

## MEMORANDUM

**TO:** **Real Estate & Transportation Committee**  
Commissioner Don Selvage, Chairman  
Commissioner Justin Troller  
Commissioner Phillip Walker

**FROM:** City Attorney's Office

**DATE:** July 7, 2014

**RE:** **Lease Agreement with Florida Modification Specialists, LLC**

Attached hereto for your consideration is a proposed Lease Agreement with Florida Modification Specialists, LLC (FMS) for 86,500 square feet of hangar space, including bays two (2) and three (3), located at 3430 Aircraft Drive at the Airside Center.

FMS has been operating at the Airport since 2011 providing heavy maintenance and repairs to large aircraft and presently has a Lease Agreement with the Airport for bay three (3) in the hangar. FMS previously subleased the second bay from Sky King. Both FMS and the Airport are now seeking to enter into a direct lease for all of the above-referenced space. Accordingly, the Airport and FMS have agreed to a new Lease Agreement that includes both bays.

The Lease, with a retroactive effective date of July 1, 2014 subject to approval by the City Commission, shall be for an initial term of ten (10) years, including two (2) additional five (5) year renewal options upon mutual written agreement of the parties. The annual rent will be \$172,800 during the first five (5) years of the initial term. Thereafter, years six (6) through ten (10) of the initial term shall be subject to annual Consumer Price Index (CPI) increases capped at 3% annually. The rent pursuant to this Lease Agreement reflects an increase of \$90,206 over the previous existing agreement with FMS.

It is recommended that the appropriate City officials be authorized to execute the Lease Agreement consistent with the above-specified terms outlined above.

RS

attachment

## LEASE AGREEMENT

**THIS AGREEMENT** ("Lease") made this 7th day of July 2014, by and between the **CITY OF LAKELAND**, a Florida municipal corporation (hereinafter referred to as the "**Lessor**"), whose address is 228 S. Massachusetts Avenue, Lakeland, Florida 33801 and **FLORIDA MODIFICATION SPECIALISTS, LLC** (hereinafter referred to as "**Lessee**"), whose address is 3445 Aircraft Drive, Lakeland, Florida 33811.

### **WITNESSETH:**

The parties hereto do hereby mutually covenant, agree and promise as follows:

#### **SECTION 1**

1.1 The Lessor, for and in consideration of the mutual promises, agreements, and covenants herein contained, does hereby lease, let, and rent unto the Lessee for an initial term of ten (10) years, with two (2) additional five (5) year options of renewal upon mutual written agreement of the parties, commencing on July 1, 2014, (the "**Effective Date**") and terminating on June 30, 2024, a portion of the building known as the "Airside Center", owned and controlled by the Lessor (hereinafter referred to as the "**Premises**"), located in and comprising a part of the Lakeland Linder Regional Airport (hereinafter referred to as the "**Airport**"), as more particularly described in **Exhibit "A"** attached hereto and made a part hereof. Lessee shall occupy a space on the Premises, consisting of approximately 86,000 square feet of hangar and office space located in Bays Two and Three as more specifically indicated on **Exhibit "A"**.

1.2 Lessee shall have non-exclusive use of ramp space located immediately due south of the hangar facility with approximate dimensions of 200 x 100, which has been identified on **Exhibit "A"**.

## **SECTION 2**

2.1 The Lessee shall pay to the Lessor as rent for the Premises monthly installments, commencing on July 1, 2014, in the amount of Fourteen Thousand Four Hundred and 00/100 Dollars (\$14,400.00) through June 30, 2019. Rent commencing July 1, 2019 shall be adjusted in accordance with Section 3.2.

Subject to Lessor's prior review and written approval, Lessee may store aircraft on the ramp area specifically designated by the Lessor on a case-by-case basis. Lessee shall pay rent for storage of such aircraft in monthly installments of Two Hundred and 00/100 Dollars (\$200.00) for narrow body aircraft and Five Hundred Dollars (\$500.00) per month for wide body aircraft, together with all other applicable taxes and charges. For purposes of this Agreement, a narrow body aircraft, also known as a single aisle aircraft or commonly known as regional airliners, shall be defined as an airliner with a fuselage aircraft cabin width typically 3 to 4 meters (10 to 13 feet) with airline seats arranged 2 to 6 abreast along a single aisle which are not capable of transatlantic or transcontinental flights. For purposes of this Agreement, a wide body aircraft shall be defined as a larger airliner generally configured with multiple travel classes with a fuselage diameter of 5 to 7 meters (16 to 20 feet) and twin aisles with passengers usually seated 7 to 10 abreast which typically accommodate between 200 and 600 passengers.

Each monthly rental installment, including rent for storage of aircraft, shall be paid, together with sales taxes, pass through expenses, and all other applicable taxes and charges, in advance on or before the first day of each month. Late installments of rent, which shall be any installment received more than fifteen (15) days after the due date, shall bear a late payment charge of five percent (5%) per month of the late

installment for any month or any portion of any month until paid. Lessee shall remit a security deposit equal to Five Thousand and 00/100 Dollars (\$5,000.00) to Lessor, upon execution of the Lease Agreement.

2.2 Lessee shall be responsible for utilities to include electric, water, wastewater services, refuse collection, and heating/air conditioning for the Leased Premises which are to be separately metered in the areas designated by **Exhibit "A"**. If the Lessor does not provide a separate meter or sub-meter, the parties shall agree upon a reasonable allocation of utility costs, including common areas. Lessee shall also be responsible for their calculated share of storm water charges based on the impervious surfaces that they occupy, including ramp and parking, at the prevailing published rate.

2.3 The Premises are not assessed ad valorem property tax on the Effective Date of this lease. In the event the Premises become subject to taxation by legislative or judicial action, or a change in policy of the Polk County Tax Assessor's Office, then the Lessee shall pay to Lessor any ad valorem taxes thereafter assessed. Based on the amount levied, the Lessor and Lessee shall discuss options regarding rent if the amount levied is significant in relation to the rent being paid. The Lessor shall provide proof of the assessment as soon as is practical following receipt of the tax bill which shall then be payable by the Lessee on the date the next rental payment would be due. Subsequent to any such initial assessment, Lessor reserves the right to provide for periodic payments of the tax. Lessor reserves the right to pass through to the Lessee a pro rata portion of ad valorem or other taxes or any other governmental charges or special assessments levied after the Effective Date.

2.4 Lessee will be provided a rent credit of Five Thousand and 00/100 Dollars (\$5,000.00) for each narrow or wide body aircraft that under goes a painting of the entire

exterior of the aircraft at the Lakeland Linder Regional Airport Paint facility. In no event shall the maximum rent credit exceed the sum of Thirty Thousand and 00/100 Dollars (\$30,000.00) per lease year.

### **SECTION 3**

3.1 In the event Lessee remains in possession of the Leased Premises after the expiration of the tenancy created hereunder, and without the execution of a renewal term or new lease, Lessee, shall be deemed to be occupying the Leased Premises on a month-to-month basis at twice the monthly rental as paid for the last month under the expiring term of the lease. Such tenancy shall be subject to all the other conditions, provisions and obligations of this Lease.

3.2 Commencing July 1, 2019, and, at the beginning of each one (1) year lease period thereafter, all rents to be paid hereafter shall be adjusted in accordance with the Consumer Price Index for all Urban Consumers unadjusted, (U.S. City Average: All Items 1982-84=100), issued monthly by the Bureau of Labor Statistics of the U.S. Department of Labor. Such adjustment shall be made by multiplying said rent by a fraction, the numerator of which shall be the Index Number as set forth in said Consumer Price Index for the month which is three (3) calendar months prior to the commencement of the new one (1) year lease period, and the denominator of which shall be the Index Number as set forth in said Consumer Price Index for the month which is three (3) months prior to the month of the commencement of the preceding one-year lease period, provided that the maximum annual increase shall not exceed three percent (3%). At no time shall rent be decreased in the event of a negative Consumer Price Index adjustment.

#### **SECTION 4**

4.1 The Lessor shall have the right to install all navigation aids at the Airport as may be identified on the Airport Layout Plan. The Lessor may furnish portions of the Airport to the Federal Government in connection with air traffic control or air navigation facilities. No structure, sign, appurtenance, projection, or modification shall be installed or kept in place by Lessee on the Premises without the prior written approval from the Lessor, of which said approval will not be unreasonably withheld, and any applicable federal, state, county, or other governmental agency.

#### **SECTION 5**

5.1 The Premises, and any improvements thereon, whether in existence or constructed in the future pursuant to the terms and conditions contained herein, shall be used solely for Aviation Repairs, storage and office facilities for purposes of this Lease Agreement, and directly related uses ("Use"), provided such Use is permitted by and in accordance with the Airport Minimum Standards, the Airport Layout Plan and Master Plan, and the Airport Rules and Regulations, each as may be amended from time to time. The Premises shall not be used for purposes which may interfere with the operation of aircraft at, from or to the Airport, including without limitation uses that create excessive light, glare, noise, dust, fumes or electromagnetic interference; uses that interfere with air traffic control line-of-sight visibility; uses that create wildlife attractants; uses that otherwise are detrimental to aviation, the airport facility, other tenants, or the City of Lakeland. Any change in use shall require written approval by the Airport Director, of which said approval will not be unreasonably withheld.

5.2 There shall be no aircraft fueling within the hangar facility. However, the Lessee shall have the right to self-service aircraft that it owns or operates, including

maintenance and repair, in the hangar portion of the Hangar facility, provided all aeronautical activities are performed in full compliance with the Airport Rules and Regulations, as the same may be amended from time to time.

5.3 No boats, trailers or recreational vehicles may be stored on the Premises. The Director may grant a temporary waiver from this prohibition upon determining that a waiver serves the interests of the Airport and the public, and upon determining that the proposed temporary storage will not interfere with the aeronautical use of the Premises. In the event such a temporary waiver is granted, the Airport Director shall prescribe the areas of the Premises that may be used for storage, which areas shall be identified so as to maintain an attractive and orderly appearance.

5.4 Auto parking shall be authorized only in those areas designed for the parking of automobiles and shall not be on ramps, taxiways or other areas where aircraft may travel.

5.5 Lessee shall not use the Premises for any other non-aeronautical use, including without limitation any residential use.

5.6 Lessee expressly agrees for itself, its successors and assigns, to restrict the height of structures and objects of natural growth determined by the Federal Aviation Administration to constitute an obstruction or hazard pursuant to 14 C.F.R. Part 77, as the same may be amended from time to time.

5.7 Environmental Matters.

Lessee shall be responsible for reporting, containing and cleaning up the release or spill of any hazardous substance or material, including any petroleum product, discovered on or emanating from the Premises on or after the Effective Date of this

Lease if due to activities caused by Lessee, its Agents or Invitees occurring on the Premises after the Effective Date.

5.8 To the extent permitted by law and subject to the monetary limitations contained in § 768.28 Florida Statute, the Lessor shall pay, defend, indemnify and save harmless the Lessee, its agents, guests, invitees and employees from all suits, actions, claims, demands, damages, including attorney's fees and costs arising out of any government action or environmental claim brought by a Federal, State or Local agency requiring the remediation of environmental contamination to the extent that any such claims, fines and/or penalties imposed are proven by Lessee to have existed prior to the Effective Date of this Lease, caused by a third party or originated from causes otherwise not attributed to Lessee's activities.

#### **SECTION 6**

The Lessee may not sublet or assign, including corporate mergers and acquisitions, all or any portion of the Premises without the prior written approval of the Lessor, of which said approval will not be unreasonably withheld. In reviewing a request by the Lessee to sublet or assign all or any portion of the Leased Premises, the Lessor will consider, *inter alia*, the permitted and intended uses of the Leased Premises and the factors used to establish the rent and other fees under Section 2 of this Lease. If the Lessor approves the sublease or assignment of any portion of the Leased Premises, the Lessee shall remain liable for any and all obligations under this Lease, unless the Lessor determines in writing on the basis of evidence presented that the sub-lessee or assignee has the requisite financial capacity, resources and business plan to satisfy any and all obligations hereunder. The requirement to obtain the Lessor's approval applies, without limitation, to any assignment or sublease to or by a trustee or receiver in federal or state bankruptcy,



receivership or other insolvency proceeding; and the sale, assignment or transfer of all or substantially all of the Lessee's assets. Use of the Premises by any sub-lessee shall be restricted to the uses as defined in Section 5 of this Lease, unless otherwise agreed to by Lessor in writing.

## **SECTION 7**

7.1 Lessee shall pay, defend, indemnify and save harmless the Lessor, its agents, guests, invitees and employees from all suits, actions, claims, demands, damages, losses and other reasonable expenses, including attorney's fees, and costs of every kind and description to which the Lessor, its agents, guests, invitees or employees may be subjected to by reason of injury to persons or death or property damage, resulting from the negligence of the Lessee, its agents, guests, invitees or employees, arising from and/or in connection with this lease or any operations necessary relating to the occupancy, maintenance, repair or improvement by the Lessee of the Premises.

7.2 The Lessee shall defend, indemnify and save harmless the Lessor, its agents, guests, invitees or employees, against any claim or liability, including attorney's fees, arising from or based upon the violation of any federal, state, county or city law, by-law, ordinance, or regulation by such Lessee, its agents, guests, invitees, servants or employees.

7.3 The Lessee covenants and agrees to comply with all provisions of the Insurance Requirements, attached hereto as **Exhibit "B"** and incorporated by reference herein. The amounts of insurance coverage set forth in **Exhibit "B"** are set in accordance with the Lessee's use of the Premises as defined in Section 5 herein. In the event of any change, alteration or expansion of the use of the Premises, the minimum limits of such

coverage shall be subject to reasonable adjustments as determined by the Lessor so as to reflect any increase in risk or exposure.

7.4 During the term of this Lease and any extension or renewal hereof, the Lessee shall keep in force fire legal liability and all perils insurance coverage in an amount of \$100,000.00 with a reputable insurance company authorized to do business in the State of Florida. Each policy required under this lease shall name the Lessor, City of Lakeland, as an additional insured and carry a provision that it will not be canceled without a thirty (30) day notice to the Lessor. The Lessee shall provide a certificate showing the insurance to be in effect to the Lessor.

7.5 If at any time during the term of this Lease the Premises and its related facilities (including the parking area, or any portion thereof) should be damaged or destroyed by any casualty, Lessor at its sole discretion may elect not to rebuild. If Lessor makes this determination, lease shall be terminated as of the date of such casualty. Should Lessor decide to rebuild, then Lessor shall forthwith remove resulting debris, and repair or rebuild the damaged or destroyed structures or other improvements to the condition in which such structures and improvements existed prior to such casualty and return such structures and improvements to working order, whether or not any insurance proceeds shall be awarded to Lessor as a result of such damage or destruction. All rent shall be apportioned and/or abated during the time of any rebuilding or repair if the Lessee is unable to perform its Maintenance functions in all or a portion of the Premises.

7.6 Lessee shall cause to be inserted in any policy or policies of insurance acquired by them with regard to this lease a so-called "waiver of subrogation" clause. Lessee hereby waives, releases and discharges Lessor, its agents and employees from all claims whatsoever arising out of loss, claim, expense or damage to or destruction covered

by insurance arising out of this agreement notwithstanding that such loss, claim, expense or damage may have been caused by Lessor, its agents or employees, and Lessee agrees to look to the insurance coverage only in the event of such loss.

7.7 To the extent permitted by law and subject to the monetary limitations set forth in Florida Statute §768.28, Lessor shall pay, defend, indemnify and save harmless the Lessee, its agents, guests, invitees and employees from all suits, actions, claims, demands, damages, losses and other reasonable expenses, including attorney's fees, and costs of every kind and description to which the Lessee, its agents, guests, invitees or employees may be subjected to by reason of injury to persons or death or property damage, resulting from the negligence of the Lessor, its agents, guests, invitees or employees, arising from and/or in connection with this Lease or any operations or actions of the Lessor, its agents, guests, invitees or employees on or near the Premises.

7.8 To the extent permitted by law and subject to the monetary limitations set forth in Florida Statute §768.28, Lessor shall defend, indemnify and save harmless the Lessee, its agents, guests, invitees or employees, against any claim or liability, including attorney's fees, arising from or based upon the violation of any federal, state, county or city law, by-law, ordinance, or regulation by Lessor, its agents, guests, invitees, servants or employees.

## **SECTION 8**

The Lessor reserves the right for the Airport Director, or his duly authorized representative, to enter the leased premises during normal business hours for the purpose of performing such inspections considered necessary by the Director, including without limitation compliance with the terms of this Lease, the Airport Minimum Standards and the Airport Rules and Regulations, and Lessee does hereby consent to such entry and waive

any right to require a warranty for such inspection, provided that such entry and inspections shall not interfere with the Lessee's operations or the conduct of its business. The Lessee, after written notice, shall use its reasonable efforts to promptly correct any condition which is a hazard to life or property. The Lessee agrees not to have explosives, gasoline or other highly flammable materials, in, on or about the premises that do not meet the Airport Minimum Standards, Rules and Regulations or other standards/compliance requirements required by any governmental agency with jurisdiction or for reasons of safety.

## **SECTION 9**

9.1 The Lessee shall, at its expense, perform general maintenance associated with the Premises such as changing of light bulbs and pay for any Premises expenses incurred due to the misuse or negligence of its employees. The Lessor shall be responsible for all structural components, which shall include roof, HVAC and Hangar Doors, but shall not include alterations necessitated and/or requested by Lessee which will be specifically identified at time of alteration.

9.2 The Lessee shall, at its expense, maintain the premises, including any structures thereon, in a neat and orderly condition at all times. Lessee shall maintain the grounds and exterior signage of the building so as to present a neat and attractive exterior appearance at all times during the term of this Lease. Lessee shall be responsible for the neatness and orderliness of the premises, removal of trash and garbage arising out of the Lessee's occupancy.

9.3 Lessee shall not have authority to make any modifications or alterations to premises without prior written consent of the Airport Director, of which said consent will not

be unreasonably withheld. The primary consideration in the approval process shall be the best interest of the Airport and the public.

9.4 The Lessee shall secure its own trash removal service outside the airfield fence (Aircraft Operating Area) at a designated location defined by the Lessor and shall have such services performed on not less than on a once a week basis.

9.5 Lessee shall be responsible for ordinary maintenance and repair of all concrete areas and all asphalt areas within the premises. Lessee shall be responsible for repairs caused by fuel spills or other causes related to the operation of the Lessee or customers or invitees of the Lessee and must notify Lessor in the event any spills occur.

#### **SECTION 10**

Should the Lessee default in the payment of the rent or the performance of any of the promises, covenants or agreements herein made, the Lessor may, at its option, if such default continues after giving the Lessee fifteen (15) days written notice in the case of a default in the payment of the rent and thirty (30) days notice in the case of any other default, declare all future payments hereunder immediately due and payable. Lessor shall have a lien upon any and all buildings and other property of the Lessee located upon the Premises at the time of default for any amount due the Lessor by the Lessee. In addition, Lessor reserves the right to prevent access to the Airport, excluding the leased Premises, by inactivating badge or security access due to non-payment. If Lessee's default requires for its cure a period longer than that allocated in this Section, Lessee shall not be in default if, in the Lessor's sole opinion, the Lessee proceeds diligently to effectuate the cure and same is accomplished within a reasonable period of time.

## **SECTION 11**

Upon the occurrence of an event of default, as set forth in Section 10, Lessor may at its option exercise any one or more of the following remedies:

(a) The Lessor may terminate this Lease by giving to the Lessee written notice of Lessor's intention to do so, in which event the term of this Lease shall end and all right, title and interest of the Lessee hereunder shall expire on the date stated in such notice, which shall not be less than five (5) days after the date of receipt by Lessee of the notice by the Lessor of its intention to so terminate; or

(b) The Lessor may terminate the right of the Lessee to possession of the Premises or any portion thereof by giving written notice to the Lessee that the Lessee's right of possession shall end on the date stated in such notice, which shall not be less than five (5) days after the date of the receipt by Lessee of the notice by the Lessor of its intention to so terminate the right of possession; or

(c) The Lessor may enforce the provisions of this Lease and may enforce and protect the right of the Lessor hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein or for the enforcement of any other appropriate legal or equitable remedy.

(d) If the Lessor exercises either of the remedies provided for in sub-paragraphs (a) or (b), the Lessor may then or at any time re-enter the Premises subject to order of a court of competent jurisdiction and in accordance with Florida law.

(e) If the Lessor terminates the Lessee's right of possession pursuant to sub-paragraph (b), the Lessor may re-enter the Premises or any portion thereof and subject to order of a court of competent jurisdiction and in accordance with Florida law take possession of all or any portion of the real property, may move any portion of the Lessee's property thereon which the Lessor elects so to do, and may sub-let or re-let the Premises or any part thereof from time to time for all or any part of the unexpired part of the then term hereof, or for a longer period, and the Lessor may collect the rents from re-letting or sub-letting and apply same, first to the payment of the rents payable hereunder and in the event that the proceeds from such re-letting or sub-letting are not sufficient to pay in full the foregoing, the Lessee shall remain and be liable therefore. The Lessee promises and agrees to pay the amount of any such deficiency and the Lessor may at any time sue and recover judgment for any such deficiency or deficiencies. The Lessor agrees, to the extent reasonable, to use its best efforts to mitigate any damages in the event of a default by Lessee.

Upon the occurrence of an event of default by Lessor, Lessee may, at its option, exercise any one or more of the rights and remedies in law and/or in equity allowed under the laws of the State of Florida.

Lessor or Lessee's failure to take advantage of any default or breach of covenant on the part of the other party shall not be or be construed as a waiver thereof, nor shall any custom or practice which may grow between the parties in the course of administering this Lease be construed to waive or to lessen the right of Lessor or Lessee, as

applicable, to insist upon the performance by the other party of any term, covenant or condition hereof, or to exercise any rights given Lessor for Lessee, as applicable, on account of any such default. A waiver of a particular breach or default shall not be deemed to be a waiver of the same or any other subsequent breach or default.

## **SECTION 12**

No remedy herein conferred upon or reserved by the Lessor is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and so often as may be deemed expedient. In order to entitle the Lessor or Lessee to exercise any remedy reserved to it in this article, it shall not be necessary to give any notice, other than such notice as may be herein in this Lease expressly required.

## **SECTION 13**

13.1 This Lease, and all provisions hereof, shall be subordinate to all the covenants and restrictions of the deeds under which the Lessor acquired the property known as the Lakeland Linder Regional Airport from the United States of America, insofar as such covenants and restrictions remain in effect, such deeds being identified as follows:

- (a) Quitclaim Deed and Surrender of Lease dated September 26, 1947, between the United States of America and City of Lakeland, recorded in Deed Book 816, page 571, Public Records of Polk County, Florida; and



(b) Supplemental Quitclaim Deed dated April 20, 1948, between the United States of America and the City of Lakeland, recorded in Deed Book 832, page 311, Public Records of Polk County, Florida;

except however, any such covenants and restrictions may hereafter become ineffective or as shall have been or may hereafter be extinguished or released, whether by statute, rule or regulations, interpretation, judicial decision, or deed or other instrument, including but not limited to the release of the "National Emergency Use Provisions" by the Deed of Release dated December 17, 1959, recorded in Official Records Book 389, page 338, current public records of Polk County, Florida, and the extinguishment of the restrictions on use for industrial or manufacturing purposes by the Act of Congress on July 30, 1947 (61 Stat. 678).

13.2 This Lease shall be subordinate to the provisions of any existing or future agreement entered into between the Lessor and the United States of America for the improvement or operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the airport.

13.3 Should the Federal Aviation Administration issue an order determining that any provision herein is inconsistent with any covenant or restriction of the deeds under which the Lessor acquired the Airport, or the provisions of any existing or future agreement entered into between the Lessor and United States of America, the parties shall amend this Lease as necessary to resolve the inconsistency.

13.4 This Lease and all the provisions hereof shall be subject to whatever right the Government of the United States of America now has or in the future may have or acquire, affecting the control, operation, regulation and reacquisition of the Airport or the

exclusive or nonexclusive use of the Airport by the United States of America during the time of war or national emergency.

#### **SECTION 14**

Notwithstanding anything herein contained that may be or appear to the contrary, it is expressly understood and agreed that nothing herein shall be understood to confer an exclusive right upon the Lessee to conduct any aeronautical activity at the Airport in violation of 49 U.S.C. Section 40103(e) or 49 U.S.C. Section 47107(a)(4).

#### **SECTION 15**

15.1 The Lessee, for itself, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

(a) no person on the grounds of race, color, creed, sex or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of the facilities;

(b) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, creed, sex or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and

(c) that the Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, entitled *Nondiscrimination in Federally-Assisted*

*Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as such Regulations may be amended.*

15.2 In the event of a breach of any of the above nondiscrimination covenants, the Lessor shall have the right to terminate the lease subject to order of a court of competent jurisdiction and in accordance with Florida law and to re-enter and repossess the leased land and the facilities thereon, and hold the same as if the lease had never been made or issued. This provision shall be subject to the procedures of Title 49, Code of Federal Regulations, Part 21, including exercise or expiration of appeal rights.

15.3 Lessee shall furnish the aeronautical services permitted hereunder on a reasonable, and not unjustly discriminatory, basis to all users of the Airport. Lessee shall charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that Lessee is allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

#### **SECTION 16**

The Lessor reserves the right to take whatever actions necessary for the operation, safety, maintenance, and improvement of the Airport and its appurtenances, without interference or hindrance, with appropriate consideration for the continuity and profitability of the Lessee's operations and the payment of the obligations to the Lessor herein. In the event of actions taken by the Lessor as provided for in this Section 16 whereby Lessee cannot continue its operations in accordance with the Use provided for in this Lease, then upon such action by the Lessor, Lessee shall have the right to terminate this Lease upon reasonable written notice to Lessor and thereafter be released from any further obligations except with regard to expenses incurred by Lessee prior to the Lease termination and those provisions involving indemnity which shall survive the termination of the Lease.

## **SECTION 17**

The Lessor reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the leased land, together with the right to cause in the airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the airspace for landing on, taking off from or operating on the airport.

## **SECTION 18**

The Lessee, its officers, employees, guests, invitees and suppliers of materials and services, shall have the right of ingress and egress over public right-of-way to the Premises for the purpose of permitting Lessee to enjoy the rights, uses, and privileges granted by the Lessor.

## **SECTION 19**

19.1 The Lessee specifically covenants and agrees to observe and obey all lawful rules and regulations which have been or may be adopted and promulgated by the Lessor for operation at the Airport, including without limitation the Airport Rules and Regulations, as the same may be amended from time to time. The Lessee shall conduct and operate its activities in accordance with any applicable federal, state and local laws, ordinances, regulations, directives, orders, and judicial decisions. The Lessee specifically shall comply with all applicable federal, state and local statutes, regulations and ordinances on the subject of environmental protection, including without limitation all EPA regulations, guidelines and permitting requirements associated with Lessee's business operations performed on the Premises.

19.2 Lessee specifically covenants and agrees to observe and obey all applicable federal laws on the subject of airport and aviation security, all applicable regulations and

directives issued by the Transportation Security Administration, and all ordinances and rules issued by Lessor related to security, including without limitation rules issues in furtherance of the Lessor's security program. Lessee further covenants and agrees to alter and improve the Premises as required to comply with any such law, regulation, directive, ordinance or rule specifically issued for Maintenance, Repair and Overhaul (MRO) businesses.

## **SECTION 20**

20.1 The Lessor hereby designates the Director of the Lakeland Linder Regional Airport as its official representative with the full power to represent the Lessor in all dealings with the Lessee in connection with the lease or the leased land, subject to approval by the Lakeland City Commission. The Lessor may designate by written notice, addressed to the Lessee, other representatives from time to time, and such representatives may exercise those rights and duties of the Lessor as may be necessary to effectuate the purposes of this Lease.

20.2 Notice to the Lessor shall be sufficient if either mailed by first class mail, postage prepaid, addressed to Airport Director, Lakeland Linder Regional Airport, City of Lakeland, 3900 Don Emerson Drive, Suite 210, Lakeland, Florida 33811, or delivered at such address, and notice to the Lessee named herein shall be sufficient if mailed by first class mail to Lessee at 3445 Aircraft Drive, Lakeland, FL 33811. Either party may change its address at which notice is to be mailed or delivered, by giving written notice of such change of address to the other party in the manner provided in this section.

## **SECTION 21**

This Lease shall be binding upon and inure to the benefit of the parties and their respective successors and assigns to the extent assignment and subletting are permitted.

**SECTION 22**

Should it become necessary for either party to bring an action at law or equity to enforce or interpret this agreement or for the Lessor to bring an action to remove the Lessee from the Premises, the prevailing party shall be entitled to all costs, including reasonable attorney's fees at both trial and appellate levels.

**SECTION 23**

This Lease shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any action brought to enforce or interpret this agreement or to remove Lessee from the Premises shall be Polk County, Florida.

**SECTION 24**

The terms and provisions of this Lease, and each sentence and paragraph hereof, are severable, and if any such term or provision shall be held invalid or unenforceable, all other terms and provisions hereof shall continue in force and effect.

**SECTION 25**

Provided Lessee is not in default of any of the terms and conditions of this Lease, Lessor covenants and warrants that Lessee shall have quiet, peaceable possession and enjoyment of the Premises for the term hereof.

**SECTION 26**

In compliance with Section 404.056, Florida Statutes, Lessee is hereby made aware of the following: RADON GAS IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING

RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY PUBLIC HEALTH UNIT.

**IN WITNESS WHEREOF**, the parties hereto have caused this Lease to be executed and their respective seals to be hereunto affixed, the day and year first above written.

ATTEST:

CITY OF LAKELAND, FLORIDA  
a municipal corporation

BY: \_\_\_\_\_  
Kelly S. Koos  
City Clerk

BY: \_\_\_\_\_  
R. Howard Wiggs  
Mayor

(Seal)

APPROVED AS TO FORM AND  
CORRECTNESS:

BY: \_\_\_\_\_  
Timothy J. McCausland  
City Attorney

Attest:

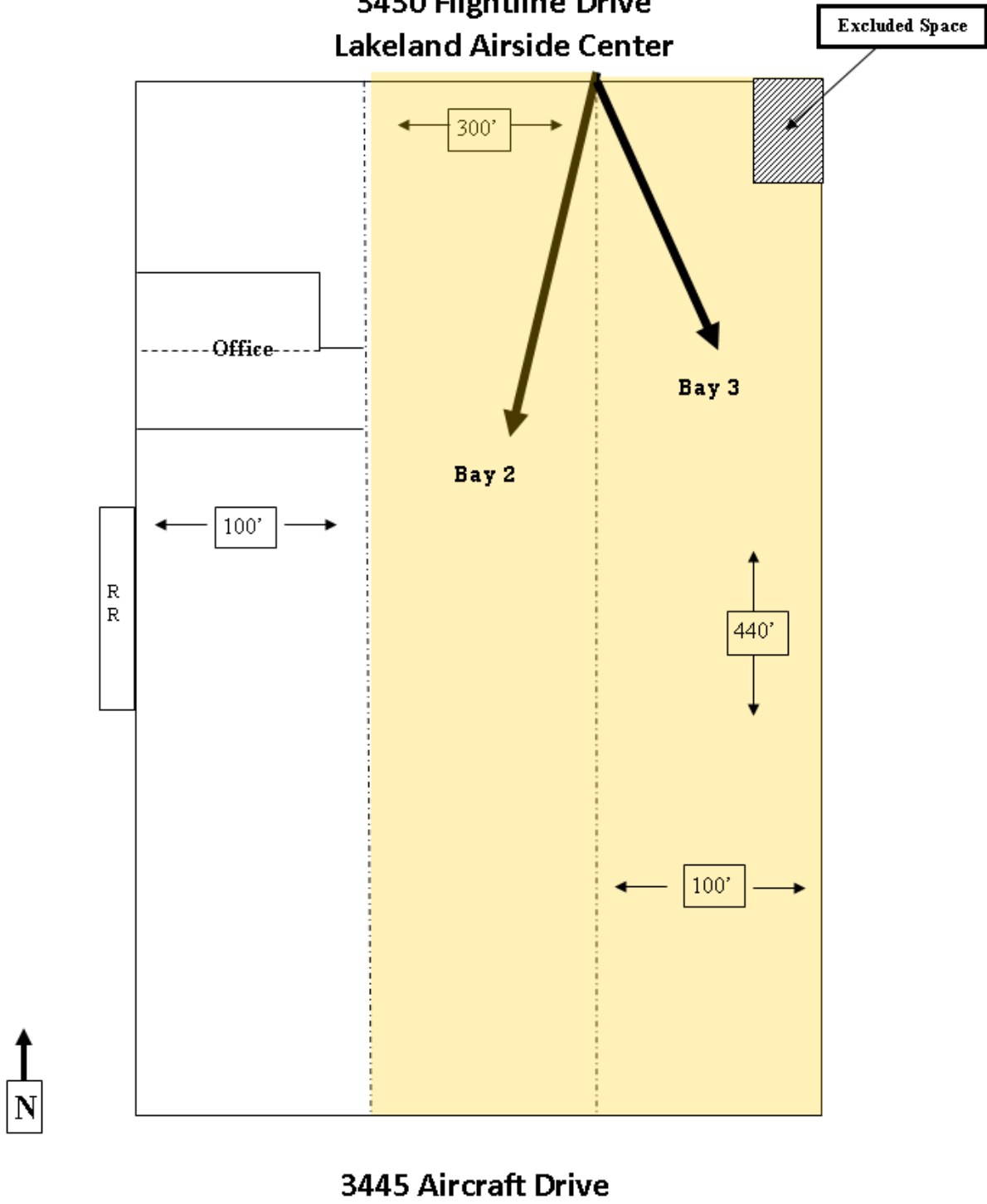
FLORIDA MODIFICATION  
SPECIALISTS, LLC

By: \_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

# EXHIBIT "A"

3430 Flightline Drive  
Lakeland Airside Center





**INSURANCE REQUIREMENTS**  
**“Exhibit B”**

**STATEMENT OF PURPOSE**

The City of Lakeland (the “City”) from time to time enters into agreements, leases and other contracts with Other Parties (as hereinafter defined).

Such Agreements shall contain at a minimum risk management/insurance terms to protect the City's interests and to minimize its potential liabilities. Accordingly, the following minimum requirements shall apply:

**CITY DEFINED**

The term City (wherever it may appear) is defined to mean the City of Lakeland itself, its Commission, employees, volunteers, representatives and agents.

**OTHER PARTY DEFINED**

The term Other Party (wherever it may appear) is defined to mean the other person or entity which is the counter-party to the Agreement with the City and any of such Other Party's subsidiaries, affiliates, officers, employees, volunteers, representatives, agents, contractors and subcontractors.

**LOSS CONTROL/SAFETY**

Precaution shall be exercised at all times by the Other Party for the protection of all persons, including employees, and property. The Other Party shall comply with all laws, rules, regulations or ordinances related to safety and health, and shall make special effort to anticipate and detect hazardous conditions and shall take such precautionary and prompt action where loss control/safety measures should reasonably be expected.

The City may order work to be stopped at any time, without liability, if conditions exist that present immediate danger to persons or property. The Other Party acknowledges that such stoppage, or failure to stop, will not shift responsibility for any damages from the Other Party to the City.

**INSURANCE - BASIC COVERAGES REQUIRED**

The Other Party shall procure and maintain the following described insurance, except for coverage specifically waived by the City of Lakeland, on policies and with insurers acceptable to the City, and insurers with AM Best ratings of no less than A.

These insurance requirements shall in no way limit the liability of the Other Party. The City does not represent these minimum insurance requirements to be sufficient or adequate to protect the Other Party's interests or liabilities, but are merely minimums.

"Except for workers' compensation and professional liability, the Other Party's insurance policies shall be endorsed to name the City of Lakeland as additional insured. It is agreed that the Other Party's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by The City of Lakeland for liability arising out of the operations of this agreement."

## **Insurance Requirements (cont'd)**

### **INSURANCE – BASIC COVERAGES REQUIRED (cont'd)**

Except for workers compensation, the Other Party waives its right of recovery against the City, to the extent permitted by its insurance policies.

The Other Party's deductibles/self-insured retentions shall be disclosed to the City and may be disapproved by the City. They shall be reduced or eliminated at the option of the City. The Other Party is responsible for the amount of any deductible or self-insured retention.

Insurance required of the Other Party or any other insurance of the Other Party shall be considered primary, and insurance of the City shall be considered excess, as may be applicable to claims which arise out of the Hold Harmless, Payment on Behalf of the City of Lakeland, Insurance, Certificates of Insurance and any Additional Insurance provisions of this agreement, contract, or lease.

**Business Automobile Liability:** Business Auto Liability coverage is to include bodily injury and property damage arising out of ownership, maintenance or use of any auto, including owned, non-owned and hired automobiles and employee non-ownership use.

The liability limits shall not be less than:

Bodily Injury and Property Damage	\$500,000 Single limit each occurrence
--------------------------------------	---

**Workers' Compensation:** Workers' Compensation coverage to apply for all employees for statutory limits and shall include employer's liability with a limit of \$100,000 each accident, \$500,000 disease policy limits, \$100,000 disease limit each employee. ("All States" endorsement is required where applicable). If exempt from Worker's Compensation coverage, as defined in Florida Statute 440, the Other Party will provide a copy of State Workers' Compensation exemption.

All subcontractors shall be required to maintain Worker's Compensation.

The Other Party shall also purchase any other coverage required by law for the benefit of employees.

### **ADDITIONAL INSURANCE**

**Additional Insurance:** The City requires the following types of insurance.

**Hangar keepers liability:** Provides coverage for damage to or destruction of the aircraft of others while in the insured's custody for storage, repair, or safe keeping and while in or on the schedule premises.

The liability limits shall not be less than:                      \$1,000,000

**Premises Liability:**

The liability limits shall not be less than:                      \$1,000,000 single limit each occurrence

## **EVIDENCE/CERTIFICATES OF INSURANCE**

Required insurance shall be documented in Certificates of Insurance which provide that the City shall be notified at least 30 days in advance of cancellation, nonrenewable, or adverse change.

New Certificates of Insurance are to be provided to the City at least 15 days prior to coverage renewals.

If requested by the City, the Other Party shall furnish complete copies of the Other Party's insurance policies, forms and endorsements.

For Commercial General Liability coverage the Other Party shall, at the option of the City, provide an indication of the amounts of claims payments or reserves chargeable to the aggregate amount of liability coverage.

Receipt of certificates or other documentation of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required does not constitute a waiver of the Other Party's obligation to fulfill the insurance requirements herein.

General Aviation Airports  
Suggested Minimum Insurance Requirements

Classification	Aircraft Liability	Premises Liability	Auto Mobile Equipment	Workers Compensation	Hangarkeepers Legal	Remarks
Air Charter						
Piston Engine Planes	\$2,000,000	\$ 1,000,000	\$ 500,000	Statutory		
Passenger capacity 1 - 4	\$2,000,000	\$ 1,000,000	\$ 500,000	Statutory		
Passenger capacity 5 - 9	\$5,000,000	\$ 1,000,000	\$ 500,000	Statutory		
Passenger capacity 10+	\$15,000,000	\$ 1,000,000	\$ 500,000	Statutory		
Passenger capacity 50+	Requires authorization from Risk Mgt.					
Air Cargo	\$5,000,000	\$ 1,000,000	\$ 500,000	Statutory		
Aircraft Operations						
Flight Instruction	\$1,000,000/\$100,000	\$ 1,000,000	\$ 500,000	Statutory		
Rental	\$1,000,000/\$100,000	\$ 1,000,000	\$ 500,000	Statutory		
Flying Clubs	\$1,000,000/\$100,000	\$ 1,000,000	\$ 500,000	Statutory		
Specialized Flying Services (1)	\$1,000,000/\$100,000	\$ 1,000,000	\$ 500,000	Statutory		
AOA Tenants						
FBO	\$5,000,000	\$ 5,000,000	\$ 500,000	Statutory	\$ 1,000,000	Products / EPL / Pollution
Aircraft Repair/Maint./Parts Sales		\$ 1,000,000	\$ 500,000	Statutory	\$ 500,000	Products / Pollution
Aircraft Hangar / Tie-Down Leases	Not applicable	\$ 1,000,000	\$ 500,000	Statutory		
Aircraft Sales	\$2,000,000/\$100,000	\$ 1,000,000	\$ 500,000	Statutory		Products
Restoration Services	Not applicable	\$ 1,000,000	\$ 500,000	Statutory	\$ 500,000	Products
Non-AOA Tenants						
Concessions	Not applicable	\$ 1,000,000	Not applicable	Statutory		Products / Liquor Liability
Restaurants / Liquor	Not applicable	\$ 2,000,000	Not applicable	Statutory		PUC - Motor Vehicle
Ground Transportation:						
6 seats or less	Not applicable	\$ 1,000,000	Not applicable	Statutory		
7 - 14 seats	Not applicable	\$ 5,000,000	Not applicable	Statutory		
15 seats or greater	Not applicable	\$ 10,000,000	Not applicable	Statutory		
Parking / Valet	Not applicable	\$ 1,000,000	Not applicable	Statutory		Garagekeepers Liability
Others	Not applicable	\$ 1,000,000	Not applicable	Statutory		
Airport Vendors						
Security Services	Not Applicable	\$ 5,000,000	Not applicable	Statutory		Personal Injury Liability
Janitorial Services	Not Applicable	\$ 1,000,000	Not applicable	Statutory		
Maintenance Providers	Not Applicable	\$ 1,000,000	\$ 500,000	Statutory		
Contractors	Not Applicable	\$ 5,000,000	\$ 500,000	Statutory		Contractors Protective
Architects / Engineers	Not Applicable	\$ 1,000,000	\$ 500,000	Statutory		Professional Liability
Others						

(1) Defined as sightseeing tours, aerial photography, aerial survey, crop dusting and aerial advertising etc.