

MEMORANDUM

TO: **Real Estate & Transportation Committee**
Commissioner Bill Read, Chairman
Commissioner Phillip Walker
Commissioner Scott Franklin

FROM: City Attorney's Office

DATE: October 5, 2020

RE: **Lease Agreement with Marathon FBO Partners, LLC**

Attached hereto for your consideration is a proposed Lease Agreement with Marathon FBO Partners, LLC. (Marathon), to operate as a Fixed Based Operator (FBO) at Lakeland Linder International Airport (Airport). As an FBO, Marathon will provide aeronautical services that include fueling, tie-down and parking of aircraft, aircraft rental and aircraft maintenance services.

Marathon is a joint venture owned by SAR Trilogy Management, LLC and Hiller, Inc. of which the principal partners have significant background and experience in aviation and FBO space. Collectively, the partners own and operate two (2) FBO's in Marathon, FL. (Marathon Jet Center and Marathon General Aviation) and are currently building a new FBO in Wilmington, NC. (Aero Center Wilmington). Marathon's new FBO in Lakeland will be known as "Aero Center Lakeland".

The Lease Agreement, subject to City Commission approval, is for a term of thirty (30) years, effective October 5, 2020, and contains two (2) additional ten (10) year renewal options. Marathon's right to exercise the renewal options are conditioned on (i) not being in default of any terms of the Lease; (ii) demonstrating a satisfactory payment history; (iii) any such renewal is consistent with the Airport's then-current Master Plan; (iv) compliance with repair/maintenance obligations of the leased premises; and (v) expenditure of an additional \$1 million dollars in leasehold improvements within five (5) years of its notice of intent to exercise such renewal.

Marathon may terminate the Lease upon thirty (30) days prior written notice to the City if there is a substantial restriction on its use of the leased premises, the City is in material default of any material term of the Lease or there is significant damage to the leased premises as built by Marathon that is determined to be uneconomical to restore. Similarly, the City reserves the right to terminate the Lease if Marathon fails to pay rent or any amounts due, fails to perform in accordance with the terms/conditions of the Lease, abandons or vacates the leased premises for ninety (90) days or more, files bankruptcy or fails to construct improvements within twenty-four (24) months of the effective date of the Lease.

Marathon's use of the leased premises is subject to the terms of the Airport's Minimum Standards which sets forth the basic requirements that an FBO must meet to

operate at the Airport, as well as what facilities and services it can offer. In accordance with the Lease, Marathon has twenty-four (24) months to complete construction of improvements to the leased premises which will include its facilities, ramp, and permanent fuel farm as specifically set forth below.

- Total Leased Premises 6 acres, contiguous
- Offices and Support Facilities 3,000 square feet
- Maintenance Hangar 10,000 square feet
- Aircraft Storage Hangar 10,000 square feet
- Apron 120,000 square feet
- Fuel Storage Area 5,000 square feet

Pursuant to the Lease, rent payments will commence upon the earlier of (i) Marathon commencing operations; or (ii) one (1) year from the Effective Date; or (iii) the commencement of any operations using a temporary fueling station. Annual rent for the first year of the Lease is set at \$0.30 cents per square foot or \$89,777.16. Thereafter, annual rent for each subsequent Lease year shall be increased in the same amount of any increase in the Consumer Price Index (CPI) during the preceding year. In no event shall annual rent be decreased due to changes in the CPI and rent shall not be increased by more than 3% in any given Lease year. In addition to rent, Marathon will pay the Airport \$0.085 per gallon for all fuel sales and collect and remit ramp fees to the Airport on the International Customs Ramp in the minimum amount established by the Airport for all users.

The Lease also provides Marathon with an option to lease an additional land parcel (Option Parcel) consisting of approximately 2.38 acres across from TWY G for future expansion. In consideration for granting this option, Marathon would pay the City (i) for the first two (2) Lease years an equivalent of \$0.05 per square foot of the Option Parcel for each option year; and (ii) for the third, fourth and fifth Lease years the equivalent of \$0.15 per square foot of the Option Parcel for each option year. The term of the Option Parcel will expire simultaneously with the Lease Term. Marathon's ability to exercise its right to lease the Option Parcel will expire at the end of the fifth Lease year if it fails to exercise such option.

In accordance with the Lease, Marathon is required to construct an Internal Road with the plans to be pre-approved by the Airport. Upon completion of the Internal Road, Marathon shall provide the Airport with an accounting of its costs to construct the Internal Road and convey any interest to the Airport, upon which the Airport shall maintain the Internal Road thereafter. If at any time any third party requires use of the Internal Road and enters into a lease with the Airport, the City will provide Marathon with a one-time credit in an amount equal to 50% of the agreed documented cost of the Internal Road, which can be applied to Marathon's rent and taxes due under this Lease Agreement. Consistent with the Airport Minimum Standards, the Lease also provides Marathon with a temporary, twelve (12) month waiver of certain fuel requirements ("Temporary Waiver") to allow it to begin fueling operations prior to the construction of permanent fueling improvements. The

Temporary Waiver shall only become effective on the date that Marathon meets all of the following conditions:

- Ramp area completed of 120,000 square feet
- Fuel tanks on temporary approved skids, which shall not be used after the expiration of the Temporary Waiver period
- Temporary FBO facility
- Access to leasehold for both aviation and non-aviation access
- Environmental controls, including required insurance
- Staffing to cover required hours of operation
- Equipment to support FBO's operations
- Permits and operational manuals as required by Airport with all safety measures in place
- Utilities inclusive of water, wastewater, electric and stormwater in place

Ownership of all the improvements, equipment and facilities installed on the leased premises which are deemed fixtures shall vest in the City at the expiration or termination of the Lease term. Marathon will also be responsible for payment of all taxes, special assessments, associated charges and maintenance of the leased property.

It is recommended that the City Commission approve this proposed Lease Agreement with Marathon and authorize the appropriate City officials to finalize and execute this Lease Agreement and any corresponding documents consistent with the above-specified terms.

Attachment

FBO LEASE

Lakeland Linder International Airport

Contract/Agreement: FBO Lease (NEW)
Full Fixed Base Operation Lease between City of Lakeland, a municipal corporation ("Lessor") and Marathon FBO Partners, LLC, a Florida limited liability company ("Lessee").

Effective Date:

Term: Thirty (30) years.

Option: Terms of the FBO Agreement include two 10-year renewal options as set forth in Section 2.2.

Total Pages: 48

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FULL FIXED BASE OPERATION LEASE AGREEMENT

THIS AGREEMENT FOR FIXED BASE OPERATION (hereinafter “Agreement”), entered into this 5th day of October 2020 by and between **City of Lakeland**, a municipal corporation, (hereinafter referred to as "Lessor"); and **Marathon FBO Partners, LLC**, a Florida limited liability company, with an office and place of business in 517 SE 25th Avenue, Ft. Lauderdale, Florida 33301 (hereinafter called "Lessee") (collectively referred to as “Parties”).

WITNESSETH:

WHEREAS Lessor, a municipality organized and existing in accordance with the laws of the State of Florida, owns and operates a municipal airport located in Lakeland, Florida known as the Lakeland Linder International Airport, hereinafter called "Airport"; and

WHEREAS Lessee desires the privilege of using the Airport and its facilities and rights for the purpose of conducting Fixed Base Operation (FBO) services, and Lessor is willing to grant the same to Lessee upon the terms and conditions hereinafter stated.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and conditions contained herein, the parties agree as follows:

1 - LEASED PREMISES

1.1 Leased Premises. Lessor hereby leases to Lessee, and Lessee hereby accepts from Lessor as tenant, the premises more particularly described and defined in Schedule A attached hereto and made a part hereof (hereinafter referred to as the “Leased Premises” or the “Premises”).

1.2 Conditions of Leased Premises. Lessee has inspected the Leased Premises and accepts them in their present condition.

2 - TERM

2.1 Term of this Agreement. This Agreement shall be effective upon execution by Lessee and the Lessor with the term commencing on October 5, 2020 (“Effective Date”) and continuing for thirty (30) years thereafter (“Initial Term”), unless sooner terminated in accordance with the provisions of this Agreement.

2.2 Extension of Term.

The Agreement may be extended by no more than two (2) options on terms set forth in this Section 2.2 (each a “Renewal Option”). Each Renewal Option is for a period of ten (10) years for a total of twenty (20) years if both options are exercised. Lessee is required to submit a written request ninety (90) days prior to the expiration of the current term, to be considered for a renewal option based on the conditions outlined in this Section. Lessee may exercise the right to each such Renewal Option only if Lessee has provided evidence satisfactory to the Lessor that: (i) There is no existing event of default by Lessee at the time of the notice of election of the Renewal Option; (ii) Lessee’s payment history is satisfactory; (iii), Exercise of the Renewal Option is consistent with the Airport’s then-current Master Plan; (iv) Lessee is in compliance with the repair and maintenance obligations set forth herein, (v) Lessee has, within five (5) years of the notice of Lessee’s intent to exercise each Renewal Option,

completed the expenditure of an additional One Million Dollars (\$1,000,000.00) in leasehold improvements. Failure to make such investment would result in Lessee's default of the Agreement and any of the Lessor's Termination Option's pursuant to Section 16 would be available to exercise

2.3 Initial Investments by Lessee. Notwithstanding anything to the contrary contained in this Agreement, it is understood and agreed that the costs and expenses of the construction of capital improvements on the Leased Premises during the first eighteen months directly paid by Lessee shall count toward the Initial Improvements. All construction contracts will require a construction bond to be issued.

3 - RENTS, FEES AND CHARGES

3.1 Rent. Lessee agrees to pay Lessor the rent based on calculations set forth in Schedule B, attached hereto and made part hereof by reference. Rent payments to the Lessor will commence upon the earlier of: (i) Lessee commencing operation of the Permitted Use on the Leased Premises or (ii) one year from the Effective Date or (iii) the commencement of any operations through the use of temporary structures required to operate as defined by Lessor, (the "Rent Commencement Date").

3.2 Place of Payment. All payments due the Lessor from Lessee shall be paid to the City of Lakeland and sent to the following address: Lakeland Linder International Airport, 3900 Don Emerson Drive, Suite 210, Lakeland, Florida 33811, unless otherwise specified in a written notice delivered to Lessee.

3.3 Time of Payments. The minimum rent shall be due in advance without demand on or before the first day of each calendar month. Additional commission fees, if due, shall be paid on or before the 15th day of each calendar month without billing. Lessor may assess a late payment charge of one- and one-half percent (1.5%) per month on any amounts paid later than five (5) days following the due date.

3.4. Security for Payment. Lessee shall provide Lessor on or before the Rent Commencement Date of this Agreement an irrevocable letter of credit, cash deposit, or other similar security acceptable to Lessor in an amount equal to three (3) months' rent payable by Lessee, to guarantee the faithful performance by Lessee of its obligations under this Agreement and payment of all rentals, fees and charges due hereunder (the "Contract Security"). Such Contract Security shall be in a form and with a company reasonably acceptable to Lessor and licensed to do business in the State of Florida. In the event that any such Contract Security shall be a period less than the full period required hereunder or if Contract Security shall be canceled, Company shall provide a renewal or replacement Contract Security for the remaining required period of at least forty-five (45) days prior to the date of such expiration or cancellation. Following completion of the Initial Improvements, and in the event, Lessee has timely paid all amounts due hereunder for a period of twelve (12) consecutive months, the Contract Security will be released to Lessee.

3.5. Utilities. Lessee shall be solely responsible for all trash removal, heat, cooling, damaged security gates or equipment, and telephone, cable, internet and other related services to the Leased Premises. Utilities will also include any grounds maintenance, aircraft and vehicular parking areas associated with the use of Leased Premises. Lessee shall bear the cost associated with the extension, upgrade and installation of any utilities, including water, stormwater, wastewater and electric, to the Leased Premises, or otherwise modifying such services to address the specific requirements of Lessee.

3.6 **Option** Lessee shall have an option to lease (“the Option”) the additional land parcel consisting of approximately two (2) acres across from TWY G for future expansion (“the option”), as more particularly described on Exhibit [1_] attached hereto (the “Option Parcel”). Lessee shall pay to Lessor, as consideration for the granting of the Option, the following amounts: (i) for the first two (2) Lease Years: five cents (\$0.05) per square foot of the Option Parcels for each option year. ; and (ii) for the third, fourth and fifth Lease Years: fifteen cents (\$0.15) per square foot of the Option Parcels for each option year with the first payment payable on the Effective Date of this Agreement and subsequent payments due and payable on the anniversary of the Effective Date each year.. The Lessee can exercise the Option at any time but not later than the expiration of the fifth (5th) Lease Year. Upon exercise of the Option, the terms of lease for the Option Parcels will be governed by same terms as this Agreement, except that the Term of the Agreement with respect to the Option Parcels shall expire simultaneously with the Leased Premises. Upon exercise of the Option, Lessor and Lessee shall execute and deliver reasonably acceptable documentation regarding the effectiveness of this Agreement with respect to the Option Parcels.

4 - RIGHTS AND PRIVILEGES GRANTED

4.1 **Ingress and Egress.** Lessee shall have the right of ingress to and egress from the Leased Premises over common landside roads established at the Airport.

4.2 **Use of Common Facilities.** Lessor grants Lessee the rights in common with others to use the public portion of the Airport, ramps, parking areas, taxiways, runways, and paved and unpaved roadways providing access to runways as permitted by applicable law and/or Airport rules and regulations and subject to any of Lessor’s published fees, as may be amended from time to time, associated with the usage of such areas.

5 - OBLIGATIONS OF LESSEE

5.1 **Listing not Exclusive.** The obligations of Lessee and Lessor listed in this Section 5 are provided for convenience of reference, and do not in any way exclude, limit or diminish responsibilities cited elsewhere in this Agreement. Lessee and Lessor further covenant and agree to at all times observe, obey and comply fully at their own expense with all laws, ordinances, rules, regulations, and deed restrictions and covenants now in effect and hereafter issued by any State, Federal or other governmental entity having jurisdiction over the Leased Premises or activities thereon; provided, however, the Lessor represents and warrants to Lessee that no such law, ordinance, rule, regulation or deed restriction now in effect or hereafter adopted shall prohibit or unreasonably restrict or limit Lessee’s ability to operate a FBO from the Leased Premises subject to the provisions set forth in this Agreement.

5.2 **Fair Services.** Lessee shall furnish its services on a fair, equal and non-discriminatory basis to all users in accordance with industry practices.

5.4 **Understanding of Certain Ordinances and Agreements.** Lessee specifically acknowledges that it has read, and fully understands, all applicable requirements in the County, City, and Airport Rules and Regulations covering leaseholds at Lakeland Linder International Airport. Lessee’s specific obligation with respect to these ordinances shall not be construed to diminish Lessee’s responsibility to comply with all applicable ordinances as stated in subsection 5.1 above.

5.5 Security Regulations. Lessee will comply with all security regulations established or amended from time to time, by but not limited to the Lessor, Department of Homeland Security, Customs and border Protection, TSA and the FAA. Lessee shall at all times comply with the current version of the Airport Security Plan prepared by the Lessor for the Airport pursuant to regulations of the TSA and FAA and FDOT.

5.6 Required Services and Facilities. In doing business at the Airport as an FBO pursuant to this Agreement, Lessee covenants and agrees, at all times during the Term hereof, to provide the services and maintain the facilities specified in Airport Code as FBO Minimum Standards as such may exist or be amended from time to time. Schedule C attached hereto list the current minimum standards in effect.

5.7 Required Financial Records. Lessee shall be required to maintain all financial records set forth in Schedule D attached hereto and to keep such records available for inspection by Lessor for a period of three (3) years from the date of preparation. Lessor shall have the right to audit Lessee's financial records described in Schedule D upon request, to recoup all losses, and to recover penalties as set forth in Schedule D.

5.8 Environmental Laws. Lessee, and its sub-lessees or subtenants, shall not bring onto the Leased Premises any Hazardous Materials (as defined below) without the prior written approval by Lessor. Notwithstanding the foregoing sentence of this Section 5.8, the Lessee shall not be obligated to secure the approval of the Lessor to bring onto the Leased Premises products and materials used in the usual and customary operation of an FBO provided, however, Lessee shall comply with all applicable laws relating to the handling, use, storage and disposal of such products and materials. Lessee shall provide to Lessor upon Certificate of Occupancy, a Material Safety Data Sheet for airplane fuel, hydraulic fluid, motor oil and those Hazardous Materials (as defined below in this Section 5.8) that Lessee knowingly uses in the customary operations of its business. Any approval must be preceded by submission to Lessor of appropriate Material Safety Data Sheets (MSD Sheets). In the event of approval by Lessor, Lessee covenants that it will (1) comply with all requirements of any constituted public Lessor and all federal, state, and local codes, statutes, ordinances, rules and regulations, and laws, whether now in force or hereafter adopted relating to Lessee's use of the Premises, or relating to the storage, use, disposal, processing, distribution, shipping or sales of any hazardous, flammable, toxic, or dangerous materials, waste or substance, the presence of which is regulated by a federal, state, or local law, ruling, rule or regulation (hereafter collectively referred to as "Hazardous Materials"); (2) comply with any reasonable recommendations by the insurance carrier of either Lessor or Lessee relating to the use by Lessee on the Leased Premises of such Hazardous Materials; (3) refrain from unlawfully disposing of or allowing the disposal of any Hazardous Materials upon, within, about or under the Premises; and (4) remove all Hazardous Materials from the Premises, either after their use by Lessee or upon the expiration or earlier termination of this Lease, in compliance with all applicable laws.

Lessee shall be responsible for obtaining all necessary permits in connection with its use, storage and disposal of Hazardous Materials, and shall develop and maintain, and where necessary file with the appropriate authorities, all reports, receipts, manifest, filings, lists and invoices covering those Hazardous Materials and Lessee shall provide Lessor with copies of all such items upon request. Lessee shall provide within five (5) working days after receipt thereof, copies of all notices, orders, claims or other correspondence from any federal, state or local government or agency alleging any violation of any environmental law or regulation by Lessee, or related in any manner to Hazardous Materials. In

addition, Lessee shall provide Lessor with copies of all responses to such correspondence at the time of the response.

Lessee hereby indemnifies and holds harmless Lessor, its officers, employees, agents and successors and assigns from and against any and all losses, liabilities, damages, injuries penalties, fines, costs, expenses and claims of any and every kind whatsoever (including attorney's fees and costs, expenses or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, from time to time, and regulations promulgated thereunder, any so-called state or local "Superfund" or "Super lien" law, or any other federal, state or local statute, law or ordinance, code, rule regulation, order or decree regulation, relating to, or imposing liability or standards of conduct concerning any Hazardous Materials) paid, incurred or suffered by, or asserted against, Lessor as a result of any claim, demand or judicial or administrative action by any person or entity (including governmental or private entities) for, with respect to, or as a direct or indirect result of, the presence on or under or the escape, seepage, leakage, spillage, discharge, emission or release from the Leased Premises of any Hazardous Materials caused by Lessee or Lessee's sub lessees, agents, employees, invitees or successors in interest. This indemnity shall also apply to any release of Hazardous Materials caused by a fire or other casualty to the premises if such Hazardous Materials were stored on the Leased Premises by Lessee, sub lessees, Lessee's agents, employees, invitees or successors in interest.

5.9 Special Events Cooperation. The Lessee agrees to make every good faith effort to fully comply and cooperate with the Lessor, its agents, assigns, contractors, licensees, and invitees, in coordinating and accommodating special events, air shows (e.g., the Annual Sun n Fun Fly-In), or emergency operations at the Lakeland Linder International Airport. The Leased Premises are located within the Lessor's "Aerobatic Box", which is more particularly described in Exhibit "2", attached hereto and made a part hereof. For purposes of this Lease Agreement, the term "Aerobatic Box" shall be defined as an area of the Premises utilized during the Airport's annual Sun n' Fun event for jet performances. Such performances and related practices are generally limited to late afternoon hours and conducted up to a maximum of five (5) days per year to minimize business interruption. During such times when the Aerobatic Box is in use, the Lessee shall not be permitted to use or occupy the Leased Premises pursuant to Federal Aviation Administration guidelines for safety reasons. Lessor shall be required to notify Lessee, in writing, on an annual basis, when the Aerobatic Box will be in use. Such notice shall be provided to Lessee no less than seven (7) days prior to the occurrence of such scheduled use.

6 - USE OF PREMISES

6.1 Use of Premises. The Leased Premises shall be used as an FBO in accordance with the Airport's Minimum Standards (except as temporarily waived pursuant to Section 6.2 herein); provided that in all respects Lessee shall be permitted to provide aviation services to general aviation aircraft and scheduled air carriers (including operations off the Leased Premises necessary to provide services as requested by Lessee's customers provided such services are in compliance with the Airport's Minimum Standards, which may be amended from time to time, the current version of which is attached hereto as Exhibit "2") with no interruption to, or interference with, the Lessor's other tenants and users (collectively, the "Permitted Use"). Lessee may commence providing services to scheduled air carriers prior to the completion of the Initial Improvements, provided that Lessee satisfies the obligations of Section 2 and Section and its operations otherwise comport with standard industry practices. In

addition, the Premises shall not be used for any illegal purposes, or in any manner to create a nuisance or trespass, or in any manner knowingly to vitiate the insurance or increase the rate of insurance on the Leased Premises. If the Lessee fails to cease such acts or omissions and in the event Lessee's use of the Premises thereafter results in an increased rate of insurance on the Premises, Lessor shall give Lessee written notice specifying the exact manner in which Lessee's acts or omissions are vitiating Lessor's insurance or increasing the Lessor's rate of insurance (specifically excluding actions of Lessee in operation of the Permitted Use) and Lessee shall have thirty (30) days to cease such acts or omissions (other than those actions of Lessee in operation of the Permitted Use); provided, however, the Lessor will not alter, change or amend its policy(ies) of insurance in such manner as to materially limit or restrict the operation of a fixed base operation and its usual and customary activities on the Leased Premises, Lessee shall have thirty (30) days upon notification to pay, as an additional rental fee, the amount of any such increase. Failure by Lessee to pay within said thirty (30) days period will result in termination by Lessor with thirty (30) days' notice to vacate Leased Premises. This thirty (30) day provision does not change termination terms set in Section 15. In addition to the foregoing, the Permitted Use shall include, but not be limited to, the following:

- (a) Buy, sell, lease and/or charter aircraft;
- (b) Hangar and store aircraft, cargo, vehicles and equipment;
- (c) Maintain and repair aircraft, their systems and avionics;
- (d) Acquire, store and sell aircraft parts and supplies;
- (e) Fuel and de-fuel aircraft and equipment;
- (f) Operate limousine and/or rental car concessions for the benefit of Lessee's customers in accordance with the standard fee established by the Lessor, as may be amended time to time;
- (g) Train aircraft pilots, mechanical technicians and ground support personnel;
- (h) The installation and operation of food, beverage and cigarette vending machines, for Lessee's tenants, employees, and business guests, one or more pilots' lounges, and the furnishing of food and beverage for in-flight consumption on general aviation and airline aircraft;
- (i) Conduct a flight training school and the provision of aircraft familiarization instruction to acquaint purchasers and lessees of aircraft sold or leased at the Airport with the operation of such aircraft;
- (j) The provisions of any other service or supply necessary for the service, storage, tie-down, sale, rental, lease, operation, repair or maintenance of general aviation aircraft;
- (k) Aircraft ground support services commensurate with the demand as it exists from time to time, including aircraft cleaning and waxing in accordance with environmental requirements and regulations; and

- (l) Aeronautical Aviation/Office and/or other aviation professional use.

6.2 Lessor and Lessee acknowledge and agree that the Minimum Standards currently require, among other items, that an FBO at the Airport must (i) lease and utilize a minimum of 5,000 square feet for its Fuel Storage Area, (ii) place the Fuel Storage Area in a location approved by the City, and (iii) construct and operate above-ground fuel tanks at the Fuel Storage Area (together, the “Certain Fuel Requirements”).

Pursuant to its powers under the Minimum Standards, Lessor agrees to issue a temporary, twelve-month waiver of the Certain Fuel Requirements to the Lessee (“Temporary Waiver”) to allow it to begin fueling operations prior to the construction of permanent fueling improvements. The Temporary Waiver shall only become effective on the date that Lessee meets all of the following conditions in the City’s reasonable discretion:

- ramp area completed of 120,000 square feet
- fuel tanks on temporary approved skids, which shall not be used after the expiration of the Temporary Waiver period
- temporary FBO facility
- access to leasehold for both aviation and non-aviation access
- necessary environmental controls are in place, including insurance as defined in this Agreement,
- necessary staffing to cover required hours of operation,
- equipment to support FBO’s operations,
- permits, operational manuals as required by Airport and all safety measures in place
- utilities inclusive of water, wastewater, electric and stormwater in place

The Temporary Waiver shall be strictly construed and shall not extend to any portion of the Minimum Standards beyond the Certain Fuel Requirements or any requirement not specifically waived herein. The Temporary Waiver shall not be extended beyond the twelve-month period. At the end of the twelve-month period, Lessee shall comply with all of the Certain Fuel Requirements and continue to comply with the Minimum Standards.

The placement of the Lessee’s permanent fuel storage tanks shall be subject to Airport’s prior written approval, which shall not be unreasonably withheld, with a minimum of 5,000 square feet of land to accommodate the above-ground fuel storage tanks to be constructed and operated in accordance with all applicable environmental requirements as defined in the Minimum Standards.

6.3 Non-Exclusive. Notwithstanding anything contained herein, it is expressly understood and agreed that the rights granted under this Agreement are non-exclusive and Lessor reserves the right to grant similar privileges to another tenant or user on the Airport property.

7 - IMPROVEMENTS

7.1 Improvements. Lessee shall construct, upon the Leased Premises, the following improvements (collectively, the “Initial Improvements”): (i) a general aviation terminal consisting of at least 3,000 square feet; (ii) aircraft hangar(s) totaling 20,000 square feet; (iii) above ground storage tanks

to accommodate the storage of jet fuel and avgas; and (iv) all ancillary improvements necessary for the operation of the Permitted Use, including but not limited to taxi-lanes, vehicle parking lanes, utilities and other facilities or improvements outlined in the Lease Agreement (Exhibit 4). Any improvements constructed or installed by Lessee in addition to the foregoing shall be deemed "Additional Improvements" for purposes of this Agreement. For Initial Improvements and Additional Improvements, Lessee shall have the right, at its sole expense, to improve, modify and make additions to the land leased to Lessee; provided, however, that prior to any construction, improvements or additions to facilities, including outdoor storage of materials and/or signage, Lessee must first obtain from Lessor the prior written approval of all plans and specifications for any and all construction, improvements or additions, which approval will not be unreasonably withheld. Factors relevant to approval include but are not limited to: aesthetic interior or exterior appearance, the safety of the Airport, and the extent of interference with other tenants' activities. All construction and improvements undertaken by Lessee shall be completed in a workmanlike manner without damage to existing facilities or interference with other tenant/airport activities. Lessee agrees to build approved capital improvements in accordance with Airport's Master Plan and in accordance with pavement standards and requirements necessary to support critical aircraft (Global Express 8000) to the extent Lessee determines that the demand for services and needs have increased sufficiently to justify additional capital expenditures by Lessee, as well as in accordance with the Lessor's current Architectural Guidelines. The Lessor represents and warrants to the Lessee that the Leased Premises is suitable for the operation of the Permitted Use and construction of the Initial Improvements and that the Lessor has no knowledge of any matter which would reasonably be anticipated to adversely affect such operation or construction. If Lessee's request for improvements is granted by Lessor, then the following conditions shall apply:

(a) Lessee shall be required to obtain, at its sole cost and expense, all required permits and licenses necessary and will comply with applicable zoning laws, building codes, and other laws and regulations of all appropriate governmental entities, including the State of Florida, Polk County and the City of Lakeland as it relates to the construction or installation of approved improvements and additional improvements to the Leased Premises.

(b) Lessee expressly agrees for itself, successors and assigns, to restrict the height of all structures, objects and/or natural growth in and upon the Leased Premises determined by the FAA to constitute an obstruction or hazard pursuant to 14 C.F.R. Part 77, as may be amended from time to time. Lessee agrees to comply with the notification and review requirements of said regulations in the event any future structure or building is planned for the Leased Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased Premises.

(c) Lessee agrees to hire only licensed contractors and subcontractors and to indemnify the Lessor in the event of any loss or damage resulting from work performed by Lessee's contractors and subcontractors on the Leased Premises.

7.2 Protection of Utility Lines and Equipment. All work undertaken pursuant to the rights granted in paragraph 7.1 above shall be subject to the condition that Lessee makes, at its expense, suitable arrangements for relocation of any utility lines, cables or other equipment. Further, Lessee shall not pave roads or ramps over said utility lines, cables, or equipment without the prior written approval of Lessor.

7.3 Lessee's Cost for Improvements, Fixtures and Equipment. As soon as practicable following

completion, Lessee shall submit to Lessor an itemized statement, certified by an officer of Lessee, showing the actual cost of fixed capital improvements for Initial Improvements and Additional Improvements inclusive of fees and expenses paid to independent architects, surveyors, and engineers, as constructed and installed by Lessee pursuant to this Agreement, and shall, if so requested by Lessor, produce copies of all invoices and other records. In no event shall Lessee's sublease, assignment or transfer of any portion of the Leased Premises to a Third Party for the purpose of constructing thereon Initial Improvements and/or Additional Improvements be used to calculate Lessee's investment in the Leased Premises for the purpose of determining capital improvements.

Said itemized statement shall, unless disputed in writing by Lessor within sixty (60) days following receipt thereof from Lessee, constitute evidence of the cost shown therein, Lessee shall fully depreciate actual cost on a straight line basis without allowance for salvage, commencing with the date on which said capital improvements are completed and ready for use or occupancy by Lessee, in accordance with Generally Accepted Accounting Procedures, however not to exceed the Initial Term of this Agreement. In the event Lessor terminates this Agreement for any reason other than an event (i) outside control of the Lessor such as a restriction imposed by the FAA, FDOT or other governmental entity prohibiting or restricting operation of an FBO, and Lessor has offered substantially similar substitute premises allowing for the operation of the Permitted Use on materially the same economic terms as existed prior to the existence of such event (ii) destruction of fixed capital improvements, (iii) a taking by condemnation or eminent domain, breach or default by Lessee hereunder, (IV) and the Term of this Agreement has not expired, Lessor shall promptly purchase or cause to be purchased from Lessee all of said capital improvements at a cash price equal to the then depreciated value of the capital improvements together with the net present value of Lessee's current receivables; provided, however, that Lessor's obligation hereunder shall be offset by the amount of any fees and charges due and owing to the Lessor from Lessee at the time of such purchase.

7.4 Ownership. Ownership of all Initial Improvements and Additional Improvements, equipment, and facilities installed or erected upon the Leased Premises which constitute fixtures and which are owned by Lessee shall vest in the Lessor at the expiration or other termination of this Agreement; provided that Lessee may retain all its trade fixtures, furnishings and that equipment (such as telephone system, computer system, diagnostic equipment, tools, aircraft equipment, etc.) which is not normally affixed to or made a part of structure. Lessee will pay any costs associated with either the restoration of the Leased Premises to be functional and in good condition upon such removal, ordinary wear and tear excepted.

7.5 Access to the Leased Premises. The Lessee will construct and ensure that the Leased Premises have landside access via a road as depicted on the attached (Exhibit 5) for automobiles (the "Internal Road") and airside access for the aircraft prior to issuance of Temporary Waiver as outlined in Section 6.2. Prior to commencing construction of the Internal Road, the plans must be approved by the Airport. Upon completion of the Internal Road, Lessee shall provide Lessor with an accounting of its costs to construct the Internal Road and convey any interest to the Airport and the Airport shall maintain the Internal Road thereafter. All landside access must comply with the Airport Security Plan and any access controls imposed by Lessor. If at any time any third party requires utilization of the Internal Road and enters into a lease with the Airport, the Lessee will be provided a onetime credit in an amount equal to fifty (50) percent of the agreed documented cost of the Internal Road, which such amount can be applied to their rent and taxes due under this Agreement.

8 - TAXES AND LICENSE FEES

8.1 Taxes, Licenses and Other Charges. Lessee shall be solely responsible for payment of all taxes, special assessments, licenses and other charges levied or imposed upon the rights, leasehold interest or other property of Lessee; reserving unto Lessee, however, the right to contest the validity of any such tax, special assessment, license, or other charge levied or imposed.

9 - MAINTENANCE

9.1 General. Lessee agrees and covenants that it shall faithfully and fully maintain the Leased Premises in substantially as good order and condition (ordinary wear and tear excepted) as exists at the time of execution of this Agreement, at its sole cost and expense, during the entire term of this Agreement and any extension thereof. Lessee agrees, except as otherwise provided herein, that it shall, during the Term or any extension of this Agreement, maintain and keep Leased Premises in a safe, workable, clean and sanitary condition, in good repair and free from obstructions and foreign object debris (FOD).

Lessee further understands and agrees that Lessor, by the exercise of reasonable discretion, shall be the sole judge of the quality of maintenance and that, upon written notice by Lessor to Lessee, Lessee will be required to perform whatever reasonable maintenance Lessor deems necessary. If said Lessee does not undertake maintenance within thirty (30) days after receipt of the written notice, Lessor shall have the right to enter the Leased Premises and perform necessary maintenance, the cost of which shall be borne by the Lessee. Lessor may make annual inspections to insure facilities are maintained in a quality condition throughout the Term of this Agreement. In the event of an emergency, Lessor may enter the Leased Premises and make maintenance or repairs without notifying Lessee. All costs incurred by Lessor in performing Lessee's maintenance responsibility, including repairs, as set forth in this Section will be paid by Lessee within thirty (30) days of receipt of invoice.

9.2 Land. Lessee agrees to maintain and keep the turfed and paved Leased Premises mowed and free and clear of all Foreign Objects and Debris (FOD) to prevent damage to jet engines through the ingestion of FOD. Lessee agrees to maintain and keep the turfed areas free and clear of all ruts, holes or depressions within the Leased Premises. Lessee shall be responsible for the clearing of snow or ice; however, nothing in this section shall prevent the Lessor from assisting Lessee in the clearing of snow or ice.

9.3 Buildings. Lessee shall maintain, at its sole cost and expense, all of Lessee's Improvements.

9.4 Refuse. Lessee agrees to furnish covered containers for its refuse and to remove all refuse from the Leased Premises at such intervals as are necessary to avoid an unsightly appearance and/or odor on the Leased Premises.

9.5 Exterior Signage. Lessee shall at its expense maintain the exterior signage on the Leased Premises or on any structure thereon in a neat and attractive exterior appearance at all times during the Term of the Agreement. All signage must be pre-approved, in writing, by the Airport Director or Designee and comply with local building code and ordinances.

9.6 Restoration upon Termination. Upon termination of this Agreement for any reason, Lessee shall deliver Leased Premises and improvements to Lessor in the same or better condition as when

received or installed, reasonable and ordinary wear and tear excluded.

10 - DAMAGE OR DESTRUCTION OF PREMISES

10.1 Buildings or Structures Built by Lessee. If any building or structure, or improvements, originally built by Lessee and not owned by the Lessor, is damaged, the Lessee shall restore the same with reasonable promptness. Lessee shall be responsible for the removal of all debris resulting from the damage or destruction of the buildings and structures built by Lessee and not owned by the Lessor. Lessee shall maintain standard fire and extended coverage insurance upon such said building, structures, and improvements. Lessee waives any right of subrogation against Lessor for loss or damages, which are covered under the aforementioned fire and extended coverage insurance. In this case, Lessee shall be entitled to receive and apply the proceeds of any insurance covering such loss, and any excess of proceeds shall belong to Lessee. Further, to the extent such proceeds do not fully satisfy the costs of such restoration, the costs expended by Lessor in excess of such proceeds shall be deemed an additional investment by Lessee pursuant to Section 2.2 above. However, if Lessee determines in its sole judgment that damages to the Leased Premises are uneconomical to restore, Lessee may terminate this Agreement pursuant to Section 15.1 (c). In such latter case, the proceeds of insurance, if any, shall be apportioned between Lessor and Lessee, with Lessor receiving the higher of the same proportion of such proceeds as the then expired portion of the contract term bears to the full term hereby granted or the funds required to restore the property to its initial state, and Lessee receiving the balance thereof.

11 - INDEMNITY

11.1 Lessee shall indemnify and hold harmless the Lessor, City of Lakeland, and any of its officers, employees and representatives, individually and collectively, from and against all loss, damage, costs, expenses, claims, suits, actions, liabilities and demands of every kind, character, or nature (including without limitation, attorneys' fees and court costs through the trial, appellate, administrative, and post-judgment proceedings) arising from, based upon, caused by or which may result from or on account of (i) any death or personal injuries or for property damages arising out of the use or occupancy of the Premises by Lessee or out of any acts or omissions of Lessee, its agents, employees or invitees upon the Premises, or (ii) any breach or default of any of the terms, provisions, conditions, obligations, or duties assumed or duties assumed by or imposed upon Lessee under this Agreement, or (iii) any violation by Lessee of any federal, state or local laws, ordinances or regulations. Lessee's duty to indemnify Lessor and City of Lakeland shall extend to all liability, loss, damage, cost or expense of Lessor arising from or relating to any event or occurrences taking place during the Term of this Agreement. In connection with any defense by Lessee, Lessor shall have the right to consent to any settlement, provided that such consent shall not be unreasonably withheld. Notwithstanding anything to the contrary contained herein, the provisions of this indemnification shall not extend to any losses, damages, costs, expenses, claims, suits, actions, liabilities or demands resulting solely from the willful misconduct or negligence of the Lessor, its employees, agents, invitees or independent contractors. The provisions of this section shall survive the expiration or any other termination of this Agreement.

12 - INSURANCE

12.1 Insurance Coverage. Lessee shall procure and maintain in full force and effect at all times and at its sole expense the insurance coverage required under Schedule E attached hereto and made a

part hereof, with insurance companies possessing financial ratings acceptable to Lessor, and shall provide Lessor with certificates of insurance evidencing the required coverage's. Lessor, City of Lakeland, shall be included as additional insured under this coverage.

12.2 Cancellation of Coverage. Each of the insurance policies and certificates required herein, except for workers' compensation, shall show the Lessor, the "City of Lakeland", as an additional insured; and shall bear the following provision:

This policy cannot be canceled, reduced in amount, or coverage limited by the insurer in less than thirty (30) days after mailing written notice to the insured, Lessor, City of Lakeland, of such alteration or cancellation, except for cancellation of the policy for non-payment of premium in which case at least ten (10) days advance written notice shall be given to the insured, Lessor and City of Lakeland.

12.3 Failure to Maintain Required Insurance. Should Lessee at any time fail to provide or maintain in force any of the insurance required herein above, the Lessor may but shall not be required to obtain said insurance, and the cost thereof shall be Lessee's responsibility to repay as additional rental in the month the costs are paid by the Lessor. If any coverage required hereby cannot be obtained for any reason, the Lessor may require Lessee to immediately cease operations until the required coverage is obtained; and if the said coverage cannot be obtained within a reasonable time as determined by the Lessor, the Lessor may terminate this Agreement. It is intended hereby that the Lessee shall at all times be insured against the risks to which it is exposed as the operator of the business authorized by this Agreement and shall be fully covered by said policies of insurance.

13 - INDEPENDENT CONTRACTOR

13.1 In conducting its business hereunder, Lessee acts as an independent contractor and not as an agent of the Lessor. The selection, retention, assignment, direction, and responsibility, of and for employees of Lessee shall be the sole responsibility of Lessee and Lessor shall not attempt to exercise control over the daily performance of duties by Lessee's employees.

14 - ASSIGNMENT, SUBLETTING AND APPROVAL OF OWNERSHIP

14.1 Neither the whole nor any part of this Agreement may be assigned, transferred or sublet by Lessee, either by process or operation of law, or in any other manner whatsoever without the prior written consent of the Lessor which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the limitation set forth in the first sentence of this Section 14.1, the Lessee, is required to receive written approval of the Lessor prior to entering into agreements (subleases and otherwise) with one or more persons or entities (collectively the "Third Party") pursuant to the terms of which the Third Party subleases a portion of the Premises from Lessee relating to Lessee's FBO operations on the Leased Premises, including, without limitation, the leasing and renting of space for office use, parking of aircraft and related uses. With respect to sublease, assignment or transfer of a portion of the Premises by Lessee to a Third Party, Lessee shall obtain prior written consent of the Lessor which shall not be unreasonably withheld, conditioned or delayed. If Lessee assigns any of its obligations as provided under this Agreement or subleases any part of the Leased Premises, Lessee shall remain liable to Lessor for all payments, damages, and actions of sublessees and assignees. Any attempted assignment or sublease of any part of this Agreement or any part of the Leased Premises without prior written consent

of Lessor shall be void.

15 - TERMINATION BY LESSEE

15.1 Lessee may cancel this Agreement and terminate all or any of its obligations hereunder, upon written notice to the Lessor, at any time that Lessee is not in default in the payment of any rentals, fees, or charges to Lessor, by giving thirty (30) days written notice to Lessor upon or after the happening of any of the following events and the Lessor shall deliver to the Lessee the sum calculated in accordance with Section 7.3 above:

- (a) The substantial restriction of, or interference with, Lessee's use of the Leased Premises provided that such restriction or interference is not due to any fault of Lessee such as restrictions imposed by the FAA, FDOT or any other governmental entity which prohibits the operation of an FBO; in the event Lessor does not offer Lessee substantially similar replacement premises which allows for Lessee's use without such restriction on interference, Lessor shall deliver to Lessee the sum calculated in accordance with Section 7.3 above.
- (b) The default by Lessor in the performance of any material term of this Agreement and the failure of Lessor to remedy such default after the receipt from Lessee of written notice to remedy the same.
- (c) The damage to Leased Premises built by Lessee, which, in Lessee's sole reasonable judgment, is uneconomical to restore. Insurance proceeds shall be distributed as provided in Section 10.1.

15.2 In the event Lessee elects to cancel this Agreement in accordance with this Section 15, the Lessor, or its designee may assume and/or enter into an Agreement with tenants that are in good standing that sublet with Lessee.

16 - TERMINATION BY LESSOR

16.1 Default. The occurrence of any one or more of the following listed events (hereinafter referred to singly as "event of default" and plurally as "events of default") shall constitute a breach of this Agreement on the part of Lessee:

- (a) Lessee fails to pay the rent or any other amount payable under this Agreement when the same becomes due and payable and remains unpaid beyond five (5) business days after Lessee's receipt of written notice of such failure.
- (b) The failure by Lessee to perform any term or terms of this Agreement and the failure of Lessee to remedy such default within a period of thirty (30) days after the receipt from Lessor of written notice to remedy the same; provided that in the event such cure cannot be reasonably effected, other than payment default, within thirty (30) days, Lessee shall be allowed reasonable additional time in which to complete such cure provided that Lessee diligently pursues such cure.
- (c) The assignment by Lessee of all or any part of its property or assets for the benefit of

creditors.

- (d) The levy of execution, attachment, or other taking of property, assets, at the Leased Premises or the leasehold interest of Lessee in the Leased Premises by process of law or otherwise in satisfaction of any judgment, debt or claim.
- (e) The failure by Lessee to maintain the insurance coverage required by this Agreement which is not cured within thirty (30) days following written notice to Lessee of such failure.
- (f) Lessee abandons or vacates Leased Premises for ninety (90) days or more.
- (g) It is expressly agreed that if at any time during the Term of this Agreement the Lessee should be adjudged bankrupt or insolvent by any Federal or State court of competent jurisdiction or should Lessor reasonably deem that the Lessee has undergone a corporate reorganization or restructuring such that the financial integrity of Lessee is diminished, Lessor may declare this Agreement terminated and cancelled and take possession of said Premises. In the event this Agreement with Lessee is terminated, the Lessor or its designee will assume or enter into agreement with sub lessees that are in good standing.
- (h) If the construction of the initial capital improvements as required in the Minimum Standards, including the construction of a permanent fuel farm, are not completed within twenty-four (24) months from the effective date of this Agreement notwithstanding any extension granted due to materially adverse effects to the field, the Lessee will be deemed to be in default of the Agreement and Lessor may exercise any or all of its rights as defined in Section 16.

16.2 Entry. In the event of default pursuant to 16.1 above, Lessor may enter the Leased Premises and may remove all persons and property from same upon the date of entry specified in Lessor's written notice to Lessee, however, such date of entry shall be not less than thirty (30) days from said notice. Upon any removal of Lessee's property by Lessor hereunder, said property may be stored at a public warehouse or elsewhere at Lessee's sole cost and expense.

16.3 Waiver. No waiver by Lessor of default by Lessee in performance of any term or terms of this Agreement shall be construed to be a waiver of any subsequent default. The acceptance of rental of the performance of all or any part of this Agreement by Lessor, for or during any period or periods after a default in performance by Lessee, shall not be deemed a waiver of any right on the part of Lessor to declare a default or terminate this Agreement for a subsequent breach thereof.

16.4 Effect of Default. Upon the happening of any event of default as defined in paragraph 16.1 above, Lessor may terminate this Agreement, provided, however, that Lessee shall have a period of thirty (30) days after delivery of "NOTICE OF DEFAULT" in which to cure the default prior to any termination by Lessor as herein provided.

16.5 Termination of Agreement. In the event Lessor shall terminate this Agreement or Lessee's right to possession or occupancy of the Leased Premises as provided herein, Lessee shall promptly

vacate the Premises, surrender and deliver possession thereof to Lessor, and at its sole expense remove from the Leased Premises within thirty (30) days all signs, trade fixtures, furnishings, personal property, equipment, and materials which Lessee was permitted to install and maintain under the rights granted herein. Any of Lessee's property not removed within thirty (30) days shall become Lessor property. Sub lessees with Lessee shall have their agreements revert to the Airport Lessor, or its designee.

17 - RIGHT OF INSPECTION

17.1 Lessor shall have the right to enter the Leased Premises at all reasonable times to inspect the Premises and Lessee's operation of the same, and to install or maintain utilities; provided that Lessor shall compensate Lessee for any damage to Lessee's property caused by Lessor's negligence or willful misconduct in exercising the rights granted under this Section.

18 - NOTICES

18.1 Forms of Notice. All notices, consents and approvals required or authorized by this Agreement to be given by or on behalf of either party to the other, shall be in writing and signed by a duly designated representative of the party by or on whose behalf they are given, and shall be deemed given (i) at the time a registered or certified letter, properly addressed, postage prepaid, is deposited in any United States Post Office or with a recognized overnight delivery service, or (ii) at the time a properly transmitted facsimile is received; or (iii) upon hand delivery.

18.2 Notices to Lessor. Notice to Lessor shall be addressed to and delivered at the office of the Airport Director, 3900 Don Emerson Drive, Suite 210 Lakeland, Florida 33811, either by hand or certified mail, postage prepaid, or at such other office as it may hereafter designate by notice to Lessee in writing.

18.3 Notices to Lessee. Notice to Lessee shall be addressed to 517 SE 25th Avenue, Ft. Lauderdale, Florida 33301 by registered certified mail, postage prepaid, or at such other office in the continental United States as it may hereafter designate by notice to Lessor in writing.

19 - GOVERNMENTAL REQUIREMENTS

19.1 Federal Agency Agreements. Lessor hereby advises the Lessee that it has entered into various agreements with City of Lakeland, the State of Florida and the United States Government. Lessor further represents that it intends from time to time hereafter to enter into additional agreements with various governmental agencies with respect to applications for funds for improvements to be made at said Airport, as required by pertinent statutes, rules and regulations of respective and duly constituted, competent governmental authority having jurisdiction thereof. This Agreement is expressly made subject to all of said agreements now existing or hereafter made.

Lessor, subject to the terms of Section 19.1 above, also reserves the right to: (1) further develop and improve the Airport as it sees fit, and (2) to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent the Lessee from erecting, or permitting to be erected, any building or other structure on the Airport which, in the opinion of Lessor, would limit the usefulness of the Airport or constitute a hazard to aircraft.

19.2 Property Rights and Subordination Reserved. This Agreement and all provisions hereof, shall be subordinate to all covenants and restrictions of the deeds under which Lessor acquired the property known as Lakeland Linder International Airport from the United States of America, insofar as such covenants and restrictions remain in effect from time to time and after the date hereof, such deeds being identified as follows:

(a) Quitclaim Deed and Surrender of Lease dated September 26, 1947, 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 as may hereunder become ineffective or as shall have been or may hereafter be extinguished or released, whether by statute, rule or regulation, 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 3, 1947 (61 Stat. 678).

(b) Should the U.S. Department of Transportation, FAA or any successor department or agency determine that any provision herein is inconsistent with any covenant or restriction of the deeds under which Lessor acquired the Airport, or the provisions of any existing or future agreement entered into between Lessor and the United States of America, the Parties shall amend this Agreement as necessary to resolve the inconsistency. If the Parties cannot agree on the manner in which to resolve the inconsistency, Lessor shall have the unilateral right to amend the Agreement to resolve the inconsistency.

19.3 Subordination to Terms of Agreements with the U.S. Government

(a) This Agreement 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 planning, improvement or expansion of the Airport.

(b) This Agreement 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 said Airport or the exclusive or nonexclusive use of the Airport by the United States of America during the time of war or national emergency.

(c) This Agreement shall further be subject to the funding and contractual requirements of the United States Small Business Administration (the “SBA”) to the extent Lessee seeks funding through the SBA or through the SBA’s third party administrator in the State of Florida.

(d) Notwithstanding anything contained in this Agreement, it is expressly understood and agreed that nothing herein shall be understood to confer an exclusive right upon Lessee to conduct any aeronautical activity at the Airport in violation of 40 U.S.C. Section 40103(e) or

49 U.S.C. Section 47107(a)(4) or any grant assurance executed by the Lessor in compliance with such statute.

19.4 Required Federal Provisions During the performance of this Agreement, LESSEE, for itself, its assignees, and successors in interest (hereinafter collectively referred to as “LESSEE”) agrees to follow Federal Guidelines as outlined on Schedule F:

20 - LIENS; MORTGAGES

20.1 Liens; Mortgages. Lessee shall not obligate the Leased Premises for the costs of any improvements or alterations and shall not permit a lien to be filed upon said Leased Premises. Notwithstanding the foregoing, the Parties hereby agree as follows:

- (a) Lessor hereby consents, as long as mortgage interest does not impair Lessor’s interest in any manner, to Lessee’s interest under this Agreement being mortgaged to any Federal or State Savings and Loan Association, Bank or Trust Company, Insurance Company, Pension Fund, Trust, similar lending institution and/or other non-public or public company authorized to make leasehold mortgage loans or offer leasehold financing in the State of Florida.
- (b) If Lessee shall mortgage its leasehold interest and if the holder of the mortgage or pledge shall forward to Lessor, pursuant to the notice Section in this Agreement, a duplicate original of the mortgage in recordable form, or a copy of the mortgage certified as a true copy by the Office of Official Records of Polk County, together with a written notice setting forth the name and address of the leasehold mortgagee, then, until the time that the leasehold mortgage shall be satisfied of record, the following provisions of this Section shall apply.
- (c) When giving notice to Lessee with respect to any default under the provisions of this Agreement, Lessor will use its best efforts to also serve a copy of such notice upon the leasehold mortgagee, which copy shall be sent by Lessor by certified mail return receipt requested, to such leasehold mortgagee. No such notice to Lessee shall be deemed to have been given, notwithstanding any provision of this Lease, unless a copy of such notice has been so sent to the leasehold mortgagee, which notice must specify the nature of each default. Notwithstanding the foregoing, the Lessor shall not be liable to the Lessee or their leasehold mortgagee for failure to provide notice in accordance with this section.

The leasehold mortgagee, upon receiving such notice, shall have, in addition to any period of grace extended to Lessee under the terms of this Agreement, a period of an additional thirty (30) days within which to cure the default or cause same to be cured or to commence to cure such default with diligence and continuity; provided, however, that as to any default of Lessee for failure to pay rent or additional rent, the leasehold

mortgagee shall have twenty (20) days from the date of receipt by leasehold mortgagee of such notice of default to cure such default.

Upon the happening of any default and receipt of notice of same from Lessor, Lessee will notify the leasehold mortgagee promptly of such occurrence and shall state in the notice what action has been or will be taken by Lessee to cure the default.

- (d) In case Lessee shall default under any of the provisions of this Agreement, the leasehold mortgagee shall have the right (but not an obligation) to cure such default whether same consists of the failure to pay rent or additional rent or the failure to perform any other matter or thing which Lessee is required to do or perform and Lessor shall accept such performance on the part of the leasehold mortgagee as though the same had been done or performed by Lessee.
- (e) Lessor will take no action to effect a termination of the Agreement until such time as the cure period provided herein to the mortgagee has expired and the defaults remain uncured, as long as FBO and fuel services are continuously provided by the mortgagee or its agent. During the cure period provided to the leasehold mortgagee, the leasehold mortgagee shall be entitled to (but shall not be required to): 1) obtain possession of the Premises (including possession by a receiver) and cure such default in the case of a default which is susceptible of being cured when the leasehold mortgagee has obtained possession; or 2) institute foreclosure proceedings and complete such foreclosure or otherwise acquire Lessee's interest under this Agreement and thereafter proceed to cure such default; provided, however, that the leasehold mortgagee shall not be required to continue such possession or continue such foreclosure proceedings if the default which would have been the reason for Lessor serving such notice of default shall be cured. During the cure period provided herein, the leasehold mortgagee shall have an obligation to ensure the continuous operation to provide FBO and fuel services through its agent as if provided by the Lessee hereunder.
- (f) The leasehold mortgagee may become the legal owner and holder of this Agreement by foreclosure of its leasehold mortgage or as a result of the assignment of this Agreement in lieu of foreclosure, made with Lessor's written consent, whereupon such leasehold mortgagee or assignee shall immediately become and remain liable under this Agreement as provided in this Section, except that such leasehold mortgagee may assign this Agreement with Lessor's written consent which shall not be unreasonably withheld or delayed and effective upon such assignment, the assignee shall become and remain liable to Lessor under this Agreement, and the leasehold mortgagee shall no longer be liable to Lessor in any fashion with the condition that the Assignee meets all of the conditions outlined in the Minimum Standards, including having the experience and financial requirements to operate a FBO and ancillary operations as defined.

In the event that a leasehold mortgagee shall become the owner or holder of Lessee's interest in this Agreement by foreclosure of its mortgage or by assignment of this Agreement in lieu of foreclosure or otherwise, the term "Lessee" as used in this Agreement, means only the owner or holder of the Lessee's interest for the time being so that, in the event of a sale, assignment or other disposition of Lessee's interest in this

Agreement by leasehold mortgagee, the leasehold mortgagee's purchaser or assignee shall upon written approval by the Lessor, which shall not be unreasonably withheld or delayed, be deemed to assume and agree to carry out any and all covenants and obligations of Lessee from and after the date that the mortgagee became the owner or holder. To wit, in such event, the leasehold mortgagee's purchaser or assignee shall retroactively assume all covenants and obligations of the Lessee from the date of transfer away from Lessee to the leasehold mortgagee and/or the leasehold mortgagee's purchaser or assignee, whichever first occurs.

- (g) Within ten (10) days after written request by Lessee or by Lessee's leasehold mortgagee, or in the event that upon any sale, assignment or mortgaging of Lessee's interest in this Agreement by Lessee or Lessee's leasehold mortgagee, an offset statement shall be required from Lessor, Lessor agrees to deliver in recordable form a certificate to any proposed leasehold mortgagee, purchaser, assignee or Lessee, certifying (if such be the case): 1) the amount of Rent and additional Rent, if any, due under this Agreement, and the date to which said sums have been paid; 2) that this Agreement is in full force and effect; 3) that Lessor has no knowledge of any default under this Agreement, or if any default exists, specifying the nature of the default; 4) that there are no defenses or offsets known to Lessor which may be asserted by Lessor against the Lessee in respect of obligations pursuant to this Agreement.
- (h) Reference in this Agreement to acquisition of the Lessee's interest in this Agreement by the leasehold mortgagee shall be deemed to refer, where circumstances require, to acquisition of the Lessee's interest in this Agreement by any purchaser at a sale on foreclosure of the leasehold mortgage and provisions applicable to the leasehold mortgagee in such instance or instances shall also be applicable to any such purchaser.
- (i) So long as Lessee's interest in this Agreement shall be mortgaged to a leasehold mortgagee, the parties agree for the benefit of such leasehold mortgagee that Lessor shall not sell, grant or convey to Lessee all or any portion of the Lessor's fee simple title to the Leased Premises without the prior written consent of such leasehold mortgagee except as provided herein. In the event of any such sale, grant or conveyance by Lessor to the Lessee, Lessor and Lessee agree that no such sale, grant or conveyance shall create a merger of this Agreement into a fee simple title to the Leased Premises. This Section shall not be construed to prevent sale, grant or conveyance of Lessor's fee simple title by Lessor to any person, firm or corporation other than Lessee, its successors, legal representatives and assigns.
- (j) Reference in this Agreement to a leasehold mortgagee shall be deemed to refer where circumstances require, to any assignee (subject to the provisions of this Section set forth above) of a leasehold mortgagee; provided that such assignee shall forward to Lessor, pursuant to the notice Section in this Agreement, a duplicate original of the assignment of the leasehold mortgagee in a form proper for recording or a copy of such assignment, certified as a true copy by the Office of Official Records of the applicable county, together with a written notice setting forth the name and address of the assignee.
- (k) Any leasehold mortgage shall be specifically subject and subordinate to Lessor's rights

under this Agreement. The sentence immediately preceding shall not be deemed or construed (by implication or otherwise) to impose or establish upon Lessee's interest in this Agreement or upon the lien of any leasehold mortgage, the superiority of any lien or encumbrance, including, without limitation, the lien of any fee mortgage, judgment, tax created directly or indirectly by, through or against Lessor or Lessor's interest in this Agreement. Despite any provision which is or may appear to the contrary in this Agreement, under no circumstances whatsoever shall the fee simple title interest of Lessor in the Leased Premises, or any portion of same, be subordinated.

- (l) Notwithstanding any other provision in this Agreement, after a default by Lessee whereby any leasehold mortgagee shall acquire any rights and/or obligations under this Agreement, including as a result of bidding or lack thereof at auction after foreclosure, and thereafter the leasehold mortgagee or referee at sale proposes to assign, sell, rent, or otherwise transfer any interests, rights, and obligations to a special purpose entity and/or third party, or allow use of the property under this Agreement by a special purpose entity and/or third party, any such assignment, sale, transfer, or use of the property under this Agreement by a special purpose entity and/or third party is contingent upon Lessor confirming to its satisfaction that the special purpose entity and/or third party has the financial and operational capabilities sufficient for the proper conduct of a fixed base operator as those capabilities are defined in this Agreement or any other agreement that is subject to this provision, and any Minimum Standards applicable to the Airport. The Lessor may also submit nominees to the leasehold mortgagee, and the leasehold mortgagee shall negotiate in good faith and act with said nominees in order to determine whether any such nominee meets the leasehold mortgagee's qualifications.
- (m) Notwithstanding anything to the contrary above, the leasehold mortgagee's rights as set forth herein shall be conditioned on the leasehold mortgagee using commercially reasonable efforts to ensure that the operations required to be provided by Lessee hereunder continue subsequent to the leasehold mortgagee acquiring the rights and obligations of the Lessee under the Agreement in accordance with the provisions of the above sections.

21 - MISCELLANEOUS PROVISIONS

21.1 Entire Agreement. This Agreement constitutes the entire understanding between the parties and supersedes all prior and independent agreements between the Parties covering the subject matter hereof and the Leased Premises. Any provisions of prior agreements which conflict in any manner with the provisions of this Agreement are hereby specifically declared void and of no effect.

Any change or modification of this Agreement must be in writing signed by both Parties.

21.2 Severability. In the event any provisions hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction, the remaining provisions shall continue in full force and effect as nearly as possible in accordance with the original intent of the Parties.

21.3 Headings. The headings used in this Agreement are intended for convenience of reference only and do not define, expand, or limit the scope or meaning of any provisions of this Agreement.

21.4 Governing Law. This Agreement is to be construed in accordance with the laws of the State of Florida. Venue for any action to enforce or interpret this Agreement shall be in the courts of Polk County, Florida or the U.S. District Court in and for the Middle District of Florida, Tampa Division.

21.5 Quiet Enjoyment. Subject to the provisions of this Agreement, Lessor covenants and agrees that Lessee, upon payment of the rentals provided for herein, and performance of its covenants, Agreements and other obligations hereunder, shall have quiet and peaceable possession of the Leased Premises granted herein during the term of this Agreement.

21.6 Approval of Signs. The number, size, type, design, and location of all signs displayed or maintained by the Lessee in view of the general public shall be subject to review by and the prior written approval, such approval not to be unreasonably withheld of the Airport Director. All signs must comply with City of Lakeland's Land Development Code.

21.7 Approvals; Consents. Notwithstanding anything to the contrary contained in this Agreement, whenever the consent or approval of the Lessor is required with respect to any act or omission of Lessee such consent or approval shall not be unreasonably withheld.

21.8 E-Verify Compliance. Lessee shall fully comply with the U.S. Department of Homeland Security employee legal status E-Verify requirements for itself and all its subcontractors, if applicable. Lessor requires an affidavit attesting to Lessee's compliance. Violation of the provision, unless timely cured, shall constitute a breach of contract.

21.9 Force Majeure. Neither Lessor nor Lessee shall be deemed to be in Default hereunder if either party is prevented from performing any of the obligations imposed under this Agreement by reason of strikes, boycotts, labor disputes, embargoes, shortage of energy or materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, pandemics, or any other circumstances for which it is not responsible or which is beyond its control. Lessor shall be under no obligation to furnish any service or supply any utility if and to the extent and during any period that the furnishing of any such service or the supplying of any such utility, or the use of any device or component necessary therefore, shall be prohibited or rationed by any federal or state law, rule, regulation, requirement, order or directive. Under no circumstances shall the happening of any event provided for in this section excuse Lessee from paying the rentals, fees and charges payable to Lessor by Lessee, pursuant to the terms of this Agreement and during the Term of this Agreement.

22 - ADDITIONAL TERMS

22.1 Cure By Third Party. Notwithstanding anything to the contrary contained in this Agreement, in the event that Lessor shall notify Lessee of any defaults as herein provided, Lessor shall simultaneously serve a copy of such notice by certified mail under each person or entity constituting a Third Party, provided each such person or entity constituting a Third Party shall have registered with

Lessor its name and address in writing. Upon notice of default the Third Party may, in order to protect its interest in the Leased Premises, cure the default of Lessee within thirty (30) days of the expiration of the thirty (30) days of the period afforded Lessee to cure any such defaults or the date the Third Party receives from the Lessor the written notice of default by the Lessee, whichever is later.

22.2 Representations and Warranties of Lessor to Lessee. The Lessor represents and warrants to Lessee that:

- (a) Lessor has full power and authority to enter into this Agreement.
- (b) Lessor has duly executed and delivered this Agreement.
- (c) This Agreement constitutes the legal, valid and binding obligation of the Lessor enforceable against the Lessor in accordance with its terms.
- (d) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated herein nor compliance by Lessor with any of the provisions hereof will (i) violate, conflict with, result in a material breach of or constitute a material default under breach of or constitute a material default under any of the terms of the establishment documents of the Lessor or any contract or agreement, written or oral, to which the Lessor is a party, (ii) violate any rule, order, writ, injunction, decree, statute, or regulation applicable to the Lessor, or (iii) require the consent, approval, permission or other authorization of any court, or governmental, administrative or self-regulatory authority or other third party.
- (e) All requisite action required to be taken by the Lessor to authorize the execution, delivery and performance of this Agreement has been taken and no other proceedings or actions on the part of the Lessor are necessary to authorize the execution, delivery and performance of this Agreement.

22.3 FAA Approval. The improvements constructed pursuant to this Agreement may be subject to approval of the FAA pertaining to 14 C.F.R. Part 77 and Environmental Review. If the FAA determines such improvements violate its rules and regulations, Lessee shall take the actions reasonably necessary to ensure compliance.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers in duplicate originals, one of which is retained by each of the Parties, this the day and year first above written.

CITY OF LAKELAND

[CORPORATE SEAL]

H. William Mutz, Mayor

ATTEST:

Kelly S. Koos, City Clerk

Approved as to form and correctness:

Palmer C. Davis, City Attorney

[LESSEE]

[CORPORATE SEAL]

CEO/President

STATE OF _____

_____ COUNTY

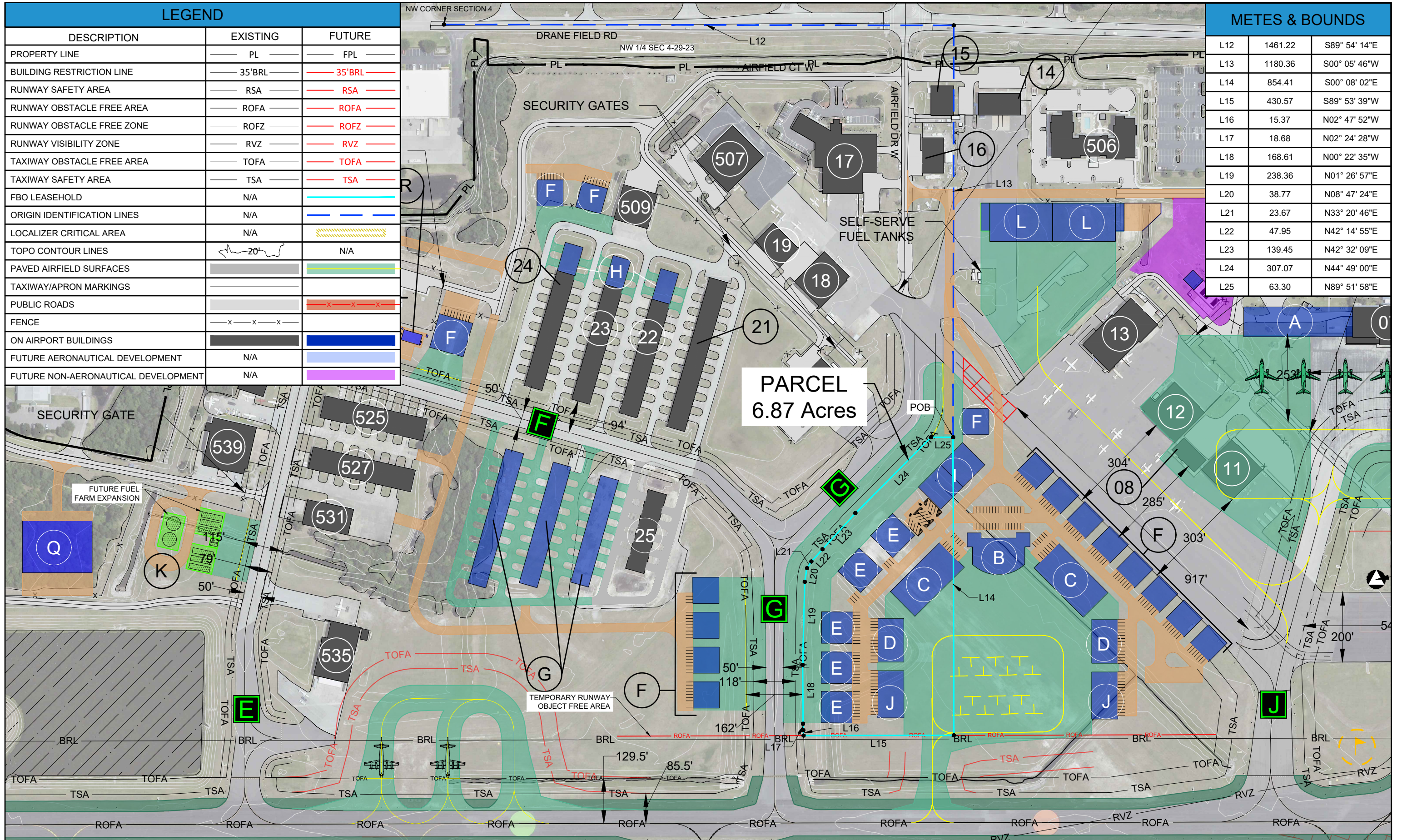
The foregoing instrument was acknowledged before me by means of ___physical presence or ___online notarization, this _____ day of _____ 2020 by (Name of officer/agent and title) of (Corporation Name), a(state or place of incorporation) corporation. He/she is personally known to me or has produced (type of identification) as identification.

_____ (Signature of person taking acknowledgment)
(Name typed, printed or stamped)
(Title or rank)
(Serial number, if any)

SCHEDULE A (DESCRIPTION OF LEASED PREMISES)

INSERT SCALED SITE PLAN

SCHEDULE A



SCHEDULE A

Description:

(PARCEL) - 6.87 Acres

A parcel of land lying in Section 4, Township 29 South, Range 23 East, Polk County, Florida, being described as follows:

Commence at the northwest corner of said Section 4; thence South $89^{\circ}54' 14''$ East, along the north line of said Section 4, a distance of 1,461.22 feet; thence South $00^{\circ}05' 46''$ West, 1,180.36 feet to the Point of Beginning; thence South $00^{\circ}08' 02''$ East, 854.41 feet; thence South $89^{\circ}53' 39''$ West, 430.57 feet; thence North $02^{\circ}47' 52''$ West, 15.37 feet; thence North $02^{\circ}24' 28''$ West, 18.68 feet; thence North $00^{\circ}22' 35''$ West, 168.61 feet; thence North $01^{\circ}26' 57''$ East, 238.36 feet; thence North $08^{\circ}47' 24''$ East, 38.77 feet; thence North $33^{\circ}20' 46''$ East, 23.67 feet; thence North $42^{\circ}14' 55''$ East, 47.95 feet; thence North $42^{\circ}32' 09''$ East, 139.45 feet; thence North $44^{\circ}49' 00''$ East, 307.07 feet; thence North $89^{\circ}51' 58''$ East, 63.30 feet to the Point of Beginning.

SCHEDULE B (RENT)

Rent shall be based on a percentage of gross sales subject to a guaranteed minimum rent.

1. Definitions.

Rent. An annual rental amount is determined by the following formula

Land Rental:	
Unimproved	\$ 0.30/SF/YR

Minimum monthly rent shall consist of the minimum annual rent divided by twelve (12).

3. Records and Audit. Lessee will be required to maintain accurate books of account and records, in accordance with generally accepted accounting practices, with respect to all of Lessee's business conducted at the Airport. Lessor shall have the right to examine such books or records relating to Lessee's sales, or to have them audited, at any reasonable time.

4. Adjustment of Minimum Rent. The net annual minimum basic rent for each Lease Year during the Term hereof subsequent to the first Lease Year shall be increased in the same amount of any increase in the Consumer Price Index during the preceding Lease Year. Such increase shall be calculated by multiplying the net minimum basic rent by a fraction whose numerator is the Consumer Price Index for the twelfth (12th) month of the preceding Lease Year and whose denominator is the Consumer Price Index for the first month of such Lease Year. In no event shall the net annual minimum basic rent be decreased due to changes in the Consumer Price Index and in no event shall the net annual minimum basic rent increase by more than three percent (3%) in any given Lease Year. For purposes hereof "Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers, U.S. City Average, published by the Bureau of Labor Statistics of the United States Department of Labor, All Items (1982-84=100). For purposes hereof, "Lease Year" shall mean each consecutive twelve (12) month period commencing on the Rent Commencement Date.

5. Fuel Flowage and Other Fees. In addition to the fees stated above, the Lessee shall pay to the Lessor Eight and One-Half cents (\$0.085) per gallon for all fuel sales. The Lessee agrees that if at any time in the future, the Lessor assesses a scheduled cargo or airlines fuel flowage or other fee on all other FBOs operating on the Airport, the Lessee will pay the Lessor the same fee. Lessor reserves this right to increase or decrease the flowage fee from time to time in its reasonable discretion, provided that such increase or decrease be applied prospectively, equally and fairly applied to all fuel vendors and self-fuelers at the Airport.

Lessee is required to collect Ramp Fees on the International Customs Ramp in the minimum amount set forth by the Airport and applicable to all users of the International Customs Ramp for any aircraft requesting service from Lessee to which Lessee actually provides service on the International Customs Ramp. To the extent Lessee collects more than the foregoing amount for such services, Lessee shall be entitled to retain such overage, if any. The Lessor reserves the right to change or alter the International Customs Ramp fee at its sole discretion; provided that at all times parties providing services on the International Customs Ramp shall be responsible for remittance of the same minimum fee to the Lessor.

Lessee will assist the Lessor in collecting all current landing fees when applicable.

6. Payment. Monthly minimum fees shall be paid as in Section 3 of the Agreement.

SCHEDULE C (MINIMUM STANDARDS FOR FIXED BASE OPERATORS)

In addition to the General Requirements for all Operators in General Requirements Section of Minimum Standards, which may be amended from time to time provided that such amendment would not require additional investments to be made by the Fixed Based Operator, each Fixed Base Operator shall meet the following standards.

Operating Agreement

- No applicant for FBO may provide aeronautical services at the Airport until entering into a written lease with the City.

Management Qualifications

- An Entity shall have a minimum of five (5) years of prior experience operating a full-service FBO at one or more airports.

Required Services

The FBO is required to provide the following services at a minimum:

- Retail Aircraft Fueling which shall include Turbine Fuel Jet-A, AvGas 100LL, and Aircraft lubricants. In addition, an FBO may provide contract fueling services to air carriers.
- Aircraft Line services
- Aircraft Oxygen and Lavatory services
- Airframe and Power Plant Maintenance services
- Aircraft Storage Hangars
- Passenger, Crew, and Aircraft ground services, pilot supplies, support and amenities
- Flight briefing capabilities including weather
- Access to limousine services and rental cars
- Courtesy vehicle(s)
- Service equipment necessary to properly provide support for Aircraft including, but not limited to: Fire extinguishers, Aircraft tugs, ground power starter, auxiliary power units, and oxygen servicing equipment.

Optional Aeronautical Services

The FBO may provide other commercial aeronautical services on its leasehold subject to the approval of the Director and provided they meet the requirements of these standards, which may include but are not limited to:

- Flight Instruction or Aircraft Rental
- Aircraft Sales
- Air Charter, Air Taxi or Aircraft Management Services
- Avionics Sales and Maintenance Services
- Other specialized aeronautical services for air carriers

Rates and Charges

- In a form acceptable to the Director, the FBO shall provide a monthly Aircraft

Fuel inventory reconciliation report to the Director and shall also submit a summary report listing the total amounts of Aircraft Fuel delivered to the site during each calendar month, together with the required fees and charges, on or before the 10th day of the subsequent month. The FBO shall maintain records of all fueling activities for not less than a three (3) year period and all necessary records shall be made available to the Director for audit.

Collection Agent

- When requested by the Director, the FBO shall act as the collection agent for any fees which are applicable to aircraft arriving at the Airport.

Sub-Contracting Limitations

- The FBO may subcontract or use third-party operators to provide any of the required FBO services, or optional services, with the exception of Aircraft Fueling and aircraft Line Services, which must be provided directly by FBO employees.

Minimum Space requirements Quick Reference:

Total Leased Premises	6 acres, contiguous
Offices and Support Facilities	3,000 square feet
Maintenance Hangar	10,000 square feet
Aircraft Storage Hangar	10,000 square feet
Apron	120,000 square feet
Fuel Storage Area	5,000 square feet

Land Requirements

- The FBO must lease property directly from the City to comply with the provisions of these Standards.
- The FBO must lease six (6) contiguous acres of land to provide space for: offices, hangars and other support buildings; paved private auto parking; paved aircraft apron; paved pedestrian walkways; fuel storage facilities; and all storage, servicing utilities and support facilities.

Hangars, Office and Support Facilities

- The FBO must lease or construct hangar facilities to provide a minimum of 10,000 square feet for aircraft storage which shall include a minimum of 2500 square feet available for short term aircraft storage.
- The FBO must lease or construct an additional 3,000 additional square feet of lounge, offices, flight planning facilities, pilot waiting areas, public restrooms and telephone facilities.
- The FBO must lease or construct an additional 10,000 square feet of hangar space to provide Aircraft Maintenance Services.

Aircraft Parking Apron and Taxiway Access

- The FBO shall lease or construct paved aircraft parking and storage area of adequate size to support the type of aircraft being serviced, but not less than a minimum of 120,000 square feet of parking apron (within the leased premises) which shall include a minimum of twenty (20) aircraft Tiedown spaces.
- The FBO shall provide any paved surfaces necessary for access to the Airport's taxiway system at a weight bearing strength to support operations by typical aircraft.

Fuel Storage Facilities

- The FBO shall provide the sale and into-plane delivery of common and recognized brands of Aircraft Fuels, lubricants and other aviation petroleum products. The FBO shall provide, store, and dispense 100LL/Avgas and Jet-A Aircraft Fuel. All Equipment used for the storage and/or dispensing of Aircraft Fuel must meet all applicable Federal, State, local laws, rules and regulations.
- The location of the Aircraft Fuel Storage Area shall be in conformance with the Airport's Master Plan, Airport Layout Plan and approved by the Airport.
- The FBO shall lease a minimum of 5000 square feet of land for above-ground fuel storage tanks to be constructed and operated in accordance with all applicable environmental requirements on the FBO's leased premises. The location of the Aircraft Fuel Storage Area shall be in conformance with the Airport's Master Plan and approved by the Airport.
- The FBO shall maintain the Aircraft Fuel Storage Area and all improvements in a presentable condition consistent with good business practices and in accordance with all applicable Federal, State and local laws, and the Airport Rules and Regulations.
- The total storage capacities shall be at least 10,000 gallons for turbine fuel and 10,000 gallons for aviation gasoline to assure an adequate supply at all times. The storage system must include adequate fuel spill prevention features and containment capabilities.
- The FBO shall provide a current copy of their Aircraft Fuel Spill Prevention, Countermeasures, and Control plan (SPCC) to the Airport thirty (30) days prior to commencing operations.
- Filter-equipped Aircraft Fuel dispensers with separate dispensing pumps and meter systems for each grade of Aircraft Fuel shall be provided. All metering devices must be inspected, checked and certified annually by appropriate local and State agencies.
- The FBO shall conduct the lawful, sanitary, and timely handling and disposal of all solid waste, regulated waste, and other materials including, but not limited to, sump Aircraft Fuel, used oil, solvents, and other regulated waste.
- The piling and storage of crates, boxes, barrels, containers, refuse, and surplus property is not permitted upon the Leased Premises.
- The FBO shall be required to undertake at its expense any environmental testing which the Airport Director may request from time to time, and any remedial actions which the Airport Director may determine to be necessary or appropriate as a result of such testing.

Vehicles and Equipment

- The FBO shall provide the personnel, equipment and facilities required to service all types of aircraft normally frequenting the Airport. Equipment shall be sufficient to facilitate the handling of aircraft up to and defined by FAA Category ARC B-II. Equipment shall consist of one (1) tug, one (1) ground power unit, one (1) universal tow bar, and one (1) tow bar with changeable heads for turbine aircraft.
- The FBO shall procure and maintain tools, jacks, tugs, towing equipment, tire repairing equipment, ground power units, emergency starting equipment, portable compressed air tanks, oxygen cart and supplies, fire extinguishers, mobile passenger stairs, chocks, ropes, tie-down supplies, crew and passenger courtesy transportation vehicles and a "Follow-Me" vehicle,
- The specific equipment requirements specified in these Standards shall be deemed satisfied if the FBO owns, leases or otherwise has sufficient access to the equipment to provide the applicable aeronautical services promptly on demand without causing any flight delays or other operational impacts on aircraft at the Airport.
- All equipment must be maintained in operating condition and good appearance.
- All equipment must be painted in a uniform manner with the company name and logo prominently displayed.
- All vehicles operating at the Airport shall have required permits and registrations, including permits for operation in the AOA.
- All vehicles operating inside the AOA shall be clearly designated with the name of the Operator on the vehicle as required by Airport Rules and Regulations.
- Each FBO shall provide an adequate supply of properly located, type, size and operable fire extinguishers and other safety Equipment. All fire extinguisher certifications must be current. Fire extinguishers shall be maintained within all hangars, on apron areas, at aircraft fuel storage area, and on all ground handling and Fueling Vehicles as required by applicable State and local fire codes for the type of operations conducted.

Emergency Assistance

- Recognizing that aircraft removal is the responsibility of the aircraft Owner/Operator, the FBO shall be prepared to lend assistance within thirty (30) minutes upon request to disabled aircraft on the Airport. This includes towing or transporting of disabled aircraft having a gross landing weight not in excess of 70,000 pounds to the Leased Premises at the request of the owner or operator of the disabled aircraft or the Director.
- Movement of any disabled aircraft shall be at the expense of the aircraft owner and the City bears no liability in moving an aircraft.

Mobile Dispensing Equipment

The FBO shall provide at least two (2) metered filter-equipped mobile dispensing trucks for dispensing the two (2) types of fuel, with separate dispensing pumps and meters required for each type of fuel.

- At least one (1) of the mobile dispensing trucks must be used for dispensing turbine Jet-A fuel with each having a minimum capacity of at least 3,000 gallons.
- 20

- At least one (1) of the mobile dispensing trucks must be used for dispensing aviation gasoline 100 LL with a capacity of at least 1200 gallons.
- All dispensers must have bottom-refilling capabilities and turbine fuel dispensers must have single point refueling capabilities.
- All dispensers shall meet all applicable safety requirements, with reliable metering devices subject to independent inspection.
- All equipment shall be maintained and operated in accordance with applicable Federal, State, Local laws and Airport Rules and Regulations.

Commercial Self-Service Fueling

- The FBO may provide Commercial Self-Service Fueling Equipment in addition to the required full-service Aircraft Fueling Equipment with the prior written consent of the Director.
- Commercial Self-Service Fueling Equipment must be in compliance with all applicable Federal, State, Local laws, Airport Rules and Regulations and cannot be substituted for the required full-service Aircraft Fueling Equipment.
- The FBO authorized to provide Commercial Self-Service Fueling shall provide at a minimum 100LL aviation gasoline.
- The storage tank for this facility shall be a minimum of 10,000 gallons.

Hours of Operation

- Each FBO is required to be open for business and provide Aircraft Fueling and Aircraft Line Services a minimum of sixteen (16) hours per day, seven (7) days per week, except as otherwise approved in writing by the Airport.
- Each FBO shall be available on-call twenty-four (24) hours a day, seven (7) days a week to respond to the needs of the customer or Airport.
- Airframe and Power Plant Maintenance must be open not less than five (5) days per week, eight (8) hours per day. At least one (1) FAA-licensed aircraft mechanic shall be made available promptly upon request. The FBO can meet this requirement by contracting with a Single Service Operator authorized to conduct aircraft maintenance at the Airport.

Personnel and Training

- At least two (2) fully trained and qualified line service personnel shall be on duty at all times while the facility is open for business. One must be a responsible and qualified supervisor.
- All fuel and line service personnel shall be suitably uniformed with the name of the company prominently displayed.
- All personnel in the AOA shall display security badges above the waist on the outermost garment at all times.
- All fuel service personnel shall have successfully completed an approved line technician safety course. National Aviation Transportation Association (NATA) or equivalent is acceptable.

- The FBO shall develop and maintain Standard Operating Procedures (SOP) for aircraft fuel and ground handling operations and shall ensure compliance with standards set forth in FAA Advisory Circular 00-34, Aircraft Ground Handling and Servicing, as now or hereafter amended. The SOP shall address bonding and fire protection, public protection, control of access to the aircraft fuel storage facility, and marking and labeling of aircraft fuel storage tanks and fuel dispensing equipment, and shall be submitted to the Airport prior to the FBO commencing fueling activities.
- The FBO shall comply with the Florida Fire Prevention Code, FAA Advisory Circular 150/5230-4, Aircraft Fuel Storage, Handling, and Dispensing on Airports, Airport Rules and Regulations, and all other applicable Federal, State and local laws related to Aircraft Fuel handling, dispensing, sale and storage.
- The FBO shall obtain all applicable aircraft fueling certifications and permits, and receive periodic refresher training as required.
- The City, the Director and/or the FAA may periodically conduct inspections of the FBO activities and facilities to ensure compliance with all applicable laws, regulations, and these Minimum Standards.

SCHEDULE D (REQUIRED FINANCIAL RECORDS)

1. **Monthly Statement.** Lessee shall furnish to Lessor, on or before the twentieth (20th) day of each month, an accurate statement setting forth all data necessary to calculate fees and charges due under this Agreement. The statement shall be in a form and with detail satisfactory to Lessor and shall include, but not necessarily be limited to, a statement of gross receipts during the preceding month. Statements shall be signed by a responsible accounting officer of Lessee.

2. **Annual Statement.** At Lessee's expense, within forty-five (45) days after the close of its fiscal year, Lessee shall furnish to Lessor a statement documenting that the minimum fee and percentage fee paid by Lessee to Lessor during the preceding year were made in accordance with the terms of this agreement. Such statement shall also contain a list of the gross receipts as shown on the books and records of Lessee for the period covered by the statement. If Lessor's examination of Lessee's statement or the supporting records discloses a potential for substantial error, Lessor may perform an audit or have an audit performed by a certified public accountant. If said substantial error is found, Lessee shall pay the full cost for such audit and for any necessary revised statement. If no substantial error is found, Lessor pays for the audit.

3. **Retention of Financial Records.** Lessee shall maintain all financial records required to document Lessee's compliance with its payment obligations to Lessor, including the following: Florida Sales Tax Reports, deposit slips, credit card sales records, individual sales records, register tapes and receipt tickets (or, in all instances, the digital or electronic equivalent).

4. **Inspection of Books and Records.** Lessee shall permit Lessor to inspect, audit, and copy all books and records relating to Lessee's sale required to be maintained by Lessee pursuant to any term of this Agreement and only may audit the records for the preceding two (2) fiscal years. Lessor agrees to conduct any such inspections and audits only during the normal business hours of Lessee. If an inspection or audit discloses an underpayment by Lessee of at least ten percent (10%) of the amount due, Lessee shall forthwith pay the sum of money owed to Lessor plus interest at eighteen percent (18%) per annum or the highest rate allowable by law from the date said sum should have been paid to the date payment is actually made. In the event such audit reveals an overpayment by Lessee, the Lessor shall promptly refund the amount of such overpayment to Lessee.

SCHEDULE E (FIXED BASE OPERATORS' INSURANCE)

Lessee shall maintain the insurance coverage that is subject to change, which is published for an and all FBO's:

A. Fire and extended coverage written within limits not less than 90% of the replacement value of all improvements and structures owned or constructed by Lessee in maintaining business operations at the Airport pursuant to the rights granted in this Agreement.

B. Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract. Policy must specify coverage applies on airport premises.

- Combined Single Limit (CSL) \$1,000,000
 - a. The policy shall be endorsed as required by this written agreement to include NHC, and its departments, agencies, boards, commissions, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Lessor, involving automobiles owned, hired and/or non-owned by the Lessor.”
 - b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of: NHC, and its departments, agencies, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Lessor.

C. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, personal and advertising injury and products and completed operations and, mobile equipment.

- General Aggregate \$2,000,000
- Each Occurrence \$2,000,000
- Hangar keepers Liability
 - Each Aircraft \$2,000,000
 - Each Occurrence \$2,000,000
 - a. The policy shall be endorsed, as required by this written agreement, to include NHC, and its departments, agencies, boards, commissions, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Lessor.
 - b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of NHC, and its departments, agencies, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Lessor.

D. Aircraft Liability Insurance

Lessor shall maintain aircraft liability and hull physical damage with respect of all aircraft owned, non-owned, leased and or operated by Lessor for bodily injury (including death) and property damage and including passenger liability in a combined single limit of not less than the following limits:

- Rotor-Wing \$5,000,000 CSL

 - Piston Aircraft:
 - 1 – 4 Seats \$1,000,000 CSL
 - More Than 4 Seats \$5,000,000 CSL

 - Turbine Aircraft
 - 10 Seats or Less \$10,000,000 CSL
 - 11 to 19 Seats \$25,000,000 CSL
 - 20 to 49 Seats \$50,000,000 CSL
 - 50 or Greater Seats \$100,000,000 CSL
- a. The policy shall be endorsed as required by this written agreement to include the NHC, and its departments, agencies, boards, commissions, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Lessor.
- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of: the NHC, and its departments, agencies, boards, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Lessor.

E. Worker’s compensation and employer’s liability insurance in compliance with statutory requirements, including other states’ endorsement.

If Lessor’s current or future comprehensive airport liability insurer adopts underwriting requirements establishing minimum amounts and/or types of insurance which Lessor must require of fixed base operators, Lessor reserves the right to revise the minimum amounts and/or types of insurance stated herein in accordance with the insurer’s requirements.

SCCHEDULE F

REQUIRED FEDERAL PROVISIONS

A. Compliance with Nondiscrimination Provisions. During the performance of this Agreement, LESSEE, for itself, its assignees, and successors in interest (hereinafter collectively referred to as "LESSEE") agrees as follows:

1. **Compliance with Regulations:** LESSEE will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
2. **Non-discrimination:** LESSEE, with regard to the work performed by it during the term of this Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of contractors, including procurements of materials and leases of equipment. LESSEE will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Agreements, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by LESSEE for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential contractor or supplier will be notified by LESSEE of LESSEE's obligations under this Agreement and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** LESSEE will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of LESSEE is in the exclusive possession of another who fails or refuses to furnish the information, LESSEE will so certify to LESSOR or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of LESSEE's noncompliance with the Non-discrimination provisions of this contract, LESSOR will impose such sanctions as it or the Federal Aviation Administration may determine to be

appropriate, including, but not limited to cancelling, terminating, or suspending the Agreement, in whole or in part..

6. **Incorporation of Provisions:** LESSEE will include the provisions of paragraphs one through six of this Schedule F, Section (A) in every contract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. LESSEE will take action with respect to any contract or procurement as LESSOR or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if LESSEE becomes involved in, or is threatened with litigation by a contractor, or supplier because of such direction, LESSEE may request LESSOR to enter into any litigation to protect the interests of LESSOR. In addition, LESSEE may request the United States to enter into the litigation to protect the interests of the United States.

B. Real Property Acquired or Improved Under the Airport Improvement Program. LESSEE for itself, its heirs, personal representatives, 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 in the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, LESSEE will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

C. Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program. LESSEE for itself, its heirs, personal representatives, 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 ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) that LESSEE will furnish its services in compliance with all other requirements imposed by or pursuant to the List of Nondiscrimination Acts And Authorities.

D. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, LESSEE, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);

- ii. 49 CFR Part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- iii. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- iv. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- v. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- vi. Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- vii. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- viii. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38;
- ix. The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- x. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- xi. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to

ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and

- xii. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

E. General Civil Rights Provision. LESSEE agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If LESSEE transfers its obligation to another, the transferee is obligated in the same manner as LESSEE. This provision obligates LESSEE for the period during which the property is owned, used or possessed by LESSEE and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

F. Right of Re-entry. In the event of breach of any of the above Nondiscrimination covenants, LESSOR will have the right to terminate the Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Agreement had never been made or issued.

G. Subcontracts. LESSEE agrees that it shall insert the above six provisions (Section (A) through Section (F)) in any agreement by which LESSEE grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public under this Agreement.

EXHIBIT 1

EXHIBIT 1

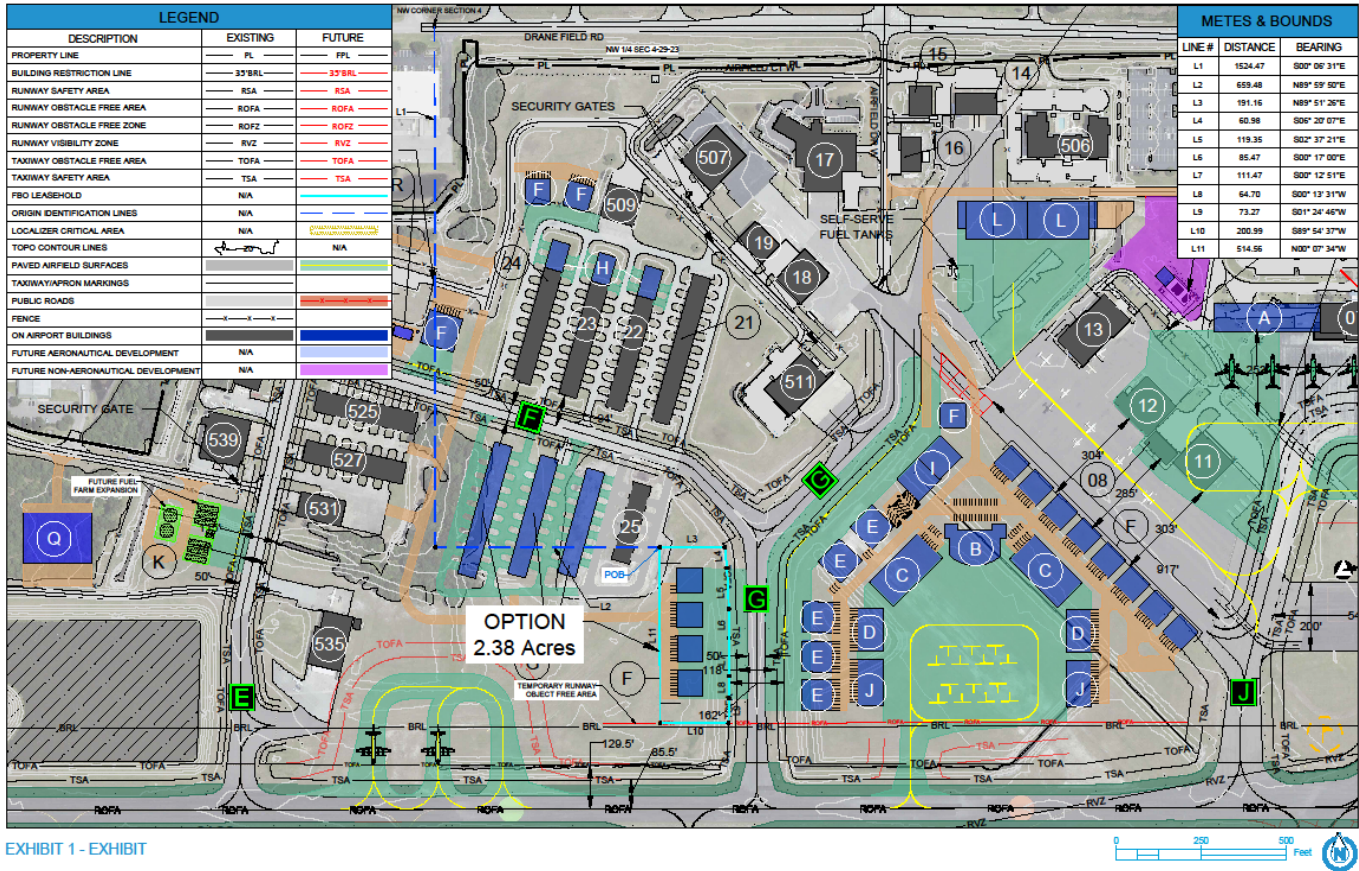


EXHIBIT 1 - EXHIBIT

EXHIBIT 1

Description:

(OPTION) - 2.38 Acres

A parcel of land lying in Section 4, Township 29 South, Range 23 East, Polk County, Florida, being described as follows:

Commence at the northwest corner of said Section 4; thence South 00°06' 31" East, along the west line of said Section 4, a distance of 1,524.47 feet; thence North 89°59' 50" East, 659.48 feet to the Point of Beginning; thence North 89°51' 26" East, 191.16 feet; thence South 06°20' 07" East, 60.98 feet; thence South 02°37' 21" East, 119.35 feet; thence South 00°17' 00" East, 85.47 feet; thence South 00°12' 51" East, 111.47 feet; thence South 00°13' 31" West, 64.70 feet; thence South 01°24' 46" West, 73.27 feet; thence South 89°54' 37" West, 200.99 feet; thence North 00°07' 34" West, 514.56 feet to the Point of Beginning.

EXHIBIT 1 - LEGAL DESCRIPTION

EXHIBIT 3

Description of Temporary FBO Facility

The Temporary FBO is required to be approved by the Lessor and will consist of the following:

- Construction type – modular facility, minimum 800 square feet
- Modular facility which will include
 - a lobby and operations office
 - Two restrooms
 - A small kitchen area
 - Be handicap accessible according to current building and City code

The facility will also need to be connected to the permanent water and sewer systems.

The location of the Temporary Facility must be approved in writing by the Lessor

EXHIBIT 5

EXHIBIT 5

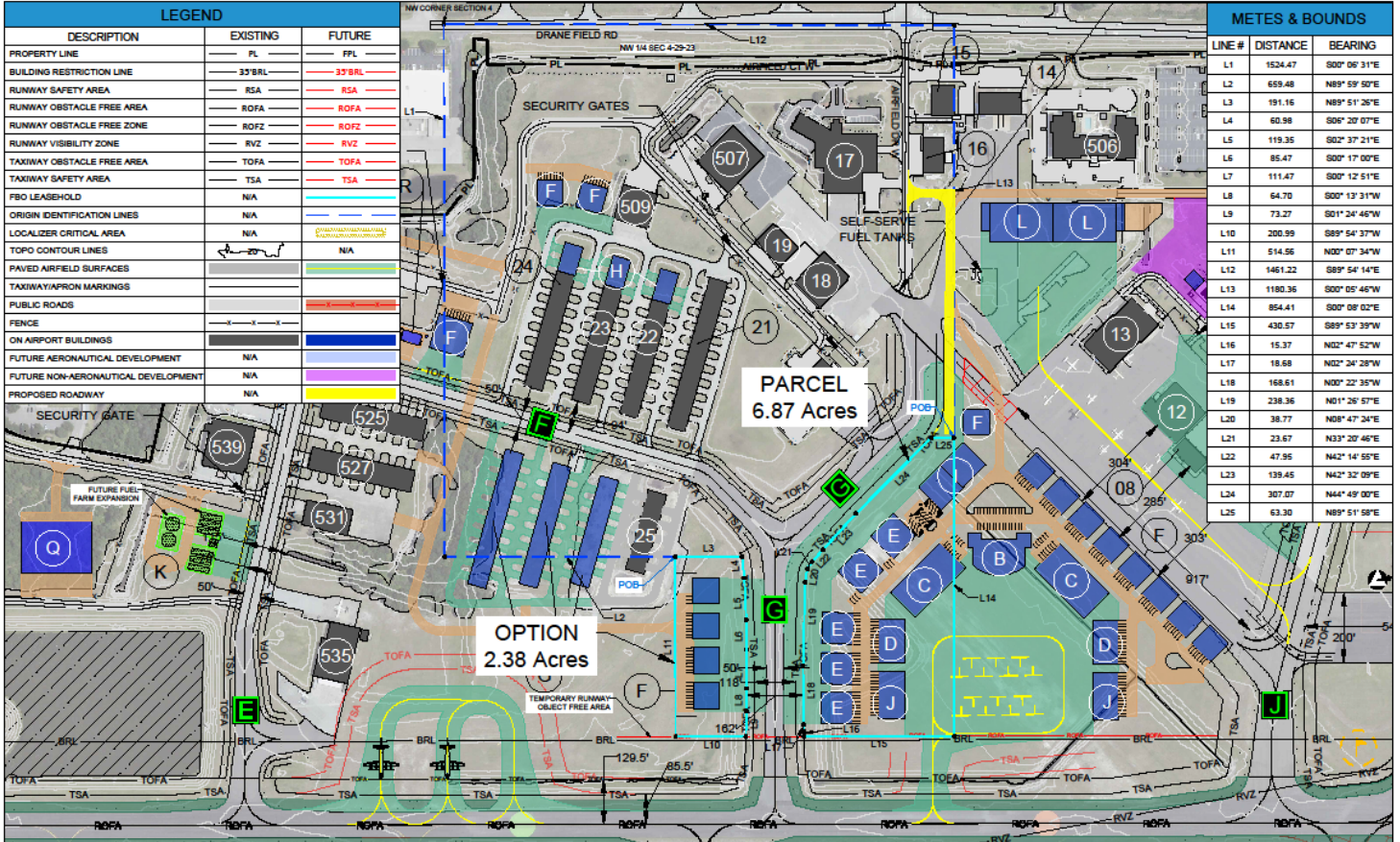


EXHIBIT 5 - PROPOSED ROADWAY



EXHIBIT 5

Description:

(OPTION) - 2.38 Acres

A parcel of land lying in Section 4, Township 29 South, Range 23 East, Polk County, Florida, being described as follows:

Commence at the northwest corner of said Section 4; thence South 00°06' 31" East, along the west line of said Section 4, a distance of 1,524.47 feet; thence North 89°59' 50" East, 659.48 feet to the Point of Beginning; thence North 89°51' 26" East, 191.16 feet; thence South 06°20' 07" East, 60.98 feet; thence South 02°37' 21" East, 119.35 feet; thence South 00°17' 00" East, 85.47 feet; thence South 00°12' 51" East, 111.47 feet; thence South 00°13' 31" West, 64.70 feet; thence South 01°24' 46" West, 73.27 feet; thence South 89°54' 37" West, 200.99 feet; thence North 00°07' 34" West, 514.56 feet to the Point of Beginning.

(PARCEL) - 6.87 Acres

A parcel of land lying in Section 4, Township 29 South, Range 23 East, Polk County, Florida, being described as follows:

Commence at the northwest corner of said Section 4; thence South 89°54' 14" East, along the north line of said Section 4, a distance of 1,461.22 feet; thence South 00°05' 46" West, 1,180.36 feet to the Point of Beginning; thence South 00°08' 02" East, 854.41 feet; thence South 89°53' 39" West, 430.57 feet; thence North 02°47' 52" West, 15.37 feet; thence North 02°24' 28" West, 18.68 feet; thence North 00°22' 35" West, 168.61 feet; thence North 01°26' 57" East, 238.36 feet; thence North 08°47' 24" East, 38.77 feet; thence North 33°20' 46" East, 23.67 feet; thence North 42°14' 55" East, 47.95 feet; thence North 42°32' 09" East, 139.45 feet; thence North 44°49' 00" East, 307.07 feet; thence North 89°51' 58" East, 63.30 feet to the Point of Beginning.

EXHIBIT 5 - LEGAL DESCRIPTION