

MEMORANDUM

TO: MAYOR AND CITY COMMISSION
FROM: CITY ATTORNEY'S OFFICE
DATE: February 5, 2018
RE: **Sun 'n Fun Use Agreement**

Attached for your consideration is the annual Sun 'n Fun Use Agreement which gives Sun 'n Fun the authority to conduct their event at the Airport. The main purpose of this agreement is to provide for insurance and indemnification provisions, as well as delineate those areas where Sun 'n Fun has the responsibility to control and maintain. Furthermore, Sun 'n Fun shall have the use of ramps, runways, taxiways and other facilities provided for aircraft and the public at the Airport which are subject to the operational control of the Airport Manager and the Federal Aviation Administration. Sun 'n Fun agrees to reimburse the City for its share of the reasonable costs of providing air traffic controllers for the event.

It is recommended that the appropriate City officials be authorized to execute this agreement.

attachment

USE AGREEMENT

THIS USE AGREEMENT, made and entered into this _____ day of _____, 2018, by and between the CITY OF LAKE LAND, FLORIDA, a Florida municipal corporation (hereinafter the "City"), and SUN 'n FUN FLY-IN, INC., a Florida not-for-profit corporation (hereinafter "Sun 'n Fun").

WITNESSETH:

THAT the City and Sun 'n Fun, for and in consideration of the mutual promises, agreements, and covenants hereinafter contained, do hereby mutually covenant, agree, and promise as follows:

SECTION 1. The City does hereby grant to Sun 'n Fun the use of property (hereinafter the "Premises") located at and comprising a part of the Lakeland Linder Regional Airport in Polk County, Florida (hereinafter the "Airport"), more particularly described in composite **Exhibit "A"** attached hereto and made a part hereof. It is specifically understood and agreed that the property described in composite **Exhibit "A"**, attached, the Premises, shall not include any active runway or taxiway which is under Federal Aviation Authority or control and any such runway or taxiway shall not be within the scope of this agreement and, thus, not the responsibility of Sun 'n Fun to control or maintain.

SECTION 2. The term of this agreement commences March 26, 2018 and expires on April 30, 2018.

SECTION 3. It is mutually understood and agreed between the parties hereto that the Premises is contiguous and appurtenant to certain property leased to Sun 'n Fun for the purpose of an annual general aviation meet known as the Sun 'n Fun Fly-In (hereinafter "Fly-In"), and that the Premises will be maintained, prepared, and utilized for the Fly-In and is under the control of Sun 'n Fun for the term of this agreement. No installations in any area outside the Sun 'n Fun leasehold without prior approval from the Airport Director or his designee.

SECTION 4. Sun 'n Fun shall pay to the City as the fee for the use of the Premises pursuant to this agreement the amount of One Dollar (\$1.00), together with any applicable sales tax, payable in advance on the date of this agreement. Sun 'n Fun acknowledges that the City will incur expenses in providing additional Air Traffic Controllers for the air show event that are in addition to those required for the normal operation of the airport. Sun 'n Fun agrees to reimburse the City for its reasonable share of those expenses as the parties may agree in a separate written agreement.

SECTION 5.

(a) Sun 'n Fun shall indemnify, save harmless and defend the City, its officers, employees, or agents from all claims, suits, and actions of any kind brought against it for, or on account of, any injuries or damages received or sustained by any person or property by, from, or on account of any acts or omissions of Sun 'n Fun, its officers, employees, agents, servants, or invitees occurring on the Premises.

(b) Sun 'n Fun shall indemnify, save harmless, and defend the City, its officers, employees, or agents against any claim or liability arising from, or based upon, the violation of any federal, state, county or city law, ordinance, or regulation by Sun 'n Fun, its officers, employees, agents, servants or invitees.

(c) During the term of this agreement, Sun 'n Fun shall obtain and keep in effect comprehensive general liability insurance and property damage insurance with public liability coverage of not less than \$500,000 per occurrence, combined single-limit for bodily injury liability, and property damage liability, premises and/or operations coverage, and broad form contractual coverage. The City shall be named as an additional insured on such insurance policy. Such insurance coverage shall be obtained from an insurer authorized to do such business in the State of Florida. Such coverage may not be canceled, terminated, or changed without thirty (30) days written notice thereof from the insurer to the City. An appropriate certificate of insurance

evidencing such coverage issued by insurer shall be provided to the City and kept current during the term of this agreement.

(d) During the term of this agreement, Sun 'n Fun shall keep each building or structure constructed or located upon the premises, except temporary buildings or structures, insured against fire and other casualty, with such coverage obtained from an insurer authorized to do such business in the State of Florida with an extended coverage endorsement, in an amount not less than 90% of replacement cost of each structure as established by mutual agreement with the City. The City shall be named as an additional insured on such insurance policy. If any such building or structure is damaged during the term of this agreement, or any extension or renewal hereof by fire or other casualty, Sun 'n Fun shall have such structure restored within a reasonable time at its own expense. A certificate of insurance evidencing such coverage shall be provided to City and kept current during the term of this agreement. Such coverage may not be canceled, terminated, or changed without thirty (30) days' notice thereof in writing to the City from the insurer.

(e) During the term of this agreement, Sun 'n Fun shall obtain an umbrella insurance policy to cover aircraft / air meet liability for the period of the annual Fly-In plus reasonable set-up and take-down time in an amount not less than \$5,000,000.

(f) Insurance requirements will be mutually reviewed and modified as history, experience, industry practice and prudent risk management indicate to be necessary to protect the City, Sun 'n Fun and the public interest.

(g) Failure of Sun 'n Fun to maintain the insurance coverage required by this section may result in immediate termination of this agreement upon written notification to that effect from the City.

(h) Sun 'n Fun is required to follow all security rules and procedures as stated in Airport Minimum Standards. It is mandatory to be in compliance with the Airport Security Program which

addresses Transportation Security Administration (TSA), Federal Aviation Administration (FAA) and Florida Statute requirements for airport security.

SECTION 6. The City has appointed a manager for Lakeland Linder Regional Airport, and the City reserves the right for that manager, or his duly authorized representative, to enter the Premises to perform inspections deemed necessary by the manager. Sun 'n Fun shall promptly correct any condition constituting a hazard to life or property.

SECTION 7. Sun 'n Fun shall, at its expense, during its actual use of the Premises or any portion thereof, and not for the use of the Premises or any portion thereof by any other person or entity maintain the Premises, including any structures thereon, in a neat and orderly condition at all times and shall be responsible for the neatness and orderliness of the grounds, including the mowing of grass and removal of trash and garbage.

SECTION 8. Sun 'n Fun may install any aviation aid permitted by the Federal Aviation Administration or other governmental agencies regulating the Lakeland Linder Regional Airport. No structure, sign, obstruction, appurtenance, projection or modification, shall be installed or kept in place by Sun 'n Fun without the prior written approval of the City and any applicable federal, state, county, or other governmental agency.

SECTION 9. This agreement and all provisions hereof shall be subject and subordinate to the terms and conditions of the deed by which the City was conveyed the property now known as Lakeland Linder Regional Airport by the United States of America and any applicable federal law, and shall be given only such effect as will not conflict or be inconsistent with such terms and conditions and law.

SECTION 10. The Premises shall be used for those activities now set forth in the Articles of Incorporation of Sun 'n Fun Fly-In, Inc., or other activities authorized by the City which are not detrimental to aviation, the Airport facility, or the City, provided such activities are for the sole use and benefit of Sun 'n Fun and its invitees.

SECTION 11. In addition to the Premises, Sun 'n Fun shall have the use of other ramps, runways, taxiways and other facilities provided for aircraft and the public at the Lakeland Linder Regional Airport. Such use of other ramps, runways, taxiways and other facilities are subject to the operational control of the Airport Manager, leases already in existence, and the Federal Aviation Administration.

SECTION 12. If Sun 'n Fun fails to timely make any payment of fee or perform any of the promises, covenants or agreements herein or otherwise violates any provision hereof, unless otherwise provided, the City may, after giving Sun 'n Fun thirty (30) days' notice, declare all future payments hereunder be immediately due and payable, and/or terminates this agreement and re-enter and take possession of the Premises. The City shall have a lien upon any property of the Sun 'n Fun located upon the Premises for any amount due the City by Sun 'n Fun as a result of such default; provided, however, this shall not be the City's exclusive remedy or the only property of Sun 'n Fun on which the City may obtain a lien by judicial process.

SECTION 13. If the United States or any agency thereof should take possession of the Premises, any compensation from the United States or such agency for improvements on the Premises shall be payable to the City. Sun 'n Fun obligations hereunder shall terminate as of the date of such possession, or such other date mutually agreed upon, unless the United States indicates it will succeed to the interest of the City.

SECTION 14. This agreement shall be subordinate to the provisions of any existing or future agreement entered into between the City and the United States for the improvement, operation, or maintenance of the Lakeland Linder Regional Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the Airport.

SECTION 15. Nothing herein grants, or authorizes the granting of, an exclusive right as may be prohibited by Section 308 of the Federal Aviation Act (49 U.S.C. Sec. 1349(a)).

SECTION 16.

(a) Sun 'n Fun, for itself, its 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 (1) no person on the grounds of race, color, sex or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises; (2) in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to any discrimination on the grounds of race, color, sex or national origin; (3) Sun 'n Fun shall use the Premises in compliance with all requirements of Title 49, Code of Federal Regulations, Part 21, Department of Transportation Subtitle A, Office of the Secretary, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as may be amended.

(b) If there is a breach of any portion of subsection (a), the City may terminate the agreement and re-enter and repossess the Premises; provided the procedures for a finding of such violation set forth in Title 49, Code of Federal Regulations, Part 21, are followed and completed, including the exercise or expiration of any appeal rights.

SECTION 17. The City may take whatever action is necessary or appropriate for the operation, maintenance, and improvement of the Airport and its appurtenances and although consideration shall be made of the interests of Sun 'n Fun, Sun 'n Fun has no vested right to continued operation of the Airport in the manner in which it is operated on the date of this agreement.

SECTION 18.

(a) The City 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 air space above the surface of the Premises, including such noise as is inherent in the operation of aircraft, now known or hereafter used, in such air space for landing on, taking off from, or operation on the Airport.

(b) Sun 'n Fun, its successors and assigns, shall restrict the height of structures, objects of natural growth, and other obstructions on the Premises to a height complying with Title 49, Code of Federal Regulations, Part 77, and as may be amended.

(c) Sun 'n Fun, its successors and assigns, shall prevent any use of the Premises which interferes with or adversely affects the operation or maintenance of the Airport, or otherwise constitutes an Airport hazard.

SECTION 19. Sun 'n Fun shall be responsible for and pay all ad valorem taxes or such other taxes which are assessed on the Premises or this lease, all sales taxes as well as all utility charges.

SECTION 20. Sun 'n Fun shall observe and obey all reasonable and lawful rules and regulations which may, from time to time, during the term hereof, be adopted and promulgated by the City for operation of the Airport. Sun 'n Fun shall conduct and operate its activities in accordance with any applicable federal, state, and local laws, ordinances, regulations, directives, orders, and judicial decisions.

SECTION 21. Sun 'n Fun, its officers, employees, guests, invitees and suppliers of materials and services, shall have the right of ingress and egress to the Premises for the purpose of permitting Sun 'n Fun to enjoy the rights, uses, and privileges granted by the City.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

SUN 'n FUN FLY-IN, INC.

ATTEST: _____
Rick Garcia, Treasurer

By: _____
John Leenhouts, President/CEO

APPROVED AS TO FORM AND CORRECTNESS: _____
John F. Wendel, General Counsel

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

CITY OF LAKELAND, FLORIDA

ATTEST: _____
Kelly S. Koos, City Clerk

By: _____
H. William Mutz, Mayor

APPROVED AS TO FORM AND CORRECTNESS: _____
Timothy J. McCausland, City Attorney

