

MEMORANDUM

December 1, 2009

TO: Mayor and City Commission

VIA: Judith H. Delmar, City Manager^{jhd}

FROM: Harold Gallup, Economic Development Director

SUBJECT: New Tenant Hangar Lease Agreement with Insurance –Lake Wales Airport

SYNOPSIS: A new lease for “New Hangar Lessees” at the City of Lake Wales Airport with requirements for additional insurance coverage by lessee to the City.

RECOMMENDATION

The Staff recommends that the City Commission take the following motions:

1. Approve and adopt the “New Tenant Lease” as presented for use at the Lake Wales Airport for new lessees for the Fiscal Year 2009 –2010 and thereafter until amended; and
2. Authorize the Mayor to execute the lease after appropriate reviews and approvals by Staff and the Airport Authority.

BACKGROUND

The City Staff in reviewing the lease agreements in use at the COLW Airport and in discussion with the City’s Risk Management Office and Insurer concluded that the additional insurance coverage by adding the City as an “Additional Insured” for an amount that equals the construction value of a single hangar was a prudent requirement. This allows for the City’s insurance to stand second in the demand of payment on direct damages to a hangar. Currently, the City is in the position of Primary Insurer. The change is found in Paragraph 4 of the document. All of the existing hangars are for storage of the listed aircraft. Any additional or other uses that are conducted in the hangar are classified as in conflict with the FAA, unless written authorization is obtained from appropriate individuals named in the lease.

CURRENT FISCAL IMPACT

No current impact.

FUTURE FISCAL IMPACT

The change will provide for additional insurance coverage from the user of the facility and may reduce an expenditure of municipal funds to cover a monetary gap in replacement costs.

OTHER ALTERNATIVES

Do not approve the change and leave the lease without the additional insurance coverage.

ATTACHMENT

Copy of the new lease

LAKE WALES AIRPORT HANGAR LEASE AGREEMENT

THIS LEASE AGREEMENT, is made and entered into this _____ day of _____, 20____, by and between THE CITY OF LAKE WALES, (hereinafter referred to as LANDLORD), and

_____ (hereinafter referred to as TENANT), whose

address is _____.

WITNESSETH:

WHEREAS, LANDLORD is the owner of certain real property located at the Lake Wales Municipal Airport in Lake Wales, Polk County, Florida; and,

WHEREAS, LANDLORD has agreed to lease a portion of the property to TENANT, subject to certain terms and conditions; and,

WHEREAS, TENANT wishes to lease said property from LANDLORD, and in consideration of the premises, the covenants, terms and conditions to be performed as set forth hereinafter, the parties have agreed and do agree as follows:

1. SUBJECT OF THE LEASE. The LANDLORD agrees to lease to the TENANT that certain airport hangar described as Building#_____ Hangar#_____ located at the Lake Wales Airport and more particularly identified on the diagram attached to this Agreement as Exhibit "A" (hereinafter referred to as "hangar" or "premises").

It shall be the policy of the LANDLORD to lease hangars for the type of aircraft for which the hangar was constructed, that is, multi-engine or single engine aircraft. In the event the aircraft owned by the TENANT is a different type than the hangar is designed to accommodate (as shown in the attached Exhibits "A" or "B" designed to accommodate the TENANT'S aircraft), the LANDLORD reserves the right to relocate the TENANT to a hangar which is designed to accommodate the type of aircraft owned by the TENANT upon fifteen (15) days prior written notice to the TENANT.

2. TERM OF THE LEASE. The term of this Lease Agreement shall be for twelve (12) months or shall be prorated if not for a full twelve (12) month period for the period of months beginning _____ and ending on September 30th of the City's then current fiscal year, unless sooner terminated in accordance with other provisions hereof.

A rent increase of the greater of 2.5% or the CPI established in the month of June of each calendar year shall be effective on October 1st in each subsequent year.

If, for any reason, the aircraft owned by the TENANT shall leave the field (sale, maintenance, recovering or damaged elsewhere) for more than sixty (60) days, this Lease Agreement shall be canceled and the hangar space shall return to the control of the LANDLORD to be rented at the earliest opportunity. Should the TENANT wish to retain the hangar, TENANT shall submit a written request for continuance to the LANDLORD. It will be the decision of the City Manager to approve the remaining term of the Lease Agreement. The City Manager shall notify the Airport Authority Board of the continuance of the Lease.

3.

USE OF THE PREMISES. The TENANT shall use the leased premises only for storage of complete airplanes with a current airworthy certificate. Storage of any other materials in the hangar not in conflict with Federal Aviation Administration requirements will be allowed only with the prior written consent of the City Manager or his designee and the Fire Chief or his designee. No business or commercial enterprise of any nature or kind whatsoever shall be conducted on the premises. The premises is not to be used for any repair other than as set forth in Paragraphs 7(f) and 7(g) herein, and is not designed for the operation of heavy equipment or any combination of machinery or other electrical devices operating in concert which exceed the building's electrical specifications as shown on the approved building plans.

4.

MONTHLY RENT.

a)

As and for partial consideration for this Lease during the fiscal year commencing October 1, 2009, and ending September 30, 2010, the TENANT agrees to pay a monthly rental fee of Two hundred twelve and 03/100 US dollars (\$212.03), **plus sales tax**, payable on the first day of each month. The first and last month's rental payment shall be due simultaneous with the execution of this Lease Agreement. Any Check for payment of rental fee shall be made payable to the CITY OF LAKE WALES and shall be collected by the Airport Fixed Base Operator ("FBO"). Rents shall be deemed to be delinquent if not paid to the FBO on or before the 15th day of the month. A late fee of five percent (5%) of the amount due shall be charged on the 16th day of the month. A separate late fee shall be charged for every month that the TENANT'S monthly payment is past due.

b)

As and for additional consideration for this Lease during the fiscal year commencing October 1, 2009, and ending September 30, 2010, the TENANT shall pay the sales tax

referred to above in the amount of Fourteen and 84/100 US dollars (\$14.84) which shall be added to the monthly rental fee collected by the FBO.

c)

As and for additional consideration for this Lease during the fiscal year commencing October 1, 2009, and ending September 30, 2010, the TENANT shall carry a policy of insurance for the replacement value of the demised hangar and the LANDLORD shall be named as an additional insured pursuant to the terms of the insurance policy.

5.

ELECTRIC SERVICE. FBO shall maintain an account with Progress Energy for provision of electric service to the hangar building, and cost of such service shall be paid by the occupants of the hangar building on a pro-rated basis. TENANT shall be required to pay FBO for pro-rated cost of electric service to TENANT'S unit upon receipt of an invoice from the FBO.

6.

BACKGROUND/CREDIT CHECK. A hangar lease shall not be executed until a background check and credit check on the prospective tenant has been completed by the City of Lake Wales. Cost of such background check and credit check shall be paid by the prospective tenant.

7. OBLIGATIONS OF TENANT.

a)

TENANT covenants that he/she/it is the owner of the following identified aircraft which has been properly certified and licensed by the Federal Aviation Administration (copy of certification and license to be furnished for LANDLORD'S files whether a new Lease or a renewal of an existing Lease):

1)

Make: _____

2)

Model: _____

3)

N-Number: _____

4)

Color: _____

b)

TENANT covenants and agrees that the hangar shall be used only for the above referenced aircraft. In the event that the above referenced aircraft is disposed of and another aircraft is obtained, the TENANT agrees to immediately notify the LANDLORD and to provide in writing the information required in paragraph 7a for the new aircraft.

c)

The TENANT shall conform to all applicable local, county, state and federal rules, regulations and ordinances.

d)

TENANT agrees that no gasoline or combustible materials of any kind shall be stored in the hangar and that welding is prohibited. TENANT agrees that no kerosene or gas heaters or any type of open flame heaters or apparatus shall be used or stored in the hangar. TENANT is specifically prohibited from spray painting, sanding or creating any powder or mist in or upon the premises.

e)

TENANT agrees that no rubbish, trash, rags, cans, grease or food items will be stored on the leased premises. TENANT agrees to keep the hangar clean at all times so as not to allow any unsightly appearance, unsanitary condition or fire hazard to exist in or around the premises. TENANT agrees that the premises shall

be subject to inspection by the LANDLORD at any time and if found to be a fire or accident hazard, TENANT shall be so informed and TENANT shall take immediate action to clean the hangar.

f)

TENANT agrees that the hangar is for storage of airworthy aircraft only. TENANT agrees that the hangar will not be used as a workshop, repair shop, maintenance shop, or storage shop and acknowledges that painting or major aircraft repairs therein are prohibited. TENANT agrees that hangar will not be used for sleeping quarters on either a temporary or long term basis. LANDLORD agrees that the aircraft owner's automobile may be parked in the hangar while the aircraft is being flown. No outside storage is allowed, either in front of the hangar or in any adjacent open areas.

g)

TENANT will be permitted to perform only repairs and/or maintenance specifically authorized under Federal Air Regulations, Part 43, preventative maintenance, which does not require the services of a licensed A&P Mechanic. This maintenance may be performed by the owner/pilot of the aircraft only.

h)

TENANT agrees that aircraft engines are not to be started or run inside the hangar for any reason at any time.

i)

TENANT shall not carry on an activity in or about the premises, which, in the opinion of the LANDLORD, shall be detrimental or annoying in any way to the tenants of other units or to LANDLORD, nor shall TENANT carry on any activity which shall damage the leased premises or other units in any way. TENANT shall not do or permit to be done any act or thing which will invalidate or conflict with the fire or hazard insurance policies covering the premises of the Airport, or which may constitute a hazardous condition of any kind.

j)

Locks are furnished by the LANDLORD with each hangar. TENANT agrees that these locks shall not be replaced, removed or re-keyed. If lock changes are necessary for any reason, the LANDLORD must be notified and a new lock will be provided by the LANDLORD. Any locks placed on hangar doors in contravention hereof may be removed by the LANDLORD without prior notice to the TENANT and shall be deemed to constitute a material breach of this Lease Agreement. Any expenses incurred by the LANDLORD for the removal of unauthorized locks and the replacement thereof shall be paid by the TENANT within thirty (30) days but not later than the following month's rent payment.

k)

Should the TENANT violate any of the conditions of this paragraph, LANDLORD shall, without regard to any limitation set forth in any other paragraph, have the right to immediately terminate this Lease Agreement, reenter and repossess the leased premises, all without notice to TENANT.

8.

HOLD HARMLESS AND INDEMNIFICATION. TENANT agrees to hold LANDLORD harmless against all claims for bodily injury, sickness, disease, death or personal injury or damage to property or loss of use resulting therefrom, arising out of this Lease Agreement unless such claims are a result of the LANDLORD'S sole negligence. LANDLORD shall not be responsible in any manner for damages to or theft of personal property stored on the premises, said responsibility being solely that of the TENANT. It is expressly agreed and understood by and between the parties to this agreement that LANDLORD shall not be liable for any damage or injury which may be sustained by TENANT or any other person, or for any other damage or injury resulting from the carelessness, negligence or improper conduct of any other tenant.

The TENANT assumes all risk of loss or damage to the TENANT'S aircraft and other property real and personal from each and every cause whatsoever. The TENANT further

agrees to provide a waiver of subrogation to the LANDLORD from the TENANT'S insurance carrier. Upon failure to obtain said waiver from the insurance carrier, the TENANT shall provide the LANDLORD with a personal waiver of subrogation.

TENANT agrees to pay on behalf of LANDLORD, and to pay the cost of LANDLORD'S legal defense, as may be selected by LANDLORD, for all claims described in this paragraph. Such payment on behalf of LANDLORD shall be in addition to any and all other legal remedies available to LANDLORD and shall not be considered to be LANDLORD'S exclusive remedy.

9.

ALTERATION OF LEASED PREMISES. TENANT shall not make any structural alteration or additions to the leased premises, nor construct any permanent improvements upon the leased premises without the written permission of the LANDLORD. Nothing is to be mounted which requires puncturing the wall. In the event LANDLORD shall grant such permission, such alterations, additions or improvements will be constructed according to the plans and specifications approved by the LANDLORD and in compliance with all building codes and regulations of the City of Lake Wales, Florida. All permits and licenses required for such construction shall be obtained by TENANT at his expense. TENANT agrees that all such improvements become the property of the City of Lake Wales. It is specifically understood that TENANT shall hold LANDLORD harmless for any mechanic's liens, materialmen, or supplier's liens that may possibly be placed against the premises and shall be solely and totally responsible for the work done and materials supplied.

10.

ACCESS TO LEASED PREMISES BY LANDLORD. LANDLORD may enter, inspect and make such repairs to the leased premises as LANDLORD may reasonably desire, at all reasonable times. Notice to TENANT will be made prior to entry if practicable.

11.

DAMAGE TO LEASED PREMISES. If the leased premises should be damaged by fire or otherwise, to the extent that they are not available to TENANT for the uses and purposes contemplated by this lease, LANDLORD shall have the right and privilege, upon refunding to TENANT any unearned rents, of immediately canceling and terminating this lease and repossessing any remainder of the premises, as there shall be no obligation on the part of the LANDLORD to repair or rebuild the leased premises.

12.

ASSIGNMENT OF LEASE. The right to use the premises described in this Lease Agreement is not an assignable right. This use shall be exercised by the TENANT and the TENANT'S agents only for storage of the aircraft identified in paragraph 7a.

13.

EMERGENCY CONTACT. The TENANT shall provide LANDLORD with the name and telephone number of a contact person who shall be on call at all times to respond in case of emergency.

14.

DEFAULT. The TENANT shall be considered to be in default of this Lease Agreement in the event of the occurrence of any of the following circumstances:

a)

Failure to make the monthly lease payment for two (2) consecutive months after the due date.

b)

Failure to comply with the specific terms and conditions of this Lease Agreement.

c)

Failure to abide by all reasonable rules and regulation of the Lake Wales Airport which are designed to promote the safe operations of the Airport and its environs.

15.

TERMINATION OF LEASE. This Lease Agreement shall be terminated upon the occurrence of any of the following conditions:

a)

Notice is received from the TENANT in accordance with paragraph 2 of this Lease Agreement.

b)

A default of the lease as described in paragraph 14. In the event of a default, the

LANDLORD shall notify the TENANT in writing of its intention to terminate the lease due to a specified default. The TENANT shall have ten days from the date of the service of the notice to either correct the default or to vacate the premises. Said notice to the TENANT shall be sufficient if sent by registered or certified mail, postage prepaid to the TENANT'S address of record as provided herein.

16.

REMOVAL OF PERSONAL PROPERTY UPON TERMINATION. Upon termination of this Lease Agreement, provided all monies due LANDLORD have been paid, TENANT shall have the right and responsibility to remove all of its personal property, including machinery and equipment, which it has installed or placed on the premises, which removal shall be accomplished no later than the termination date. Electrical and plumbing facilities, air conditioners and other permanently installed fixtures shall not be considered personal property. TENANT agrees to repair any damage occasioned by reason of such removal

or damage caused by TENANT'S occupancy. In the event TENANT fails to remove its personal property or to repair any damage done to the premises by the termination date, LANDLORD reserves the right to remove and store all such personal property left, at the risk and expense of TENANT, and to make repairs necessary to restore the premises, with the cost of such repairs to be paid by TENANT.

17.
ENTIRE AGREEMENT. This is the entire Agreement of the parties and shall govern the dealings between the parties.

18.
SUITABILITY OF PREMISES. The TENANT acknowledges having examined the premises thoroughly before entering into this Lease Agreement and does not rely upon any representations by the LANDLORD as to the suitability of the premises for the TENANT'S purposes.

19.
SEVERABILITY. If any provision hereof is declared invalid or unenforceable, it shall be severed herefrom and the remainder of the Agreement shall continue in full force as if executed originally without the invalid portion.

20.
MULTIPLE ORIGINALS. This Agreement is executed in multiple copies, each copy of which shall be deemed an original.

21.
FILING OF LEASE AGREEMENT. Within five (5) days of execution by both parties, an original copy of this Lease Agreement shall be forwarded to the City Clerk for filing in the official records of the City of Lake Wales.

22.
EXECUTION OF LEASE AGREEMENT. The Mayor of the City of Lake Wales is authorized to execute this Lease Agreement of behalf of the City of Lake Wales subsequent to review and approval of the individual Lease Agreement by the City's Director of Finance.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement on the day and year first above written.

Execution on following page

TENANT

Witness as to TENANT Signature

Printed Name: _____

LANDLORD: City of Lake Wales

Mayor

Attest: City Clerk

EXHIBIT "A"

BUILDING #1 T-HANGARS

EXHIBIT "B"

BUILDING #2 T-HANGARS