

MEMORANDUM

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

FROM: City Attorney's Office

DATE: May 16, 2016

RE: **Lease Modification with Knight Aviation, Inc.**

Attached hereto for your consideration is a proposed Lease Modification with Knight Aviation, Inc. (Knight Aviation) to the existing Land Lease Agreement approved by the City Commission on May 9, 1996. This Lease Modification provides for an extension of the Lease term as well as a rent increase and right of first refusal to develop a site adjacent to its current location.

Knight Aviation has been a tenant in good standing at the Airport since 1996. The company constructed a hangar and office facility on the one (1) acre lot and, along with its aircraft, operates Knight Industrial Equipment in its offices which provides engineering services for Bulk Material Handling Equipment and Turnkey Belt Conveyor Systems throughout the Southeastern United States, as well as overseas.

While the existing Lease has two (2) additional ten (10) year renewal options remaining, the Airport and Knight Aviation have renegotiated the Lease terms to provide for a twenty (20) year term with one (1) additional ten (10) year option of renewal for the one (1) acre parcel. Commencing May 1, 2016, and subject to approval by the City Commission, rent is set to increase from the current annual amount of \$7,643.16 (\$0.18 cents per square foot) to \$8,712.00 (\$0.20 cents per square foot) per year. Thereafter, rent is subject to an annual adjustment in accordance with the Consumer Price Index, with a not-to-exceed cap of 8% per year. In addition, this Lease Modification grants a right of first refusal to the Lessee to develop the one (1) acre parcel adjacent to the existing leased premises. Such right of first refusal shall be in effect from May 1, 2016 through September 30, 2017 and is non-transferable in the event the Lease is assigned.

It is recommended that the appropriate City officials authorize and execute this Lease Modification with Knight Aviation consistent with the terms and conditions specified above.

RS
attachment

FIRST MODIFICATION OF LEASE AGREEMENT

THIS FIRST MODIFICATION is made and entered into this 16th day of May 2016, by and between the **CITY OF LAKELAND, FLORIDA**, a Florida municipal corporation (“Lessor”), whose address is 228 S. Massachusetts Avenue, Lakeland, Florida 33801, and **KNIGHT AVIATION, INC**, a Florida corporation (“Lessee”), whose address is 3701 Airfield Drive West, Lakeland, Florida 33811.

WITNESSETH:

WHEREAS, For good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree to and do hereby modify that certain Lease Agreement between the parties dated May 9, 1996 (the “Lease Agreement”); and

WHEREAS, this First Modification of the Lease Agreement (“First Modification”) seeks to clarify and modify certain provisions of the Lease related to its term and rental rate of the Premises;

NOW THEREFORE, the parties hereto do mutually agree that the Lease Agreement entered into between Lessor and Lessee shall be amended as follows:

1. Section 1 of the Lease is hereby deleted in its entirety and replaced with the following:

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

additional term of twenty (20) years beginning May 1, 2016 (the "Commencement Date") and ending on April 30, 2036, the land owned and controlled by Landlord consisting of approximately one (1) acre (herein referred to as the "Premises"), located in and comprising a part of the Lakeland Linder Regional Airport more particularly described in **Exhibit "A"**, attached hereto and made a part hereof.

2. Section 2 of the Lease is hereby deleted in its entirety and replaced with the following:

SECTION 2.

2.1. The Lessee shall pay to the Lessor as Rent for the Leased Premises an annual amount of Eight Thousand Seven Hundred Twelve and 00/100 Dollars (\$8,712.00), commencing on the Commencement Date, in monthly installments of Seven Hundred Twenty-Six and 00/100 Dollars (\$726.00), together with sales taxes and all other applicable taxes, payable 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 interest at the annual rate of 18% from the date due until paid. All rents to be paid hereunder, including the fuel fees set forth in Section 4 hereof, shall be adjusted at the expiration of each one (1) year period the Lease is in effect in the amount to be determined by the percentile change in the Consumer Price Index , All Urban Consumers, U.S. City Average, All Items, as published by the Bureau of Labor Statistics, United States Department of Labor (the "CPI-U") using the date of commencement of this Lease as the initial base period for such determination.

2.2 The CPI-U for the month of April 2016 is hereby established as the "Base Index". Thirty (30) days prior to the beginning of each one (1) year period as defined in

subsection 2.1 hereof, the CPI-U shall be ascertained and the annual rent and other fees to be paid during the next one (1) year period shall be increased or decreased using the initial amount set forth herein by a percentage equal to the percentage of change in the CPI-U as compared with the prior year index, provided that the maximum annual increase or decrease shall not exceed 8%. In the event the CPI-U, or an equivalent or successor thereof, is not published at the time such adjustments are made, the amount of rent and other fees shall be governed by subsection 2.3 hereof, provided that if the CPI-U subsequently becomes available the Lessor shall be entitled to receive forthwith, the greater of the percentage change in the CPI-U or the adjustment required under subsection 2.3 hereof.

2.3 If at any time during the initial Lease term or any subsequent renewal term thereof, the United States Department of Labor, Statistics, or its successor or equivalent, shall discontinue issuance of the CPI-U, the parties agree to use other nationally recognized standard cost-of-living indices issued and published by the United States Government.

2.4 The Leased Premises are not assessed ad valorem property tax as of the Commencement Date of this Lease. In the event the Leased Premises becomes subject to taxation by legislative or judicial action, or a change in the policy of the Polk County Tax Assessor's Office, then the Lessee shall pay to Lessor any ad valorem taxes or other taxes thereafter assessed. 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

will pass through to the Lessee any ad valorem or other taxes or any other governmental charges or special assessments levied after the Effective Date pertaining to the Leased Premises.

2.5 Lessee is hereby granted a right of first refusal to develop the property adjacent to the existing leased Premises (hereinafter "Parcel") as more specifically identified in **Exhibit A-1**, attached hereto and incorporated herein by reference. Lessee's right of first refusal shall be based on the same terms and conditions as Lessor is prepared to accept from a third party at any time from the Commencement Date of this Lease until September 30, 2017, when such right shall expire. Lessor shall notify Lessee, in writing, of the receipt of any offer to develop said Parcel by a third party during the above-specified period and Lessee shall have thirty (30) days upon receipt of such written offer to notify Lessor, in writing, of its intent to exercise its right of first refusal to develop the Parcel. Lessee's right of first refusal shall be non-transferrable in the event the Lease is assigned during the first two (2) years of the initial Lease term. If Lessee decides to develop the Parcel prior to September 30, 2017 and before any other development offers are made, then said Parcel shall be added to this Lease subject to the same terms and conditions contained herein.

3. Section 3 of the Lease is hereby deleted in its entirety and replaced with the following:

SECTION 3.

3.1 The Lessee, so long as it is not in default shall have the right and option to renew this Lease for one (1) additional term of ten (10) years, by providing written

notification to the Lessor of its intent to do so at least sixty (60) days prior to the expiration of the initial Lease term upon the same terms and conditions as herein set forth

3.2 Rent during any renewal term shall be adjusted in accordance with the provisions set forth in of Sections 2 and 3 hereof.

4. The first sentence of Section 22.1 is hereby deleted and modified as follows:

22.1 The Lessor 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.

5. The first sentence of Section 22.2 is hereby deleted and modified as follows:

22.2 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 3701 Airfield Drive West, Lakeland, Florida 33811.

Except as otherwise modified herein all terms and conditions of the Lease Agreement made thereto shall remain in full force and effect.

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

CITY OF LAKELAND, FLORIDA
a municipal corporation

ATTEST:

By: _____

Kelly S. Koos
City Clerk

(Seal)

By: _____

R. Howard Wiggs
Mayor

Approved as to Form and Correctness:

By: _____

Timothy J. McCausland
City Attorney

KNIGHT AVIATION, INC.

Signed in the presence of:

Witness

By: _____

Name: _____

Title: _____

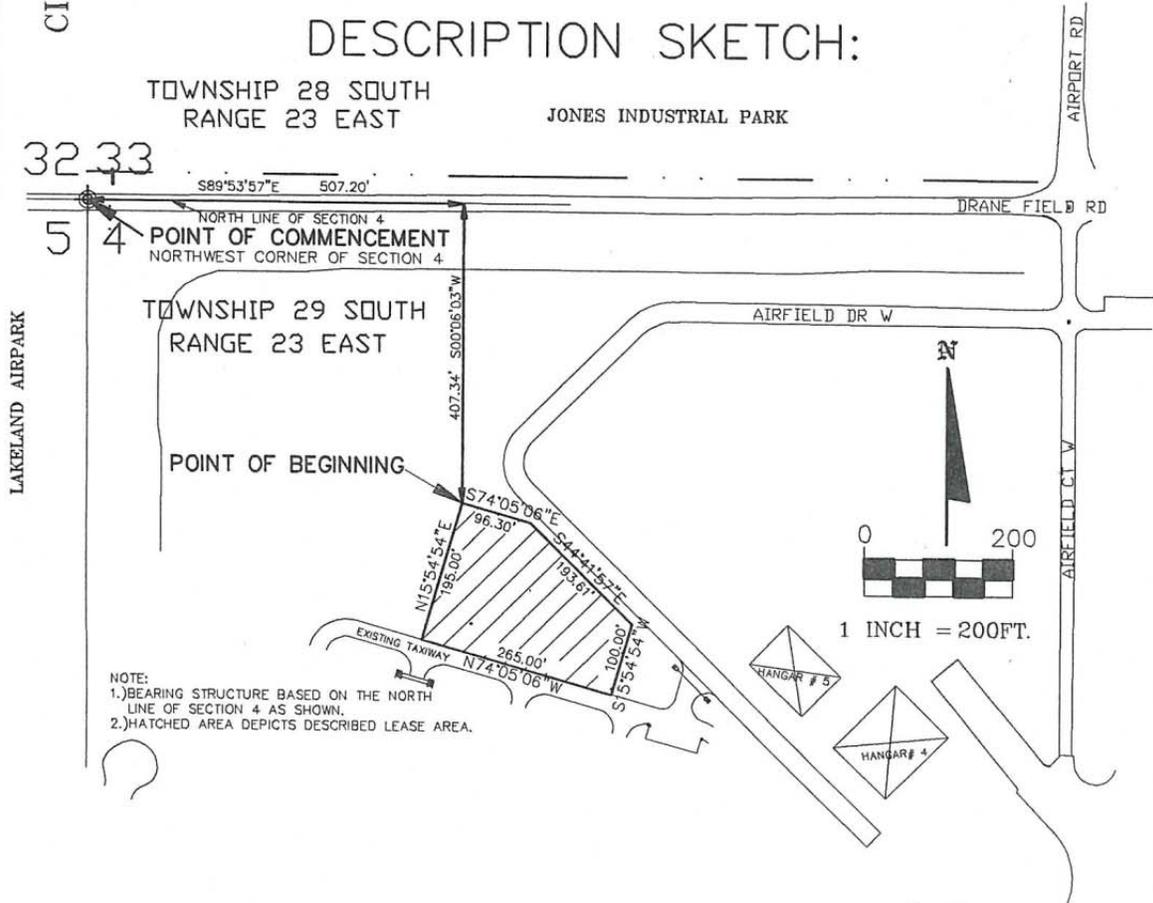
Witness

EXHIBIT "A" DESCRIPTION:

COMMENCE AT THE NORTHWEST CORNER OF SECTION 4, TOWNSHIP 29 SOUTH, RANGE 23 EAST, POLK COUNTY, FLORIDA; RUN THENCE SOUTH 89°53'57" EAST ALONG THE NORTH LINE THEREOF A DISTANCE OF 507.20 FEET; THENCE SOUTH 00°06'03" WEST A DISTANCE OF 407.34 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 74°05'06" EAST A DISTANCE OF 96.30 FEET; THENCE SOUTH 44°41'57" EAST A DISTANCE OF 193.61 FEET; THENCE SOUTH 15°54'54" WEST A DISTANCE OF 100.00 FEET; THENCE NORTH 74°05'06" WEST A DISTANCE OF 265.00 FEET; THENCE NORTH 15°54'54" EAST A DISTANCE OF 195.00 FEET TO THE POINT OF BEGINNING— CONTAINING 1.002 ACRES, MORE OR LESS.

CITY LIMITS

DESCRIPTION SKETCH:



NOTE:
1.) BEARING STRUCTURE BASED ON THE NORTH LINE OF SECTION 4 AS SHOWN.
2.) HATCHED AREA DEPICTS DESCRIBED LEASE AREA.

DATE: MARCH 7, 1996

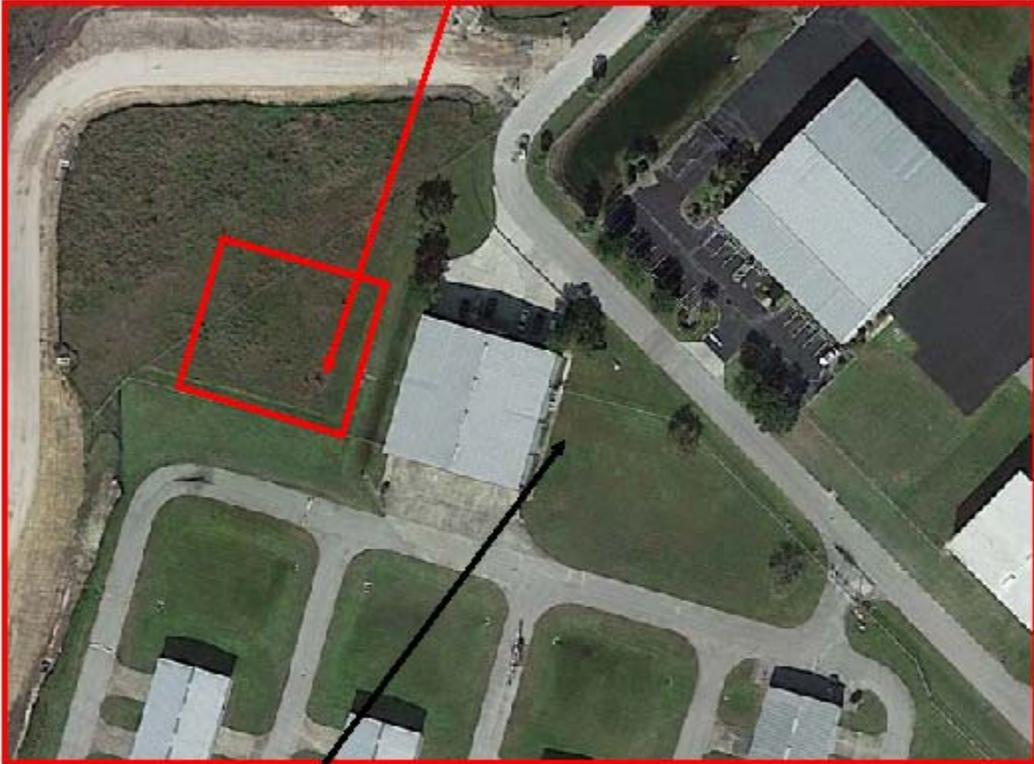
Henry J. Burton
HENLEY LEE BURTON, P.L.S.
FLORIDA REGISTRATION #4399
CITY OF LAKELAND,
PUBLIC WORKS DEPARTMENT
228 S. MASSACHUSETTS
LAKELAND, FLORIDA 33801

KNIGHT HANGAR
FILENAME: AIRLEG3.DWG

THIS IS NOT A SURVEY.
THIS DRAWING NOT VALID UNLESS ORIGINAL SEAL IS AFFIXED.

EXHIBIT A-1

**First Right of Refusal
Property**



**Exhibit A
Current Land Lease
w/building - 1 Acre**

Knight Aviation, Inc.