rent Late Fees											\$ 65,258.98	\$ 663.08	\$ 642.57	\$ (20.51)		
Fuel																
10	07/30/03	07/15/03	08/11/03	Not recorded	07/31/03	n/a	17	(15)	17		\$ 2,908.57	\$ 13.55	\$ 12.91	\$ (0.64)		
11	08/30/03	08/15/03	Not billed	Not recorded	09/02/03	n/a	19	(15)	19	*	2,180.55	11.35	0.00	(11.35)		
12	08/30/03	08/15/03	Not billed	Not recorded	09/02/03	n/a	19	(15)	19	*	1,166.29	6.07	0.00	(6.07)		
13	07/30/03	07/15/03	Not billed	Not recorded	09/02/03	n/a	50	(15)	50	*	717.42	9.83	0.00	(9.83)		
Subtotal Fuel Late Fees											\$ 6,972.83	\$ 40.80	\$ 12.91	\$ (27.89)		
											Totals		\$ 72,231.81	\$ 703.87	\$ 655.48	\$ (48.39)
Legend:																
FXE	Fort Lauderdale Executive Airport															
(a)	Late fees are assessed from date payment was received first at FXE/Treasurer's Office															
(b)	Late fees are assessed per lease agreement from due date															
n/a	Not applicable															
	Not billed															
*	No date stamped by Treasurer's Office															