

## The City of Avon Park, Florida Airport Commercial Lease Agreement

**THIS LEASE AGREEMENT** (the "Agreement") is made and entered into this 10<sup>th</sup> day of May, 2021, by and between the **City of Avon Park** a municipal corporation of the State of Florida, herein called "LESSOR," and **P.J. Aircraft Services and K-Kasley Aircraft Services**, herein called "LESSEE," which are jointly and severally liable for all provisions of this Agreement. All parties have business offices located at the addresses stated in the "Notices" provision herein.

### Intent and Consideration

LESSOR is the owner of the Avon Park Executive Airport in the County of Highlands, State of Florida where the Premises to be leased are located. LESSOR desires to lease property to LESSEE, subject to certain federal and state grants and loans, statutes and rules, City ordinances and resolutions as amended from time-to-time, and the terms and the conditions contained in this Agreement, including exhibits (hereinafter collectively, "LESSOR's Rules"). The LESSEE wishes to lease said property from LESSOR, and in consideration of the terms and conditions provided in this Agreement:

**1. TERM:** The term of this Lease Agreement ("Term") shall be for **five ( 5 ) years** commencing on the 1<sup>st</sup> day of June, 2020 (the Commencement Date") and ending on the 31<sup>st</sup> day of May, 2025, unless sooner terminated as herein provided.

**1.1. Option to Extend.** Provided that LESSEE is not in material default under any of the provisions or covenants of this Lease, and provided the Lease shall not have been previously terminated by LESSOR pursuant to any provision of this Lease, the Lease Term may, at LESSEE's option, be extended at the base rent set forth in Section 4.3 under the heading "Option Term" of this Lease for One (1), Five (5) year period, with such extension option to be exercised by LESSEE's delivery to LESSOR of written notice of LESSEE's desire to so extend the Term hereof on or before one hundred eighty (180) days prior to the expiration of the initial Term.

**1.2.1** Notwithstanding the foregoing, LESSEE's option to extend the Lease shall be deemed null and void if one or more of the following has occurred:

**1.2.2** (a) LESSEE has been late in the payment of base rent or additional rent on three (3) or more occasions within any twelve (12) month period. For this purpose, a

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payment shall be deemed to be late if it is received by LESSOR after the twenty fifth day of the month in which such payment is due;

1.2.3 (b) LESSEE is in material default in the performance of any of its obligations under the Lease after notice from LESSOR;

1.2.4 (c) LESSEE has failed to give written notice in the manner provided in Section 20 of this Lease to LESSOR one hundred eighty (180) days prior to the expiration of the initial Term; or

1.2.5 (d) The Lease has ever been assigned or sublet.

**1.2. Relocation for City's Convenience.** LESSOR shall have the right to relocate LESSEE, at LESSOR'S expense, at any time LESSOR determines in its sole discretion that it is in the best interest of LESSOR, to a mutually agreeable location within Avon Park Airport ("Airport"), provided such move is in accordance with the LESSOR's Master Plan for the Airport. LESSOR shall give LESSEE at least six (6) months' notice of a proposed relocation unless the parties agree in writing to a shorter term. Notwithstanding anything contained in this Agreement to the contrary, LESSEE shall be responsible for, and shall pay the costs of, any and all environmental remediation for damage caused by LESSEE'S operations at the leased Premises, to the extent necessary, to repair any damages caused by LESSEE and to return any property leased to LESSEE under this Agreement, to its pre-lease condition. Said relocation shall be evidenced by a written addendum to this Agreement, executed by the parties. Should the parties not be able to agree on a new location or the reasonable costs of relocation, LESSOR may terminate this Agreement.

**2. PREMISES:** The property subject to this Agreement is located at 1460 West Bell St., Avon Park, FL, and shall be also described in Exhibit "A" attached hereto, which may sometimes be colloquially referred to as the "mechanic's hanger," but herein shall be referred to as the "Premises." While this Agreement is in effect, LESSEE shall have the right to use only those other areas within the Airport shown on Exhibit "B" ("Common Areas"), and such use shall comply with LESSOR's Rules. LESSEE have inspected and accept the Premises along with the structures and appurtenances AS-IS and WHERE-IS, situated in the City of Avon Park, County of Highlands, and the State of Florida. LESSOR makes no representation or warranty whatsoever as to the condition of the Premises. As used in this Agreement, the term "Premises" refers to the real property described herein and, except as otherwise provided herein, to any improvements located in or on the Premises during the Term of this Agreement.

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**2.1** As part of Premises, LESSEE shall be allowed use of **one (1 )** airplane parking space(s) located closest to the Terminal Building. The use of such space(s) shall terminate with the termination of this Agreement.

**3.     USE:** LESSEE shall use the Premises only for storage of the DC3 belonging to Donald B. Soldini and helicopter belonging to Wauchula State Bank/ Bill Crews and for temporary work on airplanes and airplane engines, with such work being conducted and completed with all reasonable due haste. **NO OTHER USE IS AUTHORIZED AND NO SUBLETTING IS PERMITTED ON THE PREMISES OR IN THE AIRPLANE PARKING SPACE(S).** The one (1) parking space(s) referred to in Section 2.1 above shall be used only for airplanes that are certified as airworthy.

**3.1** No other business or commercial enterprise of any nature or kind whatsoever shall be conducted on the Premises than as stated in section 3 above. LESSEE agrees that no gasoline, combustible materials or other "hazardous substances" as defined in section 25 will be stored in the Premises other than within the designated areas of an aircraft as part of the normal fuel or existing lubrication of that aircraft. LESSEE is specifically prohibited from storing fuel or from engaging in fueling, lubricating, spray painting, sanding, or creating any powder or mist in or upon the Premises. LESSEE shall keep the Premises reasonably free of all trash, debris, and garbage so as not to allow any unsightly appearance or any unsanitary condition to exist on or around the Premises. LESSEE shall not carry on an activity inconsistent with the use described in this section, nor shall LESSEE carry on any activity which shall damage the Premises or other units or common area in any way. LESSEE shall not reside in the Premises, nor shall LESSEE conduct any unlawful or improper use of the Premises.

**4.     RENTAL FEES:** The LESSEE hereby agrees to pay to the LESSOR during the Term of this Agreement, a monthly rental fee based on the fee schedule provided in section 4.3 and a one-time deposit of \$1,856 paid at execution of this Agreement. The LESSEE is jointly and severally responsible for payment of the full rent.

**4.1** Beginning on the first day of the month after Lessor's receipt of the Ad-Valorem tax bill and continuing thereafter on the same day of each succeeding month for eleven (11) additional months, LESSEE agrees to pay LESSOR one twelfth (1/12) of the amount of the Ad-Valorem taxes owed plus sales tax. These amounts are considered unpaid additional rent if not paid when due and failure to pay said amounts shall be considered a default under this Agreement.

**4.2** The monthly rental payment shall be considered delinquent if it has not been received by LESSOR on or before the 25<sup>th</sup> day of the month it is due and additional rent of five percent (5%) on the amount due will be charged as a late fee.

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**4.3** Beginning on the Commencement Date, LESSEE shall pay to LESSOR, as base rent, monthly rental as set forth as follows:

**INITIAL TERM:**

Effective June 1, 2020, a monthly rental fee of \$1,856  
Effective June 1, 2021, a monthly rental fee of \$1,885  
Effective June 1, 2022, a monthly rental fee of \$1,910  
Effective June 1, 2023, a monthly rental fee of \$1,940  
Effective June 1, 2024, a monthly rental fee of \$1,970

**OPTION TERM:**

Effective June 1, 2025, a monthly rental fee of \$1,970 *\$2,600*  
Effective June 1, 2026, a monthly rental fee of \$2,000 *\$2,830*  
Effective June 1, 2027, a monthly rental fee of \$2,030 *\$2,860*  
Effective June 1, 2028, a monthly rental fee of \$2,060 *\$2,890*  
Effective June 1, 2029, a monthly rental fee of \$2,090 *\$3,420*

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**5. INSURANCE:** LESSEE is responsible for insuring LESSEE's own contents and that of any guests. In addition, LESSEE agrees to maintain the following insurance written by a company satisfactory to LESSOR and at LESSEE's expense:

**5.1 LESSEE's Insurance.** (a) LESSEE shall carry at its sole cost and expense insurance on LESSEE's furniture, fixtures, inventory, equipment, and leasehold improvements in an amount equal to their replacement value. LESSEE shall also carry at its sole cost and expense general comprehensive public liability policies of insurance, insuring LESSEE, LESSOR, and any other persons designated by LESSOR against any and all liability for injury to or death to a person, or persons, and for damage to or destruction of property occasioned by or arising out of or in connection with the use or occupancy of the Premises by LESSEE, its employees, contractors, and agents or arising out of any construction work being done on the Premises by LESSEE, its employees, contractors, and agents, the limits of such policy or policies to be in an amount not less than Two Million and No/100 Dollars (\$2,000,000.00) with respect to injuries to or death of any one person, and an amount of not less than Two Million and No/100 Dollars (\$2,000,000.00) with respect to any one accident or disaster, and in an amount not less than Two Million and No/100 Dollars (\$2,000,000.00) with respect to property damaged or destroyed. Such policies shall be non-cancelable except after thirty (30) days' written notice to LESSOR. Such policies or duly executed certificates of insurance as required shall be delivered to LESSOR at least fifteen (15) days prior to the date of delivery of possession and thereafter at least ten (10) days prior to the expiration of the respective policy term. All casualty insurance policies shall provide for a

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waiver of subrogation against LESSOR on the part of the insurance carrier and shall specifically acknowledge coverage of the insurance and indemnity requirements herein. All insurance required to be carried by LESSEE hereunder shall be with nationally recognized companies rated no lower than A-VIII by A.M. Best Company.

**5.2** Increase in Fire or Environmental Insurance Premium. LESSEE shall not keep, use, sell or offer for sale in or upon the Premises any article or service which may be prohibited by or increase the premiums under LESSOR's property insurance policy, or which is prohibited by any local, state, or federal agency.

**5.3** Nothing in this Agreement shall be construed to extend LESSOR's liability beyond that provided in Florida law, including without limitation, the limitations provided in section 768.28, Florida Statutes.

**5.4** It is furthered agreed that LESSEE shall not do or permit to be done anything upon any portion of the Premises or bring or keep anything thereon which will in any way conflict with the conditions of any insurance policies upon the Premises to jeopardize coverage, or by its existence exempt an insurer from coverage for liability or casualty, or which will increase the rate of the insurance on the Premises, or which will in any way obstruct or interfere with the rights of other tenants at the Airport.

**5.5** In the event that LESSEE shall at any time fail to furnish LESSOR with the certificate or certificates of insurance required, or allow such policy to lapse, LESSOR shall have the right to secure the required insurance at the cost and expense of LESSEE, and LESSEE agrees to promptly reimburse LESSOR for the cost thereof, which costs shall be additional rent hereunder.

**6. INDEMNIFICATION:** LESSEE shall defend, indemnify and hold harmless LESSOR and all of LESSOR's officers, agents, and employees from and against all claims, liability, loss, and expense, including reasonable costs, collection expenses, expert witness fees, attorneys' fees, and court costs, whether incurred at the trial or appellate level, or any environmental liability under any applicable federal or state environmental law, which may arise because of the negligence (whether active or passive), misconduct, or other fault, in whole or in part (whether joint, concurrent, or contributing) of LESSEE, LESSEE'S officers, agents or employees in performance or non-performance of LESSEE'S obligations under the Agreement. LESSEE recognizes the nature of this indemnification and hold harmless clause, as well as the provision of a legal defense to LESSOR when necessary, and voluntarily makes this covenant and expressly acknowledges the receipt of such good and valuable consideration provided by LESSOR in support of these indemnification, legal defense and hold harmless contractual obligations in accordance with the laws of the State of Florida. This clause shall survive the termination of this Agreement. LESSEE

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further covenants to hold the LESSOR harmless from all claims, demands, damages, fines, costs, cleanup, attorneys' fees, and court costs arising from LESSEE'S discharge and/or release (either intentional or accidental, at trial and appeals) of any hazardous substance and/or any petroleum or fuel or benzene to the soil, air, water, or wastewater treatment facility.

**6.1** Compliance with any insurance requirements required elsewhere within this Agreement shall not relieve LESSEE of its liability and obligation to defend, hold harmless and indemnify LESSOR as set forth in this Agreement.

**6.2** Nothing in this Agreement shall be construed to extend LESSOR's liability beyond that provided in Florida law, including without limitation, section 768.28, Florida Statutes.

**6.3** In the event any lawsuit or other proceeding is brought against LESSOR by reason of any such claim, cause of action or demand, LESSEE shall, upon written notice from LESSOR, resist and defend such lawsuit or proceeding by counsel satisfactory to LESSOR or, at LESSOR's option, reimburse LESSOR for use of the City Attorney or counsel selected to defend LESSOR. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary or prudent by the City Attorney, any sums due to the LESSEE under this Agreement may be retained by LESSOR until all of the LESSOR's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by LESSOR.

**7. TERMINATION:** In addition to termination through expiration as provided in section 1 above, this Agreement can be terminated under the following conditions:

**7.1** Termination by LESSOR for cause, other than nonpayment of rent or any other payment required herein, by giving written notice. For the purpose of this provision, "cause" is defined as failure to comply with LESSOR's Rules or this Agreement. LESSEE shall then have a reasonable period in which to cure the cause depending on severity, but not more than thirty (30) days. Violation of Section 25 of this Agreement regarding environmental protection (including subsections), may, at the LESSOR's sole discretion, be deemed cause for immediate termination. For failure to provide insurance, the reasonable period shall be thirty (30) days from the sooner of the termination of the policy or notice by LESSOR of a default under the insurance requirements pursuant to Sections 5 and 6 of this Agreement, including subsections.

**7.2** Should LESSEE terminate the Lease prior to the expiration of the Term, LESSEE shall be responsible for and shall pay to LESSOR the prorated ad-valorem taxes for the year in which the termination occurs.

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8. **ASSIGNMENT BY LESSEE:** This Agreement is not assignable by LESSEE.

9. **REMOVAL OF PERSONAL PROPERTY UPON TERMINATION:** Upon termination of this Agreement, provided all monies due LESSOR have been paid and the Premises are in compliance with LESSOR's Rules, LESSEE shall have the right to remove all of LESSEE'S personal property, including machinery and equipment, which LESSEE 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. LESSEE agrees to repair any damage occasioned by reason of such removal and damage caused by LESSEE'S occupancy. In the event LESSEE fails to remove LESSEE'S personal property, repair any damage done to the Premises within fifteen (15) days after the termination date, remove debris and clean the Premises, LESSOR reserves the right to remove and store all of such personal property left having an estimated value of more than \$25, at the risk and expense of LESSEE, and to make repairs necessary to restore the Premises, with the cost of such repairs to be paid by LESSEE. Personal property having a value of less than \$25 shall be considered abandoned as refuse, and its disposal along with other refuse, shall be charged against the deposit as the cost of cleanup. Storage onsite shall be charged based on twice the monthly rent, plus any other reasonable costs to LESSOR. Once the storage costs exceed FIFTY PERCENT (50%) of the estimated fair market value of the stored property, LESSOR may dispose of the property in any way it sees fit and apply any value received against the cost of storage, sale, and administrative expenses.

10. **ABANDONMENT OF THE PREMISES BY LESSEE:** In case LESSEE shall abandon the Premises, or any part thereof, during the Term of this Agreement, LESSOR may, at its option, without notice, relet the Premises, or any part thereof, on such terms and for such rent as it may deem expedient or proper. Such reletting shall not operate as a waiver of any right whatsoever which LESSOR would otherwise have to hold LESSEE responsible for the rent or other clauses within this Agreement. In case the Premises, or any part thereof, shall be relet, LESSOR shall collect that rent and, after paying the expense of such reletting and collections, apply the remainder toward the rent due or to become due from LESSEE. In the event that the Premises are abandoned, that abandonment shall automatically terminate LESSEE'S right to the Premises.

11. **NO LIENS CREATED:** LESSEE has no power to incur any indebtedness giving a right to a lien of any kind or character upon the Premises. No third person shall be entitled to any lien against the Premises or any structure thereon, derived through or under LESSEE. All persons contracting with LESSEE or furnishing materials or labor to LESSEE shall be bound by this provision. Should any such lien be filed, LESSEE shall discharge same within three (3) days or pay to LESSOR an equivalent amount by placing a bond in favor of LESSOR. LESSEE is not the agents of LESSOR so as to confer upon a laborer bestowing labor upon the Premises, or upon a

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materialman who furnishes material incorporated in the construction of improvements upon the Premises, the rights of Chapter 713, Florida Statutes, or any subsequent revision of that law.

**12. SUBORDINATION:** This Agreement shall be subordinate to the provisions of any existing or future agreement between LESSOR and the United States of America or the State of Florida relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of State or Federal funds for development or improvement of the Airport. Except to the extent required for the performance of the obligations of LESSEE in this Agreement, nothing contained in this Agreement shall grant LESSEE any rights whatsoever in the airspace above the Premises, other than those rights which are subject to Federal Aviation Administration orders, regulations, or advisory circulars currently or subsequently effective.

**13. NON-DISCRIMINATION:** LESSEE hereby agrees and covenants that:

**13.1** No person shall be excluded from participation or denied the benefits of, or be otherwise subject to discrimination in the use of the Premises on the grounds of race, color, or national origin.

**13.2** In the construction of any improvements, on the Premises and the furnishing of labor, services or materials in connection therewith, no persons on the grounds of race, color, or national origin shall be excluded from participation in, or otherwise be subject to discrimination.

**13.3** LESSEE shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulation, Department of Transportation, Subtitle A, Office of the Secretary Part 21, Non-Discrimination in Federally assisted programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as such Regulations may be amended.

**13.4** LESSEE shall operate the Premises in accordance with the requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and will assure that no qualified handicapped person shall be solely by reason of such person's handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination, including discrimination in employment.

**14. MAINTENANCE AND REPAIRS:** LESSEE will be responsible for general maintenance and repair of the Premises to keep all in good order and repair, including without limitation all maintenance, repair, and replacements to all items such as, window glass or plate glass, all doors and door opening mechanisms, as well as interior items including without limitation air handler, pest control, interior plumbing, and fixtures, electrical and fixtures, lights,

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etc. LESSOR shall maintain, repair, and replace exterior and structural conditions (not caused by LESSEE) interfering with LESSEE's use and enjoyment such as roofs, walls, plumbing, and electrical equipment up to the buildings, fire safety systems and driveways. Repairs shall be made in a timely manner.

**15. DAMAGE OR DESTRUCTION TO LEASED PROPERTY:** Except as otherwise provided in this Agreement, if any leasehold improvements shall be damaged or destroyed, LESSEE shall repair or replace the same and return them to pre-damage condition so that the replacement will be equivalent in value to the original facilities within a reasonable period of time. Any other terms or provision of the Agreement pertaining to repair, alteration, construction, or reconstruction by LESSEE shall be binding upon LESSEE in repairing or reconstruction of the Premises under the terms and provisions of this Agreement. If a substantial portion of the Premises is destroyed so that the LESSOR and LESSEE mutually agree that LESSEE cannot reasonably continue to utilize the Premises until the same is repaired or replaced, then LESSEE may elect to either repair or replace same, in which event the rent shall be abated until such time as LESSEE can reasonably resume operation of LESSEE'S business.

**16. ALTERATIONS:** LESSEE shall request City approval to make reasonable minor alterations to the fixed improvements located on the Premises as from time-to-time LESSEE shall desire to make, provided, however, that any substantial alteration or an alteration requiring a building permit shall require an amendment to this Agreement including a detail design drawing of the proposed improvement and Council approval.

**17. EXCLUSIVE USE:** This Agreement shall in no way convey the exclusive use of any part of the Airport except the Premises and shall not be construed as providing any special privilege for any public portion of the Airport. LESSOR reserves the right to lease to other parties any other portion of the Airport property for any purpose deemed suitable for the Airport by LESSOR.

**18. FUTURE AGREEMENTS OF THE AIRPORT:** The terms and conditions hereof shall not be construed to prevent LESSOR from making commitments to the Federal government or to the State of Florida to qualify for the expenditure of State or federal funds upon the Airport. In the event that there is any conflict between such financing commitments to the federal government and this Agreement or LESSEE'S use of the Premises or Common Areas, such Federal government commitments shall prevail.

**19. NATIONAL EMERGENCY:** During any national emergency declared by the President or by the Congress, the United States shall have the right to take exclusive or non-exclusive control and possession of the Premises, or of such portion thereof it may desire, with the rent to be abated accordingly in proportion to said occupancy.

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**20. NOTICES:** Whenever any notice is required or permitted by this Agreement to be given, such notice shall be sent by US Mail or nationally recognized courier (UPS FedEx, etc.) addressed to:

**20.1** City Manager, City of Avon Park, 110 E. Main Street, Avon Park, FL 33825

**20.2** Airport Manager, City of Avon Park, 1535 E. Main Street, Avon Park, FL 33825

**20.3** P.J. Aircraft Services of 1460 W. Bell St, Avon Park, FL 33825, and

**20.4** K-Kasley Aircraft Services of 1460 W. Bell St, Avon Park, FL 33825

**21. WAIVER OF BREACH:** The waiver by LESSOR or LESSEE of any breach of the terms, covenants, or conditions herein contained shall not be deemed a waiver of any subsequent breach.

**22. SEVERABILITY:** It is the intention of the parties hereto that the provisions of this Agreement shall be severable in respect to a declaration of invalidity of any provisions hereof.

**23. ATTORNEYS' FEES AND COSTS:** If either party takes legal action to enforce the terms or conditions of this Agreement, the prevailing party will be entitled to an award of all costs of the action, including reasonable attorneys' and paralegals' fees, including appeals.

**24. ENVIRONMENTAL PROTECTION:**

**HAZARDOUS MATERIALS**

- (a) "Claim" shall mean and include any demand, cause of action, proceeding, or suit for any one or more of the following:
  - (i) actual or punitive damages, losses, injuries to person or property, damages to natural resources, fines, penalties, interest, contribution, or settlement,
  - (ii) the costs and expenses of site investigations, feasibility studies, information requests, health or risk assessments, or response (as hereinafter defined) actions, and
  - (iii) the costs and expenses of enforcing insurance, contribution, or indemnification agreements.
- (b) "Environmental Laws" shall mean and include all federal, state and local statutes, ordinances, regulations, and rules in effect and as amended from time to time relating to environmental quality, health, safety, contamination, and cleanup,

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including, without limitation, the Clean Air Act, et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq., and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. Section 136 et seq.; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. Section 1401 et seq.; the National Environmental Policy Act, 42 U.S.C. Section 4321 et seq.; the Noise Control Act, 42 U.S.C. Section 4901 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right-to-Know Act, and the Radon Gas and Indoor Air Quality Research Act; the Toxic Substances Control Act ("TSCA"), 15 U.S.C. Section 2601 et seq.; the Atomic Energy Act, 42 U.S.C. Section 2011 et seq., and the Nuclear Waste Policy Act of 1982, 42 U.S.C. Section 10101 et seq.; and state and local super lien and environmental statutes and ordinances, with implementing regulations, rules and guidelines, as any of the foregoing may be amended from time to time. Environmental Laws shall also include all state, regional, county, municipal, and other local laws, regulations, and ordinances insofar as they are equivalent or similar to the federal laws recited above or purport to regulate Hazardous Materials (as hereinafter defined).

- (c) "Hazardous Materials" shall mean and include the following, including mixtures thereof: any hazardous substance, pollutant, contaminant, waste, by-product or constituent regulated under CERCLA; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel; pesticides regulated under the FIFRA; asbestos and asbestos-containing materials, PCBs, and other substances regulated under TSCA; source material, special nuclear material, by-product material, and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. § 1910.1200 et seq.; and industrial process and pollution control wastes, whether or not hazardous within the meaning of RCRA, and any other hazardous substance, pollutant or contaminant regulated under any other Environmental Laws.
- (d) "Manage" or "Management" means to generate, manufacture, process, treat, store, use, re-use, refine, recycle, reclaim, blend or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of or abandon Hazardous Materials.

- (e) "Release" or "Released" shall mean any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of Hazardous Materials into the environment, as "environment" is defined in CERCLA.
- (f) "Response" or "Respond" shall mean action taken to correct, remove, remediate, clean up, prevent, mitigate, monitor, evaluate, investigate, assess or abate the Release of a Hazardous Material.
- (g) LESSEE's Obligations with Respect to Environmental Matters. During the Term of this Lease as extended, if applicable:
- (i) LESSEE shall comply at its sole cost and expense with all applicable Environmental Laws;
  - (ii) LESSEE shall not Manage, or authorize the Management of, any Hazardous Materials, except Hazardous Materials used by LESSEE in the ordinary course of its business in compliance with applicable Environmental Laws on the Premises, including installation of any underground storage tanks, without prior written disclosure to and prior written approval by LESSOR;
  - (iii) LESSEE shall not take any action that would subject the Premises to the permit requirements under RCRA for storage, treatment, or disposal of Hazardous Materials;
  - (iv) excepting *de minimis* quantities not in violation of Environmental Laws, LESSEE shall not dispose of Hazardous Materials in dumpsters provided by LESSOR for LESSEE's use;
  - (v) LESSEE shall not discharge Hazardous Materials into drains or sewers serving the Premises;
  - (vi) LESSEE shall not cause or allow the Release of any Hazardous Materials on, to or from the Premises or surrounding land and
  - (vii) LESSEE shall arrange at its sole cost and expense for the lawful transportation and off-site disposal in accordance with all applicable Environmental Laws, of all Hazardous Materials that it generates.
- Notwithstanding the foregoing, LESSEE shall be responsible only for compliance with Environmental Laws during the Term of this Lease, as extended, if applicable, which responsibility expressly excludes compliance or causing the compliance of the Premises with Environmental Laws which are or which are allegedly violated.
- (i) as a result of conditions in existence prior to the commencement of the Term of this Lease; or
  - (ii) as a result of a Release of Hazardous Materials from other sites onto the Premises by LESSOR or third parties not related, contracted, or Subleased to LESSEE.
- (h) Copies of Notices. During the Term of this Lease, as extended, if applicable, LESSEE shall provide LESSOR promptly with copies of all summons, citations,

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directives, information inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, Claims, complaints, investigations, judgments, letters, notices of environmental liens or Response actions in progress, and other communications, written or oral, actual or threatened, from the United States Environmental Protection Agency, Occupational Safety and Health Administration, Florida Department of Environmental Protection, or other federal, state, or local agency or authority, or any other entity or individual, concerning (i) any actual or alleged Release of a Hazardous Material on, to or from the Premises; (ii) the imposition of any lien on the Premises; (iii) any actual or alleged violation of, or responsibility under, any Environmental Laws; or (iv) any actual or alleged liability under any theory of common law tort or toxic tort, including without limitation, negligence, trespass, nuisance, strict liability, or ultra-hazardous activity. In addition, LESSEE shall provide LESSOR promptly with copies of all environmental studies and reports conducted in connection with the Premises.

- (i) LESSOR's Right to Inspect. LESSOR and LESSOR's employees shall have the right to enter the Premises upon at least 24 hours' prior notice to LESSEE (except in an emergency, in which event no prior notice is required) and conduct appropriate inspections or tests, which inspections and tests shall be carried out in such a manner as will cause the least practicable interference with LESSEE's business in the Premises, for the purpose of (i) determining LESSEE's compliance with Environmental Laws, and (ii) determining the type, kind, and quantity of all products, materials and substances brought onto the Premises, or made or produced thereon. LESSOR and its agents and representatives shall have the right to take samples in quantities sufficient for analysis of all products, materials and substances present on the Premises including, but not limited to, samples, products, materials, or substances brought onto or made or produced on the Premises by LESSEE or its agents, employees, contractors, or invitees. LESSEE agrees to cooperate with such investigations by providing any relevant information requested by LESSOR, including, but not limited to, information LESSOR requests to comply with applicable state or local laws concerning or affecting real property transfers. LESSEE may not perform any sampling, testing, or drilling to locate Hazardous Materials without LESSOR 's prior written consent.
- (j) Tests and Reports. Within ten (10) days of LESSEE's receipt of a written request by LESSOR, but in no event more often than semi-annually, unless Hazardous Materials are discovered on, in or under the Premises in violation of this Article or there is a violation of Environmental Laws, in which event LESSOR hereby reserves the right to request the following described documents more often, LESSEE shall provide LESSOR with (i) copies of all environmental reports and tests obtained by LESSEE; (ii) copies of transportation and disposal contracts (and

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related manifests, schedules, reports, and other information) entered into or obtained by LESSEE with respect to any Hazardous Materials; (iii) copies of any permits issued to LESSEE under Environmental Laws with respect to the Premises; (iv) copies of any and all reports, notifications, and other filings made by LESSEE to any federal, state, or local environmental authorities or agencies; and (v) any other applicable documents and information with respect to environmental matters relating to the Premises. LESSEE shall provide LESSOR with the results of appropriate reports and tests, with transportation and disposal contracts for Hazardous Materials, with any permits issued under Environmental Laws, and with any other documents necessary to demonstrate that LESSEE complies with all Environmental Laws relating to the Premises.

- (k) LESSEE's Obligation to Respond. If LESSEE's Management of Hazardous Materials at the Premises (i) gives rise to liability or to a Claim under any Environmental Law, or any common law theory of tort or otherwise; (ii) causes a threat to, or endangers, the public health; or (iii) creates a nuisance or trespass, LESSEE shall, at its sole cost and expense, promptly take all applicable action in response so as to comply with all applicable Environmental Laws and eliminate or avoid any liability Claim with respect thereto.
- (l) LESSOR 's Right to Act. In the event that LESSEE shall fail to comply with any of its obligations under this Article as and when required hereunder, LESSOR shall have the right (but not the obligation) to take such action as is required to be taken by LESSEE hereunder and in such event, LESSEE shall be liable and responsible to LESSOR for all costs, expenses, liabilities, claims, and other obligations paid, suffered, or incurred by LESSOR in connection with such matters. LESSEE shall reimburse LESSOR immediately upon demand for all such amounts for which LESSEE is liable.

LESSOR represents that LESSOR has no actual knowledge of any substance, chemical, or waste on the Premises that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. LESSEE accepts the Premises "AS-IS" after its own inspections of Premises.

**25. AMENDMENT:** No amendment, modification, or alteration of the terms hereof shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by each party.

**26. UTILITIES AND SERVICES:** LESSEE is required to use LESSOR'S water and sewer system. LESSEE further agrees to pay when due all charges and expenses for water, sewer services, and fire protection, and all other utilities and services used in connection with the Premises as such charges and expenses are added or amended from time-to-time, LESSEE shall

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arrange for and pay any and all utility service or commodity procured or consumed by LESSEE, or otherwise required to be paid by LESSOR's Rules.

**27. REMEDIES CUMULATIVE:** All remedies conferred on LESSOR shall be deemed cumulative and no one exclusive of the other or of any other remedy conferred by law.

**28. INTENT & EXHIBITS INCLUDED; SECTION CAPTIONS:** The intent clause above, and all exhibits hereto, are incorporated herein as part of this Agreement. The captions appearing under the section number designations of this Agreement are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions of this Agreement.

**29. DOCUMENT IS THE RESULT OF MUTUAL DRAFTSMANSHIP:** The terms and conditions of this Agreement are the product of mutual draftsmanship by both parties, each being represented by counsel, and any ambiguities in this Agreement or any documentation prepared pursuant to it shall not be construed against either of the parties because of authorship. The parties acknowledge that all the terms of this Agreement were negotiated at arms' length, and that each party, being represented by counsel, is acting to protect its, his, her, or their own interest.

**30. RECORDATION:** This Agreement may not be recorded without LESSOR's prior written consent, and LESSEE agrees, upon request of the LESSOR, to execute a memorandum hereof for recording purposes.

**31. RADON GAS:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the county health department.

**32. COUNTERPARTS AND FACSIMILE (FAX) DOCUMENTS:** This Agreement may be signed in counterparts, and each counterpart bearing an original signature shall be considered one document with all others bearing original signature. Also, facsimile transmission of any signed original document and re-transmission of any signed facsimile transmission shall be the same as delivery of an original.

**33. AUTHORITY OF SIGNORS:** The signors of this Agreement individually warrant that all actions necessary to authorize their signature to this Agreement have been taken. Without reducing the effectiveness of that warranty, LESSOR shall provide a corporate resolution (or similar authorization, depending on the business organization) authorizing their signature.

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**34. EFFECTIVE DATE:** This Agreement shall be effective on the date executed by both parties as stated above, and all terms and conditions stated herein shall apply as of that day. If not stated above, but executed by both parties, the effective date shall be the date when this Agreement was approved by the City Council.


**LESSEE**

**Witnesses as to LESSEE**

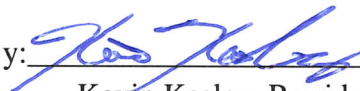
  
Printed name: Danielle Phillips

  
Printed name: Jeannette Wanzel

**P.J. AIRCRAFT SERVICES**

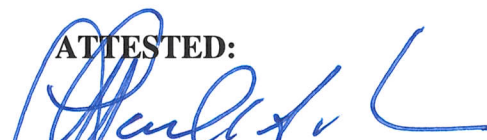
By:   
Phil M Jimenez, President

**K-KASLEY AIRCRAFT SERVICES**

By:   
Kevin Kasley, President

**LESSOR**

**SEAL**

**ATTESTED:**  
  
Mark Schrader, City Manager

**CITY OF AVON PARK, FLORIDA**

  
Garrett Anderson, Mayor

**APPROVED AS TO FORM  
AND CONTENT:**

  
Gerald T. Buhr, City Attorney

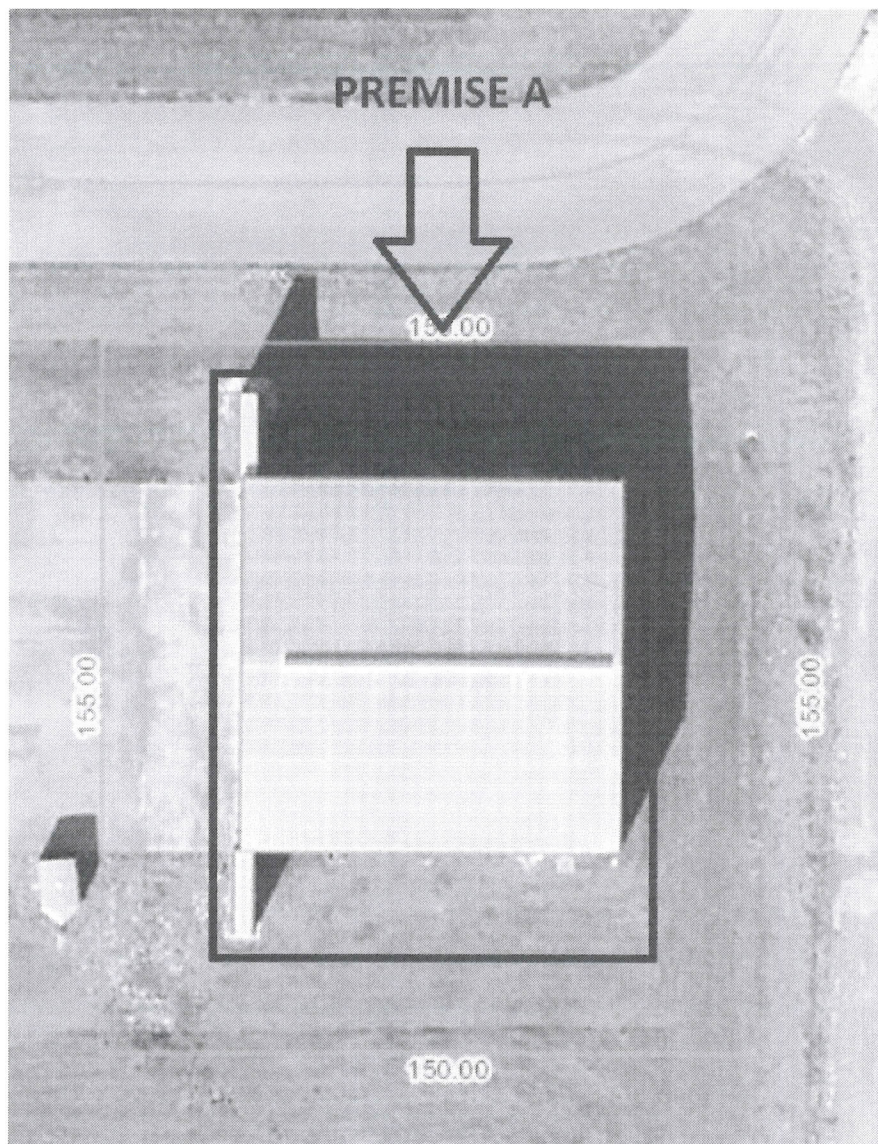
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**Exhibit A**



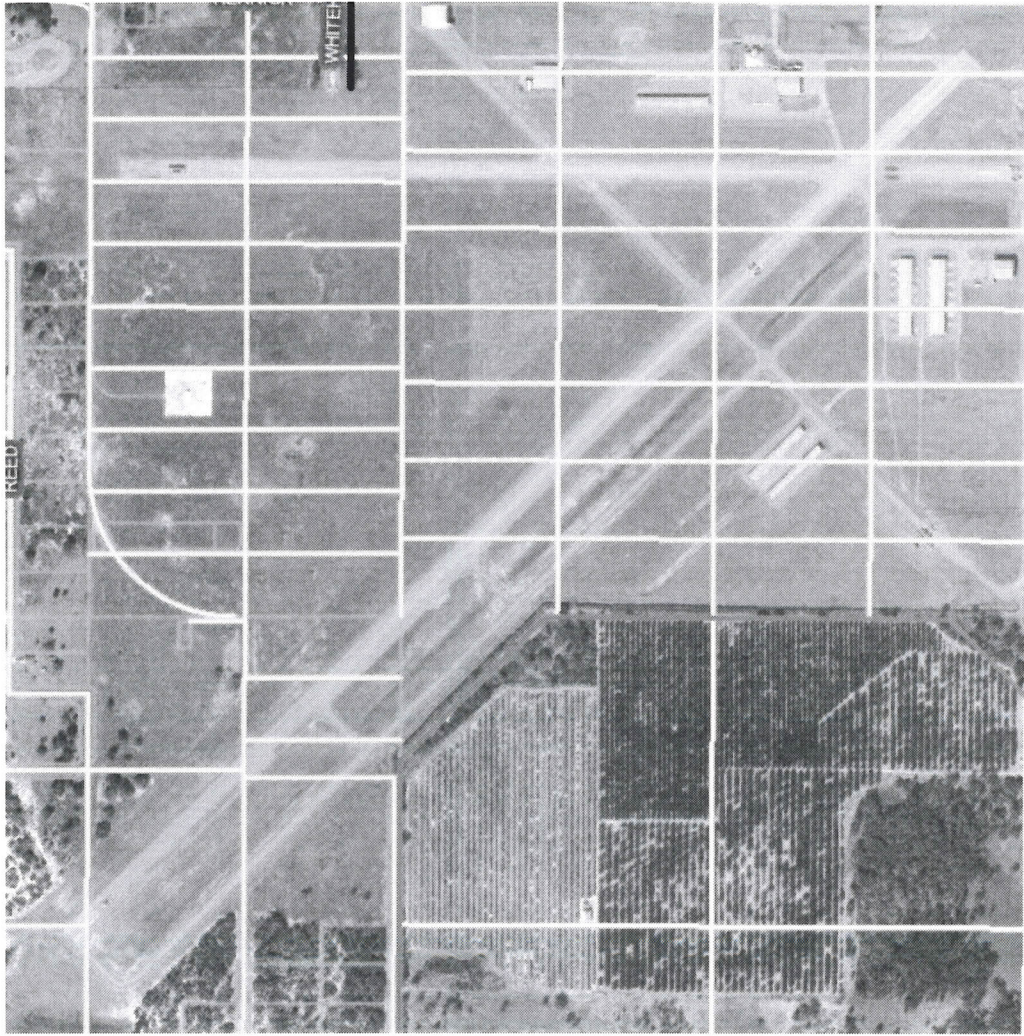
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## Exhibit B



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**Exhibit C**  
**Insurance Certificate**  
**\$2,000,000.00 General Liability Insurance**

(To Be Attached By LESSEE Prior To Execution of Agreement)

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Initial by Lessee 1: KK

Initial by Lessee 2: \_\_\_\_\_