

## KITTINGER F-4 PARK AGREEMENT

This Kittinger F-4 Park Agreement (“Agreement”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between the City of Orlando, Florida, a Florida municipal corporation existing under the laws of the State of Florida with a principal address of 400 South Orange Avenue, Orlando, FL 32801 (“City”), the Greater Orlando Aviation Authority, a public body corporate and politic with a principal address of One Jeff Fuqua Boulevard, Orlando, FL 32827-4399 (“Authority”), and Kittinger F-4 Park, Inc., a Florida not-for profit corporation, whose principal address is 200 N. Thornton Avenue, Orlando, Florida 32801 (“Kittinger”).

### WITNESSETH:

WHEREAS, the City is fee owner of that certain real property located in Orange County, Florida, more particularly described and depicted in Composite **Exhibit “A”** attached hereto and made a part of this reference (“Property”), which property constitutes a substantial portion of a public park commonly known as Kittinger Park (“Kittinger Park”); and

WHEREAS, Kittinger Park and the adjacent Orlando Executive Airport are controlled and operated by the Authority, pursuant to that certain Operation and Use Agreement entered into between the City and the Authority, dated September 27, 1976 (the “Use Agreement”); and

WHEREAS, the City, the Authority, and Kittinger have agreed upon the installation of an F-4 jet (“Jet”) at Kittinger Park.

NOW THEREFORE, for and in consideration of the aforesaid premises, the mutual covenants herein set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Recitals.** The recitals set forth above are true and correct and constitute a material part of this Agreement and are incorporated herein by this reference.

2. **Kittinger’s Obligations.**

a. Kittinger shall be responsible and liable for any costs and damages related to the permitting, transport, installation, construction, maintenance and repair of the Jet, the Jet support structure and attendant displays, including, though not exclusively, ancillary facilities such as lights, posts, fences, plaques, monuments and paving that are directly related to the display of the Jet (collectively the “Jet Installation”).

b. Kittinger shall locate the Jet Installation in conformity to the diagram described. In no event shall the mean sea level (MSL) maximum height of the Jet Installation exceed 133'6" MSL as shown on the attached drawing presented to the FAA for approval. Kittinger shall design and construct the Jet Installation, at its sole cost, consistent with any and all applicable laws, rules and regulations.

c. Kittinger shall maintain the Jet Installation at its sole cost in an attractive, clean and fresh manner such that it would appeal to passersby and instill in them pride in their community, and in a manner consistent with applicable local, state, and federal laws and regulations. Such maintenance shall be performed in accordance with the standards established by the City and at a minimum include: painting the exterior every five (5) years; pressure washing once per year. If the Jet Installation is not maintained in such a manner, either the City or the Authority may require that Kittinger remove and return the Jet to the Air Force, at its sole cost, upon thirty (30) days written notice.

d. In the event Kittinger is required, for any reason, to dismantle and return the Jet to the Air Force, but fails to do so, then the City or the Authority may, but are not obligated to, dismantle the Jet and return it to the Air Force.

e. During the entire term of this Agreement, Kittinger shall carry all-risks policy of insurance for the estimated value of the Jet Installation, covering the Jet Installation and all liability arising therefrom, of Thirty Thousand and No/100 Dollars (\$30,000.00) and shall name the City and the Authority as additional insureds. The City is a self-insured entity but has agreed to treat the Jet Installation similarly to other general park improvements with respect to tort liability arising therefrom. Kittinger shall ensure that the company contracted by Kittinger to transport the Jet to the Orlando Executive Airport provides a general liability insurance policy with limits of liability not less than One Million Dollars (\$1,000,000) combined single limit. Kittinger shall ensure that the City and the Authority are added as additional insureds to the all-risk policy and to the general liability policy maintained by the contractor retained by Kittinger to transport the Jet and by any contractors retained by Kittinger to install, construct, maintain and repair the Jet Installation. Kittinger shall provide to the City and Authority a copy of the contractor's certificate of insurance for review and approval prior to transport of the Jet. Kittinger shall also provide copies of the contractor(s)' liability policies with respect to installation, construction, maintenance and repair of the Jet Installation prior to the conduct of any contractor activities in Kittinger Park. Nothing in this Agreement operates as a waiver of sovereign immunity or the limits of liability established under Florida law.

f. Kittinger agrees to remove the Jet and return it to the Air Force, at its cost, if required in writing by the City, the Authority, the Air Force, or any applicable law or regulation. In the event Kittinger fails to do so, then the City or the Authority may, but are not obligated to, remove the Jet and return it to the Air Force.

g. Kittinger shall indemnify and hold the City and the Authority harmless from and against any loss or liability occasioned by transporting the Jet and by locating, displaying, installing, constructing, maintaining and repairing the Jet Installation on Kittinger Park. Nothing in this Agreement operates as a waiver of sovereign immunity or the limits of liability established under Florida law.

3. **Authority's Obligations.** The Authority agrees, at its cost, to provide a location on the Orlando Executive Airport to store the Jet until sufficient funds have been raised to cover the cost of installation but in no event longer than 365 days from receipt of the Jet. In the event that the Jet Installation has to be removed for any reason and Kittinger fails to remove and return the Jet to the Air Force as required herein, the Authority shall cooperate with the City to provide a location on the Orlando Executive Airport site to store the Jet until relocation of the Jet or return of the Jet to the Air Force can be achieved.

4. **City's Rights and Obligations.** The City has agreed to serve as sponsor of the Jet and is entitled to take all actions necessary and proper to ensure it meets its responsibilities as a sponsor. Kittinger and the Authority shall cooperate with the City to conduct and achieve any such actions. The City's agreement to act as sponsor is expressly based on the representations of Kittinger and the Authority contained in this Agreement. Kittinger shall consult with the City's Parks Division Manager, "Parks Manager," and his/her designated staff, during the design process for the Jet Installation and shall obtain the Parks Manager's approval of design plans at 30%, 60% and 90% completion stage and final approval prior to submittal of the permit application for the Jet Installation to the City's Permitting Department. In addition, Kittinger shall coordinate all installation activities with the Parks Manager.

5. **Attorney's Fees.** In the event of any dispute concerning the interpretation or enforcement of the terms hereof, the prevailing party in any such dispute shall be entitled to recover from the non-prevailing party all costs and expenses incurred in connection therewith, including, but not limited to, reasonable attorney's fees, paralegal's fees, and expenses incurred prior to trial, on appeal, and in connection with any administrative or bankruptcy proceedings.

6. **Governing Law.** This Agreement and the provisions contained herein shall be construed and interpreted in accordance with and controlled and governed by the laws of the State of Florida.

7. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof.

8. **Effective Date.** The effective date of this Agreement shall be the date upon which the last party to sign has executed this Agreement.

9. **Notices.** All notices required under this Agreement shall be in writing and shall be given by hand delivery, acknowledged electronic transmission or United States mail, first class postage prepaid, addressed as follows (or to any such other address of officer as either party may designate in writing):

The City                      City of Orlando  
   Chief Administrative Officer  
   400 South Orange Avenue  
   Orlando, Florida 32801  
   Telephone: (407) 246-3091  
   Telecopier: (407) 246-3342

Copy to:                      City of Orlando  
   City Attorney's Office  
   Attention: Roy Payne, Esquire  
   400 South Orange Avenue  
   Orlando, Florida 32801  
   Telephone: (407) 246-2295  
   Telecopier: (407) 246-2854

Copy to:                      John Perrone, Manager  
   City of Orlando Parks Division  
   1206 Columbia Street  
   Orlando, FL 32805  
   Telephone: (407) 246-3856

Authority:                    Greater Orlando Aviation Authority  
   Philip Brown, Executive Director  
   One Jeff Fuqua Boulevard  
   Orlando, Florida 32827  
   Telephone: (407) 825-  
   Telecopier: (407)

Copy to:                      Marchena and Graham, P.A.  
   Attention: Marcos Marchena, Esquire  
   976 Lake Baldwin Lane, Suite 101  
   Orlando, Florida 32814  
   Telephone: (407) 658-8566  
   Telecopier: (407) 281-8564

Kittinger:                    R. Patrick Phillips, Esquire  
   200 N. Thornton Avenue  
   Orlando, Florida 32801  
   Telephone: (407) 425-7676  
   Telecopier: (407) 425-7679

IN WITNESS WHEREOF, the parties have executed this Agreement in manner and form sufficient to bind them as of the day and year first written above.

**GREATER ORLANDO AVIATION  
AUTHORITY**

Attest:

By: \_\_\_\_\_

By: \_\_\_\_\_  
Phillip N. Brown, A.A.E.

Date: \_\_\_\_\_, 2014

APPROVED AS TO FORM AND LEGALITY  
For use and the reliance of the Greater  
Orlando Aviation Authority only, on this  
\_\_\_\_ day of \_\_\_\_\_, 2014.

By: \_\_\_\_\_  
Marchena and Graham, P.A.

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2014 by Phillip N. Brown, the Executive Director on behalf of the GREATER ORLANDO AVIATION AUTHORITY, a public body corporate and politic, who is personally known to me or has produced \_\_\_\_\_ as identification, and who did (did not) take an oath.

*(Notarial seal)*

\_\_\_\_\_  
Notary Public (sign)  
Print Name: \_\_\_\_\_

State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**CITY OF ORLANDO, FLORIDA**

Attest:

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_

Date: \_\_\_\_\_, 2014

APPROVED AS TO FORM AND LEGALITY  
FOR THE EXECUTION BY A SIGNATORY  
OF THE CITY OF ORLANDO, Legal  
Counsel:

By: \_\_\_\_\_

Print: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2014 by \_\_\_\_\_ on behalf of the CITY OF ORLANDO, FLORIDA, a Florida Municipal Corporation existing under the laws of the State of Florida, who is personally known to me or has produced \_\_\_\_\_ as identification, and who did (did not) take an oath.

*(Notarial seal)*

\_\_\_\_\_  
Notary Public (sign)  
Print Name: \_\_\_\_\_

State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

KITTINGER F-4 PARK, INC.

Attest:

By: \_\_\_\_\_

By: \_\_\_\_\_

Joseph Kittinger

Date: \_\_\_\_\_, 2014

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2014 by \_\_\_\_\_, who is the \_\_\_\_\_ of Kittinger F-4 Park, Inc., who is personally known to me or has produced \_\_\_\_\_ as identification, and who did (did not) take an oath.

*(Notarial seal)*

\_\_\_\_\_  
Notary Public (sign)

Print Name: \_\_\_\_\_

State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**EXHIBIT "A"**