

MEMORANDUM

TO: **Real Estate & Transportation Committee**
Commissioner Bill Read, Chairman
Commissioner Justin Troller
Commissioner Phillip Walker

FROM: City Attorney's Office

DATE: October 16, 2017

RE: **Sale of Property to LeFrois Associates, L.P.**

Attached hereto is a proposed contract for the sale of property located on the south side of Lakeland Linder Regional Airport adjacent to the existing Geico Facility to LeFrois Associates, L.P. The Buyer is a development entity that will construct a facility, and enter into a long-term lease with Geico General Insurance Company (Geico). The subject parcel consists of about 15 acres depicted on the attached Exhibit A with site access to be provided from Aviation Drive.

Purchase price is \$1,650,000 or \$110,000 per acre which is consistent with an appraisal by the airport. The Buyer will provide a \$10,000 cash deposit, and closing will take place as soon as possible following approval of the contract. The airport has obtained all necessary approvals for sale of the property. Purchaser will pay all costs of the transaction.

The City will rebuild Aviation Drive to public right of way specifications at its expense, and dedicate the 80-foot ROW to the public following the improvements to provide public access to the site. Geico will construct during its site development a ramp and bus shelter to facilitate bus service. Utilities will be made available to the site. Buyer will pay all the customary impact and connection fees.

The Buyer will construct for lease to Geico a 50,000-square foot building to be used as support and accessory purposes for the main 300,000 square foot facility owned by Geico that is adjacent to this site. Capital investment is approximately \$11.8m. Adequate parking will be provided on site, with projected occupancy by March 1, 2018. Following build out, and staffing, there will be an additional 500 new employees. The Buyer acknowledges the noise levels consistent with airport operations, and grants an easement for air space over the property for normal aircraft operations. They agree to abide by all use and height restrictions consistent with FAA regulations.

This conveyance is consistent with the airports and the city's economic development objectives. It is recommended that the appropriate city officials be authorized to execute all documents associated with closing.



PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the “Agreement”) made and entered into as of the Effective Date (as defined herein), by and between **LeFROIS ASSOCIATES, L.P.**, a New York limited partnership having its address at 1020 Lehigh Station Road, Henrietta, New York 14466 (“Purchaser”), and **CITY OF LAKE LAND**, a municipal corporation existing under the laws of the State of Florida, by and through its City Commission, having its address at 228 South Massachusetts Avenue, Lakeland, Florida 33801 (“Seller”).

WITNESSETH:

In consideration of the mutual promises and covenants herein contained and the sum of \$10.00 and other good and valuable consideration paid by Purchaser to Seller, receipt of which is hereby acknowledged by Seller, it is mutually covenanted and agreed by the parties hereto as follows:

1. Property: Seller hereby agrees to sell and convey to Purchaser, and Purchaser hereby agrees to purchase from Seller, subject to the terms and conditions hereinafter set forth, the property located in Polk County, Florida described on Exhibit A attached hereto and made a part hereof containing approximately 15 acres of land (the “Land”), together with any improvements located thereon (the “Improvements”), and together with the following:

(a) Other Property: To the extent Seller’s interest is assignable, Seller also agrees to convey to Purchaser all of Seller’s rights and interest in and to all other personal property (“Other Personal Property”), if any, pertaining to the Land, including the following:

(i) Licenses and Permits: Seller’s rights in and to any and all certificates of occupancy, licenses, permits, and other governmental approvals pertaining to the Land and Improvements and the use thereof;

(ii) Service Contracts/Warranties: Any and all rights under any existing service contracts, maintenance contracts and warranties pertaining to the Land, Improvements, and Other Personal Property that are approved by Purchaser; and

(iii) Other Rights: All of Sellers’ other rights, licenses, interests and properties pertaining to the Land, including, without limitation, all of Sellers’ right, title and interest in and to all water and sewer connections, development rights, including any vested rights, concurrency rights, zoning rights and site plan rights, if any, relating to the Land, to the extent transferable; and

(iv) Appurtenances and Additional Interests: Any and all rights, entitlements and appurtenances to the Land, including, but not limited to, rights of ingress and egress, any and all air space rights and subsurface rights, mineral rights, riparian and littoral rights, together with all pertinent rights and interests pertaining to adjacent streets and roadways.

(b) Easements: Any and all of Seller’s rights in and to all easements, if any, benefiting the Land or the Improvements. Seller further agrees to convey to Purchaser an easement

for ingress, egress and utilities over an area of real property eighty (80) feet in width running from to Pipkin Road to the Land (“Easement Area”), as further described within Exhibit A-1 attached hereto (the “Access Easement”), reasonably satisfactory to Purchaser’s counsel and which adequately serves the Property for Purchaser’s intended use.

All of the property described in Subsections (a) and (b) above, together with the Land and Improvements, are hereinafter sometimes collectively referred to as the “Property”.

2. Purchase Price: The purchase price to be paid by the Purchaser for the Property shall be ONE MILLION SIX HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$1,650,000.00).

3. Deposit:

(a) Deposit: Purchaser shall within five (5) days of the Effective Date deposit with GRAYROBINSON, P.A. (the “Escrow Agent”), the sum of TEN THOUSAND DOLLARS (\$10,000.00) (hereinafter called the “Deposit”, which term shall include all interest earned thereon) securing the obligations of the Purchaser hereunder, which shall be held in escrow by the Escrow Agent in accordance with the terms and conditions of this Agreement. The Deposit shall be automatically refunded to the Purchaser in the event Seller fails to close in accordance with the terms hereof. In all other events, the Deposit together with all interest earned thereon shall be disbursed in accordance with the terms and conditions set forth in this Agreement.

(b) IOTA Escrow Account: Any deposits received hereunder by the Escrow Agent shall be placed by Escrow Agent in the IOTA escrow account of Escrow Agent at a federally insured bank located in Lakeland, Florida (the “Depository”). Any interest earned on the Deposit shall inure to the benefit of the Florida Bar Foundation IOTA Program.

4. Access to Property:

Purchaser, its counsel, accountants, agents and other representatives shall have full and continuing access to all relevant documents and records of the Seller as they relate to the title, the physical conditions and the development and the operation of the Property (the “Property Data”). Seller shall within five (5) days of the Effective Date deliver to Purchaser true and correct copies of all Property Data in Seller’s possession. Purchaser its counsel, accountants, agents and other representatives shall also have the continuing right to enter upon the Property at any time after the Effective Date for the purpose of performing surveying, engineering, environmental tests and studies, test borings and such other similar investigatory work as the Purchaser shall consider appropriate; provided however that the property be restored to its pre-inspection condition, and shall have the further right to make such inquiries of governmental agencies, utility companies and other like parties and to make such feasibility studies and analyses as it considers appropriate. Seller shall cooperate with Purchaser in the performance of Purchaser’s due diligence investigation. Purchaser acknowledges and agrees that Purchaser assumes all risk of loss with respect to and arising out of Purchaser’s inspection or examination of the Property and agrees that Seller shall have no liability to Purchaser or Purchaser’s agents with respect thereto. Purchaser shall indemnify and hold Seller harmless from any and all costs, liabilities, damages, claims, liens, encumbrances and causes of action (including without limitation, reasonable attorneys’ fees) due

to or arising out of Purchaser's actions or the actions of any of Purchaser's agents on the Property in connection with Purchaser's exercise of its rights under this Article 4 and such indemnification obligations shall survive the Closing or termination of this Agreement.

5. Inspection Contingency: Purchaser shall have until midnight on the day before the Closing Date ("Inspection Period") to evaluate all matters deemed relevant by Purchaser with respect to the Property and to determine, in Purchaser's sole discretion, whether or not it will be suitable to Purchaser. Purchaser shall have the absolute and unconditional right to terminate this Agreement during the Inspection Period. If Purchaser notifies Seller in writing during the Inspection Period of Purchaser's election to terminate this Agreement, then this Agreement shall automatically terminate and the Deposit shall be delivered to Purchaser by Escrow Agent and the parties shall be relieved of all further liability under this Agreement, except as otherwise set forth in this Agreement. Purchaser's inspections pursuant to the Inspection Period shall be for Purchaser's sole benefit and shall not limit or negate any of Seller's obligations or assurances under this Agreement.

6. Representations and Warranties: Seller represents and warrants to Purchaser as of the date hereof and as of the Closing Date as follows:

(a) Pending Litigation: There are no known pending legal actions, suits or other legal or administrative proceedings affecting the Property or any portion thereof, nor has Seller actual knowledge that any such action is presently contemplated or threatened. In the event any such proceedings are hereinafter instituted, Seller will give Purchaser notice thereof and Seller shall dispose of such proceedings. If Seller is unable to dispose of such proceedings on terms acceptable to the Seller, prior to the Closing Date then the parties shall be relieved of all further liability and neither party shall have any further obligation or liability to the other, in which event Purchaser shall be entitled to the immediate refund of the Deposit plus all interest earned thereon. Purchaser and Seller may agree to extend the Closing Date in order to allow Seller additional time in which to dispose of such proceedings.

(b) Condemnation: There are no condemnation or eminent domain proceedings pending, and Seller has no actual knowledge of any condemnation or eminent domain proceedings contemplated against the Property or any part thereof, and Seller has received no notice of the desire of any public authority or other entity to make or use the Property or any part thereof.

(c) Notice of Violations: Seller has received no written notice of a violation of, any law, regulation, ordinance, order, restrictive covenant, or other requirement affecting the Property.

(d) Unrecorded Easements: Except for the Permitted Exceptions (as defined below), Seller has no knowledge of any unrecorded easements, restrictions or encumbrances affecting all or any part of the Property.

(e) Materially True Statements: No representation or warranty by Seller in this Agreement contains or will contain any untrue statement of a material fact.

(f) Parties in Possession: There are no adverse parties in possession of the Property or of any part thereof and there are no parties in possession thereof except Seller, and except for

the Permitted Exceptions (as defined below), no party has been granted any license, lease, or other right relating to the use or possession of the Property.

(g) Pending Contracts: There are no contracts or other obligations outstanding for the sale, exchange or other transfer of the Property or any portion thereof.

(h) Environmental. The Seller has no actual knowledge of 1) any violations of law, regulation, or ordinance pertaining to the disposal of any hazardous materials, wastes or substances, toxic wastes or substances, pollutants or contaminants, including but not limited to those as defined by the Resource Conservation and Recovery Act, 42 U.S.C. Section 9601-9674, as amended by the Superfund Amendments and Reauthorization Act of 1986, or any Florida Statute defining hazardous materials, wastes or substances, toxic wastes or substances, pollutants or contaminants (hereinafter collectively referred to as "Contaminants") on the Property; and 2) any Contaminants deposited, located, placed or released on the Property. If at any time after the Closing, the Purchaser determines in its sole discretion that there have been Contaminants deposited, located, placed or released on the Property prior to Closing, the Seller shall be obligated to pay all reasonable costs for immediate removal of those Contaminants which were deposited, located, placed or released on the Property.

Seller has no actual knowledge of any toxic wastes and/or hazardous substances (as such terms are defined under any applicable Federal or Florida law) ever having leaked or otherwise escaped or been spilled, discharged or released at, upon or into, or been buried under, any part of the Property during the period of ownership thereof by Seller; and, furthermore, Seller has no actual knowledge of any toxic wastes and/or hazardous substances ever having leaked or otherwise escaped or been spilled, discharged or released at, upon or into, or buried under, any part of the Property prior to the acquisition thereof by Seller.

7. Radon Gas: Radon 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. Seller represents that it has received no notice and is not otherwise aware of the presence of radon gas at the Property in excess of applicable governmental limitations.

8. Affirmative Covenants of Seller:

(a) No Change of Title: Except for those matters which can be liquidated and paid at Closing, Seller shall not cause or permit any mortgage, lien, encumbrance, covenant, condition, restriction, assessment, easement, right-of-way, obligation, encroachment or liability whatsoever, to be placed of record, affect the Title Commitment to be given Purchaser pursuant to this Agreement or otherwise exist, from the Effective Date to the date of termination of this Agreement. If any title defects are so placed of record, or otherwise exist contrary to the provisions hereof, the effect of: which can be removed and/or eliminated by the payment of money, Title and Closing Agent is hereby expressly authorized, directed and instructed to pay such monies at Closing from the monies otherwise payable to Seller at Closing and the net proceeds available to Seller at Closing shall be reduced accordingly. To the extent that monies available to Seller at

Closing are insufficient to cause said title exception(s) to be removed, Seller shall immediately cause sufficient additional monies to be deposited with Title and Closing Agent so as to enable Title and Closing Agent to cause said title exception(s) to be eliminated and/or removed of record.

(b) No Change of Zoning, Land Use Plan Classification or Development Permits: Provided that and for as long as this Agreement remains in full force and effect, Seller will not modify or change the existing zoning or land use plan classification for the Property, or other existing development permits, without the prior written consent of Purchaser.

(c) Condition and Maintenance of Property: Except for acts of God and activities related thereto, Seller agrees to maintain the natural amenities and contour of the land and soil in its natural condition. Seller agrees not to cut, clear, excavate, fill, dump or dispose of any materials or permit any of same, or engage in any development activity of any kind on the Property during the pendency of this Agreement.

(d) Assessments: Except as to assessments or charges caused by Purchaser's development of the Property, any assessment, special or otherwise, imposed on the Property prior to the Closing Date shall be the obligation of Seller and shall be paid in full on or before Closing.

(e) Seller Cooperation: Prior to and after Closing, to the extent required by any federal, state, or local governmental agencies, Seller shall cooperate with Purchaser in connection with obtaining any authorizations, consents, permits related to Purchaser's intended use of the Property which shall include, but is not limited to, Seller signing authorizations to make application for permits and government approvals (collectively, the "Government Approvals"). Purchaser, or Purchaser's successor and assignee, shall be solely responsible, at its own cost and expense, to pay to the appropriate authorities all (i) impact fees, if any, (ii) mobility fees, if any, (iii) utility capacity and connection fees, if any, (iv) application fees for procure of the Government Approvals, if any, and (v) all other governmental fees necessary to develop the purchased Property and construct improvements thereon, if any. The covenants of this paragraph 8(e) shall survive Closing.

9. Title, Survey, Environmental Reports:

(a) Title Commitment: Purchaser, at its sole cost and expense, shall cause GrayRobinson, P.A., as Closing Agent and as agent for Old Republic National Insurance Company (the "Title Company") to issue and deliver to Purchaser within ten (10) days from the Effective Date, an ALTA title commitment ("Title Commitment") in the minimum amount of \$1,650,000.00 (subject to increases based upon the cost of any improvements made to the Land by Purchaser after Closing), accompanied by one copy of all documents affecting the title to the Property and which constitute exceptions to the Title Commitment. Purchaser shall give Seller written notice (the "Title Notice") prior to Closing if Purchaser objects to any of the title exceptions including, without limitation, those that are revealed by the Survey or an inspection of the Premises other than the Permitted Exceptions referenced on the attached Exhibit "B" which Purchaser has agreed to accept (the "Permitted Exceptions"). In the event that Purchaser objects to any title exceptions, other than the Permitted Exceptions, Purchaser shall state in the Title Notice which exceptions to the Title Commitment are unacceptable and Seller shall within five (5) days of the date of such Title Notice

notify Purchaser if Seller elects to cure or not to cure the objections of the Purchaser; provided, however, that at the Closing all mortgages and any other liens that may be satisfied by the payment of money shall be satisfied of record. If Seller fails to timely notify Purchaser that Seller intends to cure the objections, Seller shall be deemed to have elected not to cure the same. All title exceptions not timely objected to by Purchaser and which are listed on Exhibit "B" shall be deemed "Permitted Exceptions." In the event Purchaser does not waive its objections (as set forth in the Title Notice) and if Seller elects not to attempt to eliminate the matters or is unable, after diligent, good faith efforts, to remove the matters within thirty (30) days after receipt of the Title Notice, Purchaser may, at its option, and as its sole remedy (i) accept title subject to the objections raised by Purchaser, in which event said objection(s) shall be deemed waived for all purposes, or (ii) rescind this Agreement, whereupon this Agreement shall terminate and the Deposit with interest shall be refunded to Purchaser. Purchaser shall elect one of the two options specified in the preceding sentence within five (5) business days after the earlier of the date that Purchaser receives notice from Seller that Seller has elected not to cure the objections or the last day of the 30 day period during which Seller attempts to eliminate the objections by Purchaser. In the event that Purchaser fails to timely make such election, Purchaser shall be deemed to have elected to rescind the Agreement pursuant to option (ii) above. The Title Commitment shall be updated by the Title and Closing Agent five (5) days prior to Closing. Any title exception appearing in the updated Title Commitment, other than a prior Permitted Exception hereunder, shall be treated as a title defect and shall be subject to the making of a written Title Notice by Purchaser after receipt of the updated Title Commitment prior to Closing.

(b) Survey: Purchaser shall, at Purchaser's expense, obtain an ALTA/ACSM or a Florida Minimum Technical Standards survey of the Property from a registered Florida land surveyor, which shall be certified to Purchaser, Seller, the Title Company and the Title and Closing Agent (the "Survey"). If the Survey reflects any encroachments, closure errors, or other material, adverse survey matters, Purchaser shall deliver written objections to Seller with respect to such matters prior to Closing along with a copy of the Survey (collectively, "Survey Objections"). Timely Survey Objections delivered by Purchaser shall be treated in the same manner as Title Objections hereunder in accordance with the provisions of Paragraph 9(a) above.

10. Conditions to Close: Notwithstanding anything to the contrary contained herein, this Agreement and the obligations of the parties under this Agreement are subject to and conditioned upon the following conditions being satisfied prior to Closing:

(a) Lease of Property to Geico: Purchaser and Geico General Insurance Company ("Geico") and/or Geico's affiliated entity transacting business within the State of Florida entering into an agreement for the construction of improvements on the Property for use by Geico and the lease of the Property to Geico on terms reasonably acceptable to Purchaser. This Agreement shall terminate immediately upon Purchaser providing notice to Seller that Purchaser is unable to reach an acceptable agreement with Geico.

(b) INTENTIONALLY OMITTED.

11. Closing: The purchase and sale contemplated by this Agreement shall close at the offices of GRAYROBINSON, P.A. ("Closing Agent") located in Lakeland, Florida, within three (3) business days after Purchaser provides notice to Seller that the Conditions to Close have been

satisfied (the "Closing Date"), or such earlier or later date as the parties may mutually agree upon (the "Closing").

12. Closing Costs and Adjustments: At Closing, the following items shall be borne, adjusted, prorated or assumed by or between Seller and Purchaser, as follows:

(a) Adjustments and Prorations:

(i) Real Estate Taxes: Seller is currently exempt from real estate and personal property taxes ("Taxes") and there will be no proration of Taxes.

(ii) Certified/Pending Liens: Any certified, confirmed and ratified governmental liens shall be paid by the Seller. Pending liens shall be assumed by the Purchaser, provided, however, that where the improvement has been substantially completed as of the Closing Date, such pending lien shall be considered as certified, confirmed or ratified, and Seller shall, at Closing, be charged an amount equal to the last estimate by the public body of the assessment for the improvement.

(b) Closing Costs:

(i) Each party shall bear the fees and charges of its respective attorneys, consultants, engineers, accountants, architects and other professionals and/or representatives;

(ii) Seller shall pay the cost of recording any corrective instruments;

(iii) Purchaser shall pay the cost of the Owner's and/or Lender's Title Insurance Commitment and Policy and all related title searches and charges; and

(iv) Purchaser shall pay all cost associated with any financing obtained by Purchaser; the cost of state documentary stamps which are required to be affixed to the Deed (defined below); the cost of all inspections, any Environmental Reports, the cost of recording the Deed, and the cost of the Survey.

13. Closing Documents:

(a) At the Closing, the Seller shall execute and deliver to Purchaser the following with respect to the Property being conveyed at that time by Seller:

(1) Counterpart of Closing Statement;

(2) City Deed (the "Deed") with exceptions for the Permitted Exceptions for the Property and also for relinquishment of the automatic reservation of mineral rights pursuant to Section 270.11, Florida Statutes;

(3) A Seller's Affidavit in form and content as may be reasonably required by the title insurance company to provide the "gap" coverage necessary to issue at Closing, an endorsement to the applicable Title Commitment, deleting the

standard “gap” exception, the standard mechanic’s lien exception and the standard parties in possession exception;

(4) Such resolutions, certificates and/or other documents relating to Seller as are reasonably required in connection with this transaction including but not limited to a certificate from the City Attorneys' Office or the City Clerk to be attached to the Deed evidencing the proper adoption of a resolution to sell the Property to Purchaser;

(5) An assignment of all of Seller’s right, title and interest in and to all water rights, zoning and concurrency rights, site plans and site plan approvals and any and all other development rights directly relating to the Property or arising from the Property;

(6) Such corrective instruments as may be required to deliver good and marketable title;

(7) The Access Easement in recordable form; and

(8) Any other documents reasonably necessary or advisable to consummate the transactions contemplated hereby.

(b) Purchaser’s Documents At Closing: At Closing, the Purchaser shall execute or cause to be executed by the appropriate persons and/or deliver to Seller the following:

(1) Counterpart of Closing Statement;

(2) Any other documents necessary or advisable to consummate the transaction contemplated hereby; and

(3) The Purchase Price, as increased or decreased by credits, prorations and adjustments, shall be paid by Purchaser to Seller in cash in the form of a confirmed federal wire transfer of immediately available funds.

14. Seller's Post-Closing Obligations. Seller shall comply with the following obligations which shall survive Closing:

(a) Construction of Road. Seller shall cause, at Seller's expense, to be designed and constructed within the Easement Area a road and required traffic improvements ("Road") which shall be completed not later than issuance of a certificate of occupancy for improvements on the Property. The Road shall be designed and constructed to meet the requirements of applicable governmental authorities. Concurrently with completion of construction of the Road, Seller shall dedicate the Road for public use. Seller shall provide to Purchaser documentation of the dedication of the Road for public use promptly after completion of construction.

(b) Installation of Utilities. Seller shall cause, at Seller's expense, the extension of utility services to serve the Property and the improvements which Purchaser intends to construct on the Property for the benefit of Geico, all utility services, including, electric service, and sewer

and water services in capacities adequate to serve the improvements to be constructed on the Property by Purchaser for the benefit of Geico. The construction and installation of the utilities shall be completed not later than ninety (90) days after the Closing Date.

14.1 Purchasers Post Closing Obligations. The Purchaser shall comply with the following obligations which shall survive the Closing Date:

(a) Install and construct at Purchaser's expense, a bus bay and shelter to be incorporated in the Access Road in accordance with Lakeland Area Mass Transit requirements, to be constructed concurrent with Purchasers site development if such installation and construction is required by the City of Lakeland as a part of the permitting process.

(b) Ensure that whoever the land is initially and subsequently conveyed to that they and their successors and assigns protect the rights and interest of the public in the Airport and prevent any use of the Property that would constitute an Airport hazard.

(c) Ensure that Purchaser and their successors and assigns shall not permit or allow access from the subject property onto Airport property for aeronautical purposes.

(d) Disposition of land shall be subject to retention or reservation of any interest or right therein needed to ensure such land will be only used for purposes compatible with noise levels related to Airport Operations.

These covenants must run with the described land conveyed for the benefit of the Seller and its successors and assigns in the ownership and operation of the Airport:

1. The Airport 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 real property, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in said airspace, and for use of said airspace for landing at, taking off from or operating from Airport.
2. The Airport reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of entry onto the real property herein conveyed to cut, remove, or lower any building, structure, poles, trees, or other object, whether natural or otherwise, of a height in excess of Federal Aviation Regulation (FAR) Part 77 surfaces relating to Airport. This public right must include the right to mark or light as obstructions to air navigation, any and all buildings, structures, poles, trees or other object that may at any time project or extend above said surfaces.
3. Purchaser expressly agrees for itself, its successors and assigns that the Property only be used for purposes that is compatible with noise levels of airport operations. The Property must not be used for residential purposes, which purposes include single family, multi-family or mobile home development; for education facilities (as described in state law); or other noise sensitive land use not compatible with airport noise as described in 14 Code of Federal Regulations Part 150, as amended.

4. The Purchaser expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth, and other obstructions on the property to a height which does not exceed the height requirements set forth in Part 77 of the FAA Regulations, as amended, or any similar regulations which may hereinafter be enacted relating to the Airport.
5. The Purchaser expressly agrees for itself, its successors and assigns, to file a notice consistent with requirements of FAR Part 77 (FAA Form 7460-1) prior to constructing any facility, structure, or other item on the land described above.
6. The Purchaser expressly agrees for itself, its successors and assigns, to not hereafter use, permit, or suffer use of the land described above in such a manner as to create electrical interference with radio communications between the installation upon the airport and aircraft or as to make it difficult for fliers to distinguish between airport lights and others, or as to impair visibility in the vicinity of the airport, or as otherwise to endanger the landing, taking off, or maneuvering of aircraft.
7. The Purchaser expressly agrees for itself, its successors and assigns, to not hereafter use, permit, or suffer use of the land described above in such a manner as to create a potential for attracting birds and other wildlife which may pose a hazard to aircraft. The grantee expressly agrees to follow the airport's Wildlife Hazard Management Plan. The Airport reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of entry onto the real property herein conveyed to inspect the property for compliance with the Airport's Wildlife Hazard Management Plan.

15. Default:

(a) If any of Seller's representations and warranties contained herein shall not be materially true and correct, or if Seller shall have failed to perform in any material respect any of the covenants and agreements contained herein to be performed by such Seller within the time for performance as specified herein (including Seller's obligation to consummate the transactions contemplated hereby), Purchaser as and for its sole and exclusive remedies, shall be entitled to either (i) elect to terminate this Agreement and receive the return of the Deposit; (ii) elect to waive any such conditions or defaults and to consummate the transactions contemplated by this Agreement.

(b) If any of Purchaser's representations and warranties contained herein shall not be true and correct, or if Purchaser shall have failed to perform in any respect, any of the covenants and agreements contained herein to be performed by Purchaser within the time for performance as specified herein (including Purchaser's obligation to consummate the transactions contemplated hereby), Seller as and for its sole and exclusive remedy, shall retain the Deposit, as liquidated damages and not as a penalty or forfeiture, actual damages being difficult or impossible to measure.

(c) As used in this Agreement, the word "default" is to mean that a party hereto has breached a term, covenant or condition contained herein; and, except for the failure to timely deliver any Deposit, and the failure to timely close (both of which shall have no cure period), such party has failed to cure same within ten (10) days from receipt of written notice from the other

party specifying the nature of the alleged default. No delay or omission in the exercise of any right or remedy accruing to one party upon any breach by the other party under this Agreement shall impair such right or remedy to be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by one party of any condition or of any subsequent breach of the same or any other term, covenant, or condition herein contained shall not be deemed to be a waiver of any other condition or of any subsequent breach of the same or any other term, covenant or condition contained herein.

16. Brokerage. Purchaser and Seller represent and warrant to each other that neither has had any dealings with any person, firm, broker or finder in connection with the negotiations of this Agreement and/or the consummation of the purchase and sale contemplated hereby and no other broker or other person, firm or entity is entitled to any commission or finder's fee in connection with this transaction. Purchaser does hereby indemnify, defend, and hold Seller harmless from and against any costs, expenses or liabilities for compensation, commission or charges which may be claimed by any broker, finder or other similar party by reason of any actions of Purchaser.

17. Assignment: Purchaser may assign or transfer its rights under this Agreement, without Seller's further consent if Purchaser provides Seller notice of the assignment at least one (1) day prior to the Closing.

18. Condemnation: In the event of any condemnation or eminent domain proceedings for any public or quasi-public purposes at any time prior to Closing, resulting in a taking of any portion of the Property (prior to Closing thereon), Purchaser shall have the option to be exercised within ten (10) business days from being advised of such proceedings (i) to cancel this Agreement, whereupon the Deposit shall be returned to the Purchaser and the parties shall thereupon be relieved of any and all further responsibility hereunder and neither party shall have any further obligation or liability to the other; or (ii) to close the transactions contemplated by this Agreement, in which event the Purchase Price shall not be reduced, provided, however, that Seller shall assign any applicable condemnation or eminent domain award to Purchaser. The terms and provisions of this Article 17 shall survive the Closing.

19. Notices: Any notice, request, demand, instruction or other document to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be (i) delivered personally with a receipt requested therefor or (ii) sent by a nationally recognized overnight courier service or (iii) sent by United States registered or certified mail, return receipt requested, postage prepaid or (iv) sent by completed and receipted facsimile or by electronic mail, (which facsimile or electronic mail shall be followed by a copy by another method specified in this Article or by regular U.S. Mail) to the parties at their respective addresses set forth below, and the same shall be effective (a) upon receipt or refusal if delivered personally, (b) one (1) business day after depositing with an overnight courier service, (c) two (2) business days after deposit in the mails if mailed or (d) the day sent by PDF electronic transmission with confirmation of receipt. A party may change its address or number for receipt of notices by service of a notice of such change in accordance with this Section. It is expressly understood and agreed to between the parties that counsel for the Purchaser and Seller are authorized to give notice on behalf of their respective clients. Any such notices shall be addressed to the party to whom notice is intended to be given at the address set forth below:

To Seller: CITY OF LAKELAND
228 South Massachusetts Avenue
Lakeland, Florida 33801
Attention: City Attorney
E-mail: Timothy.McCausland@lakelandgov.net

With Copy to: Gene Conrad
Airport Director
Lakeland Linder Regional Airport / City of Lakeland
3900 Don Emerson Dr., Suite 210
Lakeland, FL 33811
E-mail: gene.conrad@lakelandgov.net

To Purchaser: LeFROIS ASSOCIATES, L.P.
1020 Lehigh Station Road
Henrietta, New York 14466
Attention: Richard Lefrois, President
E-mail: rlefrois@lefrois.com

With a copy to: GRAYROBINSON, P.A.
One Lake Morton Drive
Post Office Box 3
Lakeland, Florida 33802
Attention: Stephen C. Watson, Esq.
E-mail: Steve.Watson@Gray-Robinson.com and
Copy: Kathy.Greiner@Gray-Robinson.com

To Escrow Agent: GRAYROBINSON, P.A.
One Lake Morton Drive
Post Office Box 3
Lakeland, Florida 33802
Attention: Stephen C. Watson, Esq.
E-mail: Steve.Watson@Gray-Robinson.com

20. Further Assurances: In addition to the foregoing, the parties hereto, at the time and from time to time at or after Closing, upon request of Purchaser or of the Seller, as the case may be, agree to do, execute, acknowledge and deliver all such further deeds, assignments, transfers, conveyances, authorizations, filings, consents, and assurances, as may be reasonably required for: (a) the better assigning, transferring, granting, conveying, assuring and confirming unto the Purchaser all of the applicable Seller's right, title and interest in and to the Property to be conveyed hereunder; and (b) the more effective consummation of the other transactions referred to in this Agreement.

21. Escrow: Any escrow agent, whether the Closing Agent or the Escrow Agent (separately referred to in this paragraph as the "escrow agent"), receiving funds or documents is authorized and agrees by acceptance thereof to promptly deposit and to hold same in escrow and

to disburse same subject to clearance thereof in accordance with the terms and conditions of this Agreement. Failure of the clearance of funds shall not excuse performance by the depositor. In the event of doubt as to its duties or liabilities under the provisions of this Agreement, the escrow agent may, in its sole discretion, continue to hold the monies which are the subject of this escrow until a judgment of a court of competent jurisdiction shall determine the rights of the parties thereto, or it may deposit all of the monies then held pursuant to this Agreement with the Clerk of the Circuit Court of Polk County, Florida, which Circuit Court shall have jurisdiction of the dispute, and upon notifying all parties concerned of such action, all liability on the part of the escrow agent shall fully terminate, except to the extent of accounting for any monies theretofore delivered out of escrow. In the event of any suit wherein the escrow agent is made a party by virtue of acting as such escrow agent hereunder, or in the event of any suit wherein escrow agent interpleads the subject matter of this escrow, the escrow agent shall be entitled to recover reasonable attorneys' fees and costs incurred through all levels of proceedings, said fees and costs to be charged and assessed as court costs in favor of the prevailing party. Except for the willful misconduct or gross negligence of the escrow agent, all parties agree that the escrow agent shall not be liable to any party or person whomsoever for misdelivery to Purchaser or Seller of monies subject to this escrow, unless such misdelivery shall be due to willful breach of this Agreement or gross negligence on the part of escrow agent. Seller acknowledges that it has been advised that escrow agent has acted and is also acting herein as counsel to Purchaser and Seller has no objection thereto. The foregoing paragraph shall survive the Closing.

22. Captions and Headings: Captions and Article headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement nor the intent of any provision hereof.

23. No Waiver: No waiver of any provision of this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted and any such written waiver shall only be applicable to the specific instance to which it related and shall not be deemed to be a continuing or future waiver.

24. Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

25. Binding Effect: This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.

26. Governing Law: This Agreement shall be construed and interpreted according to the internal laws of the State of Florida.

27. Gender: All terms and words used in this Agreement, regardless of the number and gender in which used, shall be deemed to include any other gender or number as the context or the use thereof may require.

28. Interpretation: This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that Seller and Purchaser have contributed substantially and

materially to the preparation of this Agreement. Wherever used in this Agreement, “any” means “any and all”; “including” is without limitation; “indemnify” means that the indemnitor will to the extent provided by law, defend, indemnify and hold the indemnitee harmless against any claims, demands, losses or liabilities asserted against or incurred by the indemnitee to any third party because of the subject matter of the indemnity; “may not” and other negative forms of the verb “may” each are prohibitory; and “will”, “must” and “should” each are mandatory. Unless this Agreement expressly or necessarily requires otherwise, (i) any time period measured in “days” means consecutive calendar days, except that the expiration of any time period measured in days that expires on a Saturday, Sunday or legal holiday automatically will be extended to the next day so that it is not a Saturday, Sunday or legal holiday; (ii) any action is at the sole expense of the party required to take it; (iii) the scope of any indemnity includes any costs and expenses, including reasonable attorneys’ fees through all levels of proceedings incurred in defending any indemnified claim, or in enforcing the indemnity, or both.

29. Entire Agreement: This Agreement and the Exhibits attached hereto contain the entire agreement between the parties. There are no promises, agreements, conditions, undertaking, warranties, or representations, oral or written, express or implied between the parties other than as herein set forth. No amendment or modification of this Agreement shall be valid unless the same is in writing and signed by the parties hereto. No waiver of any of the provisions of this Agreement or any other agreement referred to herein shall be valid unless in writing and signed by the party against whom enforcement is sought.

30. Time of the Essence: Time is of the essence in respect to this Agreement.

31. Effective Date: The “Effective Date” of this Agreement shall be the date the last of the Purchaser or Seller signs this Agreement.

32. Venue: Purchaser and Seller agree that the venue for any matters arising out of or in connection with this Agreement shall only be in the Circuit Court in and for the County of Polk, State of Florida.

33. Waiver of Jury Trial: PURCHASER AND SELLER WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THIS AGREEMENT. THIS WAIVER IS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY EACH PARTY AND EACH PARTY EXPRESSLY ACKNOWLEDGES THAT NEITHER THE OTHER PARTY NOR ANY PERSON ACTING ON BEHALF OF THE OTHER PARTY HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. EACH PARTY ACKNOWLEDGES TO THE OTHER THAT IT HAS READ AND UNDERSTANDS THE MEANING AND EFFECT OF THIS WAIVER PROVISION.

34. 1031 Tax Exchange: Purchaser and Seller agree to cooperate in effecting any 1031 tax deferred exchange in connection with this transaction in accordance with Section 1031 of the Internal Revenue Code, including execution of any documents that may be reasonably necessary to effect the exchange; provided that (a) the party requesting the exchange will bear all additional costs, if any, incurred in connection with the exchange, and (b) the non-requesting party shall not

be obligated to delay the closing or execute any note, contract, or other document providing for any personal liability which would survive the exchange. The requesting party shall be responsible for preparing all additional contracts, documents and escrow instructions (collectively, the "Exchange Documents") required by the exchange at its sole cost and expense, and the requesting party shall be responsible for making all determinations as to the legal sufficiency, tax considerations and other considerations relating to the proposed exchange, the Exchange Documents and the transaction contemplated thereby, and the cooperating party shall in no event be responsible for, or in any way deemed to warrant or represent any tax or other consequences of the exchange transaction arising by reason of the cooperating party's performance of the acts required hereby. Notwithstanding any provision hereof to the contrary no intermediary used in the 1031 or Like-Kind Exchange shall be personally obligated or liable to pay Seller any sums of money other than those sums of money deposited with the intermediary as a part of the exchange for the purpose of acquiring the Seller's property as replacement property pursuant to the terms of this Agreement. However, this provision shall not be deemed to limit Purchaser's obligations or liabilities hereunder.

(The remainder of this page was intentionally left blank; Signature pages to follow)

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement, as of the day and year first above written.

"SELLER"

Attest:

Kelly S. Koos, City Clerk

Approved as to form and correctness:

Timothy J. McCausland, City Attorney

CITY OF LAKELAND, a municipal corporation existing under the laws of the State of Florida

By: _____
Print Name: R. Howard Wiggs
As: Mayor
October __, 2017

“PURCHASER”

LeFROIS ASSOCIATES, LP., a limited partnership

By: _____
Print Name: _____
As: _____

October __, 2017

JOINDER OF ESCROW AGENT

The undersigned, as Escrow Agent, hereby joins in the execution of this Agreement solely for the purpose of (i) acknowledging and agreeing to its responsibilities as an escrow agent hereunder, subject to the provisions of Paragraph 20 hereof entitled "Escrow"; and (ii) acknowledging receipt from Purchaser of the Deposit.

GRAYROBINSON, P.A.

By: _____
Stephen C. Watson, Esq.

EXHIBIT "A"

Legal Description

A portion of the Northwest 1/4 of Section 9, Township 29 South, Range 23 East, Polk County Florida, being more particularly described as follows:

COMMENCE at the Southwest corner of the Northwest 1/4 of said Section 9; thence N.89°47'43"E., 1626.84 feet along the Southerly boundary line of said Northwest 1/4; thence N.00°12'17"W., 491.82 feet to the POINT OF BEGINNING; thence S.89°47'43"W., 512.24 feet; thence N.00°12'17"W., 241.76 feet; thence S.89°47'43"W., 469.27 feet; thence N.00°02'09"W., 539.99 feet; thence N.89°47'43"E., 979.92 feet; thence S.00°12'17"E., 781.75 feet to the POINT OF BEGINNING.

Containing 15.00 Acres, more or less

Exhibit “A-1”

Legal Description of the Access Easement

To be prepared by Purchaser’s surveyor and provided to Seller prior to Closing.

EXHIBIT "B"
TO
AGREEMENT
FOR SALE AND PURCHASE

Permitted Exceptions

1. General or special taxes and assessments required to be paid in the year 2017 and subsequent years.
2. Assignment of Sewer Capacity and Water Hook-Up Rights and Assignment of Warranties recorded in Official Records Book 3570, Page 2086, Public Records of Polk County, Florida.
3. Terms, conditions and restrictions contained in the Extended and Renewal Use Agreement attached as Exhibit B to the Assignment and Assumption of Use Agreement recorded in Official Records Book 3570, Page 2108, Public Records of Polk County, Florida.
4. Easement Agreement recorded in Official Records Book 1911, Page 1227, as partially released in Official Records Book 9105, Page 252, Public Records of Polk County, Florida.
5. Grant of Easement recorded in Official Records Book 4143, Page 20, Public Records of Polk County, Florida.