

City of Fayetteville Staff Review Form

2022-0805

Legistar File ID

9/20/2022

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Jared Rabren

8/25/2022

AIRPORT SERVICES (760)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

The Aviation Division recommends approval and signature of the Mayor on an agreement for an assignment of the LC Joint Adventures, LLC ground lease to Creamer Pilot Services, LLC.

Budget Impact:

Account Number		Fund	
Project Number		Project Title	
Budgeted Item?	<u>No</u>	Current Budget	
		Funds Obligated	\$ -
		Current Balance	\$ -
Does item have a cost?	<u>No</u>	Item Cost	
Budget Adjustment Attached?	<u>No</u>	Budget Adjustment	
		Remaining Budget	\$ -

V20210527

Purchase Order Number: _____

Previous Ordinance or Resolution # 42-18

Change Order Number: _____

Approval Date: 2/18/2018

Original Contract Number: _____

Comments:



MEETING OF SEPTEMBER 20, 2022

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff

FROM: Jared Rabren, Airport Director

DATE: August 25, 2022

SUBJECT: LC Joint Adventures, LLC to Creamer Pilot Services, LLC Agreement for Assignment

RECOMMENDATION:

Staff recommends approval and signature of the Mayor on agreement for an assignment of the LC Joint Adventures, LLC ground lease to Creamer Pilot Services, LLC.

BACKGROUND:

LC Joint Adventures, LLC entered into a ground lease with the city on February 6, 2018, for property located at 4560 S. School Avenue. The initial term of the lease runs through 2033 and has the sole option to extend an additional twenty years.

LC Joint Adventures, LLC is solely responsible for upkeep and maintenance of the leased property and its hangar. The City also agreed to provide a significant discount for the sale of fuel as described in Lease Attachment Number Two: First 100,000 gallons delivered in-to-plane \$.25 above cost per gallon; Second 100,000 gallons delivered in-to-plane \$.20 above cost per gallon; Third 100,000 gallons delivered in-to-plane \$.15 above cost per gallon; Fourth and Subsequent 100,000 gallons delivered in-to-plane \$.10 above cost per gallon.

DISCUSSION:

Creamer Pilot Services, LLC was one part of the LC Joint Adventures, LLC purchase. The company is now dissolved. Paragraph 11 of the ground lease requires the written permission of the City for an assignment to be effective. Creamer Pilot Services, LLC has agreed to take on all of the rights and responsibilities set forth in the ground lease and will also continue to receive the benefit of the fuel discount if the City agrees to the assignment.

BUDGET/STAFF IMPACT:

This lease will provide \$1,397.45 in revenue to the airport per year at the current rate.

Attachments:

Staff Review Form
City Council Memo
Assignment of lease
Resolution 42-18

AGREEMENT FOR ASSIGNMENT

Pursuant to the Fayetteville City Council Resolution approved on September 20, 2022, I, Mayor Lioneld Jordan, do hereby consent on behalf of the City of Fayetteville to the assignment of the Ground Lease Agreement dated March 18, 2003 between the City of Fayetteville and LC Joint Adventures, LLC, for property located at 4560 S. School Avenue, to Creamer Pilot Services, LLC, subject to Creamer Pilot Services, LLC's complete and full acceptance of all of its responsibilities and duties within the Ground Lease Agreement and its consummation of its purchase agreement with LC Joint Adventures, LLC.

ATTEST:

CITY OF FAYETTEVILLE

City Clerk Treasurer Kara Paxton

Mayor Lioneld Jordan

Date: _____, 2022

Creamer Pilot Services, LLC does hereby agree that it shall bound by all the rights, responsibilities and duties including the timely and complete payment of rent of the Ground Lease Agreement for property located at 4560 S. School Avenue dated March 18, 2003, once it has consummated its purchase agreement with LC Joint Adventures, LLC, and the Ground Lease Agreement has been assigned to Creamer Pilot Services, LLC. I hereby certify that the below named person is authorized to sign for and bind Creamer Pilot Services, LLC.

WITNESS:

CREAMER PILOT SERVICES, LLC

Tamra Kesner
Signature

By: Lance Creamer
Lance Creamer, Managing Member

Name: Tamra Kesner

Date: 8-26-2022

Title: Admin. Assistant

Date: 8/26/22



113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Resolution: 42-18

File Number: 2018-0064

FLYING INVESTMENTS/LC JOINT ADVENTURES, LLC:

A RESOLUTION TO APPROVE THE AGREEMENT FOR ASSIGNMENT OF A GROUND LEASE FOR AIRPORT PROPERTY LOCATED AT 4560 SOUTH SCHOOL AVENUE FROM FLYING INVESTMENTS, LLC TO LC JOINT ADVENTURES, LLC

WHEREAS, on March 18, 2003, the City of Fayetteville entered into a Ground Lease Agreement with Flying Investments, LLC to lease airport property at 4560 South School Avenue for the purpose of constructing a hangar for business operations for Seven Hundred and Eighty Dollars (\$780.00) per month for thirty (30) years which shall automatically be extended for an additional twenty (20) years at Flying Investments, LLC's option with the rent being increased every five (5) years by an amount tied to Consumer Price Index; and

WHEREAS, following execution of the Ground Lease Agreement, the hangar was constructed and is owned by the Gerald B. Jones Revocable Trust; and

WHEREAS, to safeguard the interests of Fayetteville's citizens, this Ground Lease Agreement can only be sold, assigned or transferred with the consent of the City which "will not be unreasonably withheld." Paragraph 11 of the Agreement; and

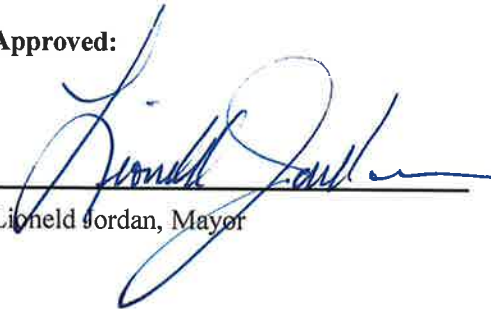
WHEREAS, Flying Investments, LLC has requested that the City Council approve the assignment of this ground lease to LC Joint Adventures, LLC which proposes to purchase the hangar constructed and owned by the Gerald B. Jones Revocable Trust on the City's land and assume all the rights and responsibilities of Flying Investments, LLC within the assigned Ground Lease Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves the attached Agreement For Assignment of the rights, responsibilities and duties of the Ground Lease Agreement entered into on March 18, 2003, to LC Joint Adventures, LLC subject to the consummation of the purchase agreement by and between the Gerald B. Jones Revocable Trust, LLC and LC Joint Adventures, LLC, the execution of the Assignment and Assumption of Ground Lease by and between Flying Investments, LLC and LC Joint Adventures, LLC, and acceptance of the Agreement For Assignment.

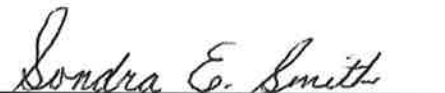
PASSED and APPROVED on 2/6/2018

Approved:



Lionel Jordan, Mayor

Attest:



Sondra E. Smith, City Clerk Treasurer





City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Text File

File Number: 2018-0064

Agenda Date: 2/6/2018

Version: 1

Status: Passed

In Control: City Council Meeting

File Type: Resolution

Agenda Number: A. 8

FLYING INVESTMENTS/LC JOINT ADVENTURES, LLC:

A RESOLUTION TO APPROVE THE AGREEMENT FOR ASSIGNMENT OF A GROUND LEASE FOR AIRPORT PROPERTY LOCATED AT 4560 SOUTH SCHOOL AVENUE FROM FLYING INVESTMENTS, LLC TO LC JOINT ADVENTURES, LLC

WHEREAS, on March 18, 2003, the City of Fayetteville entered into a Ground Lease Agreement with Flying Investments, LLC to lease airport property at 4560 South School Avenue for the purpose of constructing a hangar for business operations for Seven Hundred and Eighty Dollars (\$780.00) per month for thirty (30) years which shall automatically be extended for an additional twenty (20) years at Flying Investments, LLC's option with the rent being increased every five (5) years by an amount tied to Consumer Price Index; and

WHEREAS, following execution of the Ground Lease Agreement, the hangar was constructed and is owned by the Gerald B. Jones Revocable Trust; and

WHEREAS, to safeguard the interests of Fayetteville's citizens, this Ground Lease Agreement can only be sold, assigned or transferred with the consent of the City which "will not be unreasonably withheld." Paragraph 11 of the Agreement; and

WHEREAS, Flying Investments, LLC has requested that the City Council approve the assignment of this ground lease to LC Joint Adventures, LLC which proposes to purchase the hangar constructed and owned by the Gerald B. Jones Revocable Trust on the City's land and assume all the rights and responsibilities of Flying Investments, LLC within the assigned Ground Lease Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves the attached Agreement For Assignment of the rights, responsibilities and duties of the Ground Lease Agreement entered into on March 18, 2003, to LC Joint Adventures, LLC subject to the consummation of the purchase agreement by and between the Gerald B. Jones Revocable Trust, LLC and LC Joint Adventures, LLC, the execution of the Assignment and Assumption of Ground Lease by and between Flying Investments, LLC and LC Joint Adventures, LLC, and acceptance of the Agreement For Assignment.

City of Fayetteville Staff Review Form

2018-0064

Legistar File ID

2/6/2018

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Summer Fallen

1/18/2018

Aviation /
Transportation Services Department

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends approval and signature of the Mayor on agreement for an assignment of the Flying Investments ground lease to LC Joint Adventures, LLC.

Budget Impact:

Account Number	Fund
Project Number	Project Title
Budgeted Item? <u>NA</u>	Current Budget \$ -
	Funds Obligated \$ -
	Current Balance \$ -
Does item have a cost? <u>NA</u>	Item Cost
Budget Adjustment Attached? <u>NA</u>	Budget Adjustment
	Remaining Budget \$ -

V20140710

Previous Ordinance or Resolution # _____

Original Contract Number: _____

Approval Date: _____

Comments:



CITY COUNCIL AGENDA MEMO

MEETING OF FEBRUARY 6, 2018

TO: Mayor Lioneld Jordan
Fayetteville City Council

THRU: Don Marr, Chief of Staff
Terry Gulley, Transportation Services Director

FROM: Summer Fallen, Airport Services Manager

DATE: January 18, 2018

SUBJECT: LC Joint Adventures, LLC Agreement for Assignment

RECOMMENDATION:

Staff recommends approval and signature of the Mayor on agreement for an assignment of the Flying Investments ground lease to LC Joint Adventures, LLC.

BACKGROUND:

Flying Investments entered into a ground lease with the city on March 18, 2003, for property located at 4560 S. School Avenue, to construct a corporate hangar. The initial term of the lease runs through 2033 and has the sole option to extend an additional twenty years. Flying Investments paid \$780.00 for the first year's rent and the amount has been adjusted every five years.

Flying Investments is solely responsible for upkeep and maintenance of the leased property and its hangar. The City also agreed to provide a significant discount for the sale of fuel as described in Lease Attachment Number Two: First 100,000 gallons delivered in-to-plane \$.25 above cost per gallon; Second 100,000 gallons delivered in-to-plane \$.20 above cost per gallon; Third 100,000 gallons delivered in-to-plane \$.15 above cost per gallon; Fourth and Subsequent 100,000 gallons delivered in-to-plane \$.10 above cost per gallon.

DISCUSSION:

LC Joint Adventures, LLC has made an offer to Flying Investments for the purchase of the hangar which will also require an assignment of the ground lease. Paragraph 11 of the ground lease requires the written permission of the City for an assignment to be effective. LC Joint Adventures, LLC has agreed to take on all of the rights and responsibilities set forth in the ground lease and will also continue to receive the benefit of the fuel discount if the City agrees to the assignment.

BUDGET/STAFF IMPACT:

This lease will provide \$1,397.45 in revenue to the airport per year at the current rate.

Attachments:

SRF
Agreement for Assignment
Letter from LC Adventures with proposed assignment
Resolution 39-03 Ground Lease Agreement

AGREEMENT FOR ASSIGNMENT

Pursuant to the Fayetteville City Council Resolution approved on February 6, 2018, I, Mayor Lioneld Jordan, do hereby consent on behalf of the City of Fayetteville to the assignment of the Ground Lease Agreement entered into between the City of Fayetteville and Flying Investments, LLC on March 18, 2003, for property located at 4560 S. School Avenue, to LC Joint Adventures, LLC, subject to LC Joint Adventures, LLC's complete and full acceptance of all of its responsibilities and duties within the Ground Lease Agreement and its consummation of its purchase agreement with Gerald Jones, Trustee of the Gerald B. Jones Revocable Trust, dated January 22, 2007.

ATTEST:

CITY OF FAYETTEVILLE

Sondra E. Smith
City Clerk Sondra E. Smith

Lioneld Jordan
Mayor Lioneld Jordan

Date: 2-6, 2018



LC Joint Adventures, LLC does hereby agree that it shall bound by all the rights, responsibilities and duties including the timely and complete payment of rent of the Ground Lease Agreement of March 18, 2003, entered into between the City of Fayetteville and Flying Investments, LLC, once it has consummated its purchase agreement with Gerald Jones, Trustee of the Gerald B. Jones Revocable Trust, dated January 22, 2007, and the Ground Lease Agreement has been assigned to LC Joint Adventures, LLC. I hereby certify that the below named person is authorized to sign for and bind LC Joint Adventures, LLC.

WITNESS:

LC JOINT ADVENTURES, LLC

Amanda Hampton
Signature

Lance Creamer
By: **Lance Creamer, Managing Member**

Name: Amanda Hampton

Date: January 17, 2018

Title: Paralegal

Date: January 17, 2018



W. ASA HUTCHINSON III
LICENSED IN ARKANSAS AND MISSOURI

479.878.1600
ahutchinson@ahlawgroup.com

January 4, 2018

Via First Class Mail and Email

Blake E. Pennington
Assistant City Attorney
Office of the City Attorney of Fayetteville
113 W Mountain Street, Suite 302
Fayetteville, AR 72701
bpennington@fayetteville-ar.gov

Re: Assignment of Land Lease from Flying Investments, LLC to
LC Joint Adventures, LLC

Dear Blake:


Flying Investments, LLC currently leases land from the City located at 4560 S. School Avenue at the City's Municipal Airport. A corporate-style hangar has been constructed on this property by Gerald Jones, Trustee of the Gerald B. Jones Revocable Trust, dated January 22, 2007. Mr. Jones is the owner of Flying Investments, LLC, and desires to sell the hangar to my client LC Joint Adventures, LLC. In connection with this proposed sale, the parties are requesting that the City approve of the assignment of Flying Investments, LLC's lease to LC Joint Adventures, LLC. The purchase and sale of the hangar will not occur without the assignment of this lease as requested.

LC Joint Adventures, LLC is owned by Lance Creamer and Mark Rockwell. Mr. Creamer is an owner of JETT Aircraft, LLC which currently operates out of the hangar located at 4500 S. School Ave. at the City's Municipal Airport. JETT Aircraft, LLC has been a good operator and customer at the airport. LC Joint Adventurers, LLC will similarly be a responsible operator and customer, and will of course agree to be bound by all the rights, responsibilities and duties, including the timely and complete payment of rent, of the tenant under the current lease between Flying Investments, LLC and the City for the 4560 S. School Ave. property once said lease has been assigned to LC Joint Adventures, LLC and its purchase of the associated hangar has been consummated.

Enclosed is a copy of the proposed Assignment we request the City to approve. I have also copied Tom Overbey, counsel for Flying Investments, LLC, Gerald Jones and Gerald Jones, Trustee of the Gerald B. Jones Revocable Trust, dated January 22, 2007. Thank you and please let me know if you need anything additional.

Blake E. Pennington
January 4, 2018
Page 2

Sincerely,



W. Asa Hutchinson III

Enclosure

Cc: Tom Overbey (via email only to toverbey@artaxlaw.com)

ASSIGNMENT AND ASSUMPTION OF GROUND LEASE

KNOW ALL MEN BY THESE PRESENTS that Flying Investments, LLC, an Arkansas limited liability company (the "**Assignor**"), in consideration of the mutual promises, agreements and covenants contained in that particular Hangar Purchase Agreement executed by the parties hereto on February 16, 2018 (the "**Agreement**"), and for other good and valuable consideration given by LC Joint Adventures, LLC, an Arkansas limited liability company (the "**Assignee**"), the receipt and sufficiency of which is hereby acknowledged, hereby assigns, effective as of February 16, 2018 ("**Effective Date**"), does hereby convey, transfer and assign unto the Assignee all of Assignor's right, title and interest in and to the Lease Agreement entered into on March 18, 2003 by and between Assignor and the City of Fayetteville, Arkansas (the "**City**") attached hereto whereby Assignor leases certain real estate from the City located at 4560 S. School Avenue, Fayetteville, Arkansas (the "**Ground Lease**"),

TO HAVE AND TO HOLD the same unto the Assignee, its successors and assigns, from and after the Effective Date hereof, subject to the terms, covenants, conditions and provisions contained in the Ground Lease.

The Assignee hereby assumes, as of the Effective Date, the performance of all of the terms, covenants and conditions of the Ground Lease herein assigned by the Assignor to the Assignee from and after the Effective Date hereof and hereby agrees to perform all of the terms, covenants and conditions contained in the Ground Lease from and after the Effective Date hereof, all with the full force and effect as if Assignee had signed the Ground Lease originally as the tenant named therein.

This instrument may be executed in counterparts, which counterparts, when taken together, shall constitute a single agreement. This instrument may be executed and delivered by electronic and/or facsimile transmission.

IN WITNESS WHEREOF, the parties hereto have each set their hands as of the date indicated by each below but this Assignment and Assumption of Leases shall be effective as of the Effective Date set forth herein.

ASSIGNOR:

Flying Investments, LLC

By: _____
Name: Gerald Jones

Title: _____

Date: _____

ASSIGNEE:

LC Joint Adventures, LLC

By: _____
Name: Lance Creamer

Title: Managing Member

Date: _____

RESOLUTION NO. 39-03

A RESOLUTION APPROVING A GROUND LEASE AGREEMENT WITH FLYING INVESTMENTS, LLC FOR SPACE AT THE FAYETTEVILLE MUNICIPAL AIRPORT TO CONSTRUCT A HANGAR AND AN OFFICE/SHOP.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council hereby approves a Ground Lease Agreement with Flying Investments, LLC for space at the Fayetteville Municipal Airport to construct a hangar and an office/shop. A copy of the Lease Agreement marked Exhibit "A" is attached hereto and made a part hereof.

PASSED and APPROVED this 18th day of March, 2003.



By: Sandra Smith
SONDRA SMITH, City Clerk

APPROVED:

By: Dan Coody
DAN COODY, Mayor



LEASE AGREEMENT
Ground Lease

This Lease Agreement entered into this 18th day of March, 2003, by and between the City of Fayetteville, Arkansas, hereinafter referred to as the "City" and Flying Investments, LLC, P. O. Box 8157, Fayetteville, Arkansas 72703 hereinafter referred to as Flying Investments.

WHEREAS, the City owns and operates an Airport known as Fayetteville Municipal Airport - Drake Field, situated in Washington County in the State of Arkansas; and

WHEREAS, Flying Investments desires to lease from the City certain space for the construction of an aircraft hangar and ramp as described below:

A CERTAIN TRACT OF LAND 120 FT. X 130 FT. LOCATED AT 4560 S. SCHOOL AVENUE AT THE FAYETTEVILLE MUNICIPAL AIRPORT - DRAKE FIELD AND MORE PARTICULARLY SET FORTH AND SHOWN ON EXHIBIT "A", ATTACHED HERETO AND MADE A PART HEREOF.

NOW, THEREFORE, the Parties hereto agree as follows:

1. **LEASEHOLD.** The City does hereby grant, demise and lease unto Flying Investments certain premises situated in Washington County, Arkansas, within the boundaries of the Fayetteville Municipal Airport- Drake Field. Flying Investments will be responsible for all improvements to the Leased Premises.

2. **TERM.** The term of this lease is for thirty (30) years beginning on the first day of the next month following the date the Occupancy Permit is granted (___ day of _____, 2003), and ending at midnight the end of the previous month in the year 2033 (_____, 2033), unless otherwise terminated, canceled or extended as set forth herein below.

Flying Investments shall have six (6) months from April 1, 2003 to begin construction of the hangar. The City or Flying Investments may terminate this lease at any time by giving the other party thirty (30) days written notice of termination during the first six (6) months following the April 1, 2003 date, or prior to the ground breaking for the new facility. Failure to begin construction before October 1, 2003 will be an automatic cancellation of this ground lease.

A. Option to Extend. Flying Investments shall have the option to extend the Lease Term of this Lease for one (1) period of Twenty (20) years if Flying Investments has satisfied the following conditions (extensions beyond Fifty (50) years must be renegotiated and approved by the City Council):

1). Flying Investments has complied with and performed all conditions, covenants, and terms of the Agreement without any defaults known to Flying Investments, or any defaults that are not otherwise in the process of being resolved in the manner provided in this Agreement.

2). Notice of Flying Investments's request to renew has been made and presented in writing to the City at least One Hundred Twenty (120) days prior to the expiration of the term.

3.) The amount of rental fees shall have been successfully negotiated and agreed to by the parties for the extended lease term.

3. RENTAL FEES. During the term of this lease, Flying Investments agrees to pay the City an annual ground rental fee of five cents (\$.05) per square foot of total leased ground space. Leased ground space totals 15,600 square feet. Annual rental due the City is Seven Hundred and Eighty Dollars (\$780.00). Said rental is to be paid in advance in yearly installments on the 1st day of next month following the date of the Occupancy Permit is granted (_____, 2003).

If paid annually, or in increments of five (5) years or less, rental charges shall be reviewed every five (5) years and the rental charges for the next five (5) years of the lease term will be adjusted up to reflect the Consumer Price Index (CPI) plus one (1) percent, using the formula on Lease Attachment #1.

A delinquency charge will be imposed on payments not received by the close of business on the tenth day after the due date. Such delinquency charge shall be the maximum amount allowable under Arkansas law. All payments shall be delivered or mailed to: City of Fayetteville, 113 West Mountain Street, Fayetteville, Arkansas 72701.

4. UTILITIES AND JANITORIAL SERVICES. Flying Investments shall be responsible for the payment of the utilities associated with any, but not limited to, electric, gas, heating, water/sewer, and trash removal to the leasehold.

The City shall not be required to furnish to Flying Investments any facilities or services of any kind, such as, but not limited to, water/sewer, trash removal, electricity, or gas. Any such facilities or services required by Flying Investments for their use and purposes shall be their sole and exclusive responsibility and agree to hold City of Fayetteville harmless from any responsibility or liability therefore.

5. **TERMS AND CONDITIONS.** Flying Investments agrees to comply with and abide by all terms and conditions set forth in this original Agreement of Lease.

6. **USE OF THE PREMISES.** Flying Investments agrees that the leased premises shall be used and occupied only as an aircraft hangar and for related lawful purposes.

A. **Flammable Material.** Flying Investments further agrees not to store any flammable material on the demised premises other than a limited supply of oils and agents necessary for the operation of an aircraft hangar.

B. **Hazardous Substance.** Flying Investments shall not cause or permit any Hazardous Substance to be used or stored on or in the Leased Premises with out first obtaining the City of Fayetteville's written consent. If Hazardous Substances are used, stored, generated, or disposed of on or in the Leased Premises or if the Leased Premises or any other Airport property becomes contaminated in any manner for which Flying Investments is responsible or legally liable, Flying Investments shall indemnify and hold harmless the City of Fayetteville from any and all claims, damages, fines, judgements, penalties, costs, liabilities, or losses (including, without limitation and decrease in value of the Lease Premises, damages caused by loss or restriction of rentable or usable space as part of the Leased Premises) arising during or after the term hereof and arising as a result of that contamination by Flying Investments, Flying Investments's agents, employees, and invitees. This indemnification includes, without limitation, and all costs incurred because of any investigation of the Airport or any cleanup, removal, or restoration mandated by a federal, state, local agency or political subdivision.

C. Flying Investments shall not start or operate aircraft engines within the facility leased hereby and shall not allow such operations by any other person.

7. **USE OF THE AIRPORT.** Flying Investments is granted the use, in common, without charge, with others similarly authorized, of the airport, together with all facilities, equipment, improvements, and services which have been or may hereafter be provided at or in connection with the Airport from time to time including, but not limited to, the landing field and any extensions hereof or additions thereto, roadways, runways, ramps, aprons, taxiways, flood lights, landing lights, beacons, control tower, signals, radio aids, and all other conveniences for flying, landings and takeoffs.

Flying Investments agrees to observe and obey City of Fayetteville's Ordinances and Regulations with respect to the use of the demised premised and Airport; provided, however, such Ordinances and Regulations shall be consistent with safety and with all city, county, state, and federal ordinances, rules and regulations. Flying Investments agrees to abide by the rulings of the Federal Aviation Administration with respect to the use of the Leased Premises. *"Airport Minimum Standards for Operations and Commercial Activities"* herein referred to as Airport Minimum Standards at Fayetteville Municipal Airport are made part of this lease by reference as if included

word for word. Special provisions for the use of fuel storage facilities are listed on **Lease Attachment #2**.

8. REPAIRS, MAINTENANCE AND APPEARANCE.

A. Flying Investments shall at all times during the term of this Lease Agreement, at Flying Investments's expense, keep and maintain in good repair and safe condition the leased premises and the equipment and appurtenances, both inside and outside, structural and non-structural, extraordinary and ordinary, whether or not necessitated by wear, tear, obsolescence or defects, latent or otherwise. When used herein, the term "repairs" shall include all necessary replacements, renewals, alterations, additions, and betterments. Flying Investments acknowledges that Flying Investments shall be responsible for the repairs and maintenance necessary to maintain the structural integrity of the hangar. Flying Investments will at all times maintain the Leased Premises in a clean, orderly, and attractive condition; not allow the accumulation of rubbish, trash, refuse and any unsightly conditions or fire hazards on the Leased Premises. Flying Investments shall be responsible for mowing and the upkeep of the outside grounds of the Leased Premises. Flying Investments shall be responsible for all janitorial services and trash removal from the Leased Premises.

B. The necessity for and adequacy of repair to the Lease Premises, pursuant to Subparagraph (a.) hereof, shall be measured by the standard which is appropriate for improvements of similar construction and also shall meet the requirements and standards set out and promulgated by the City pursuant to the primary lease referred to above.

C. Flying Investments agrees to reimburse the City for all sums and expenses incurred in the repairs or maintenance required or caused to be made pursuant to the regulations and rules of the City mentioned in Subparagraph (b) above as a result of failure by Flying Investments to maintain or repair the demised premises as required.

9. ALTERATIONS AND IMPROVEMENTS. Flying Investments shall have prior written consent from the City, meeting all City requirements, to make any alterations, additions and improvements Flying Investments deems necessary and desirable to the interior of the leased premises. Flying Investments shall not be entitled to make any major or material alterations, additions or changes to the exterior of the leased premises without the City's prior written consent. Flying Investments acknowledges and agrees that all such alterations, additions and improvements, including paneling, partitions, railings, floors, ceilings and the like, shall become the property of the City upon the terminations of the Lease Agreement.

10. INSURANCE. Flying Investments shall obtain and maintain property insurance coverage for the repair or replacement of the leasehold and any adjacent improvements, with an insurance company licensed to do business in the State of Arkansas, naming the City of Fayetteville and the Fayetteville Municipal Airport and their trustees, agents, officers, and employees as an

Additional Insured on the policy, and Flying Investments shall provide the Airport Administration Office with a Certificate of Insurance during the term of this Lease.

Flying Investments acknowledges that it is the Flying Investments's responsibility to maintain insurance on Flying Investments's personal property.

11. SUB-LEASING AND ASSIGNMENT. Flying Investments shall not be entitled to sub-lease or assign the Flying Investments's interest in this Lease Agreement without first obtaining the written permission of the City, provided however, Flying Investments may assign Flying Investments's interest in this Lease Agreement for a One Hundred and Eighty (180) day period to Qualified Escrow, LLC, in order for Flying Investments to accomplish a tax deferred exchange under Section 1031 of the Internal Revenue Code. A request to sub-lease or an assignment of the lease will not be unreasonably withheld.

12. EVENTS OF DEFAULT. The following shall be "Events of Default" under this Agreement, and the terms "Events of Default" or "Default" shall mean, whenever they are used herein, any one or more of the following.

- A. Flying Investments shall fail to pay when due and owing any rentals hereunder and such nonpayment shall continue for twenty days after written notice thereof by the Airport;
- B. Flying Investments voluntarily shall abandon, desert, or vacate the Leased Premises;
- C. Flying Investments shall fail to comply with insurance requirements imposed hereunder;
- D. Flying Investments shall fail to observe or perform any other of its obligation hereunder, and such failure shall continue un-remedied for twenty (20) days after the City shall have given to the Flying Investments written notice specifying such default. Provided, the Airport may grant Flying Investments such additional time as it's reasonably required to correct any such default if Flying Investments has instituted corrective action and diligently is pursuing the same;
- E. Flying Investments shall fail to provide and maintain any security assurances required hereunder; or

13. REMEDIES UPON FLYING INVESTMENTS'S DEFAULT. Whenever an Event of Default of Flying Investments shall occur, the City may pursue any available right or remedy at law or equity including:

- A. Termination. At its exclusive option, the City deliver to Flying Investments written notice of termination, specifying the date upon which the Agreement will terminate. In the event of termination, Flying Investments's rights to possession of the Leased Premises immediately shall cease. The City may then reenter and take possession of the Leased

Premises and Flying Investments forthwith shall surrender possession of the Leased Premises. Upon termination of this Agreement, Flying Investments shall be liable for payment of:

- 1.) All sums accrued through the date of termination.
- 2.) The reasonable costs incurred by the City to re-let the Leased Premises, or any portion thereof; and
- 3.) The reasonable cost incurred by the City to restore the Leased Premised or any portion thereof to the condition in which they originally were leased, ordinary wear and tear excepted.

All rentals received by the City from re-letting the Leased Premises after the termination of this Agreement shall be credited against the Outstanding Rental Balance. The acceptance by the City of any rentals from Flying Investments after the termination of this Agreement shall not reinstate this Agreement.

Upon such notice, Flying Investments agrees to vacate the premises immediately. Should it become necessary for City to resort to judicial process to enforce the terms of this Agreement, or reclaim possession of the premises, Flying Investments agrees to pay a reasonable attorney's fee.

14. **EXPIRATION OR TERMINATION.** On the expiration or other termination of this Lease, Flying Investments 's right to use the demised premises shall cease, and Flying Investments shall vacate the premises without unreasonable delay. All property installed, erected, or placed by Flying Investments in, on, or about the premises leased hereunder shall be deemed to remain the property of City. Flying Investments shall have the right at any time during the term of this agreement, or any renewal or extension hereof, and for an additional period of seven (7) days after the expiration or other termination of this agreement, to remove any or all of Flying Investments's property, subject, however to Flying Investments's obligation to repair all damage, if any, resulting from such removal. Any and all property not removed by Flying Investments prior to the expiration of the aforesaid seven (7) day period shall thereupon become a part of the land on which it is located and title hereto shall thereupon vest in City.

15. **TERMINATION OF AIRPORT.** In the event that the Fayetteville Municipal Airport facility and property are no longer used for aviation purposes, the Flying Investments may remain in possession of the premises until the end of the lease term with the right to use the premises for any use allowable under Arkansas law.

16. **TAXES.** Flying Investments shall pay all ad valorem taxes and assessments upon the leased premises and upon all personal property located upon the leased premises which are assessed during the lease term.

17. **MORTGAGING OF LEASEHOLD.** Flying Investments is hereby given the absolute right without the City of Fayetteville's consent to mortgage his interest in the leased premises, provided that no such mortgage shall extend to or affect the fee, the reversionary interest, or the estate of City of Fayetteville in and to the land and building (hangar facility complex) erected thereon.

18. **INDEMNITY.** Flying Investments agrees to indemnify the City against any liability for injuries to persons or damage to property caused by Flying Investments's gross negligent use or occupancy of the leased premises; provided, however, that Flying Investments shall not be liable for any personal injury, damage or loss occasioned by the negligence of City or its agents or employees, and provided further, that each party shall give prompt and timely notice of any claim made or suit instituted which in any way directly or indirectly affects or might affect either party, and each party shall have the right to compromise and defend the same to the extent of its own interest. This clause shall not be construed to waive that tort immunity asset forth under Arkansas Law.

19. **NON-WAIVER.** Neither the waiver by City of any breach of Flying Investments of any provision hereof nor any forbearance by the Airport to seek a remedy for any such breach shall operate as a waiver of any other breach of Flying Investments.

20. **NOTICES.** Any notice or consent required by this Agreement shall be sufficient if sent by Certified Mail, return receipt requested, postage paid, to the following addresses:

CITY OF FAYETTEVILLE:

Airport Administration Office
4500 S. School Avenue, Suite F
Fayetteville, Arkansas 72701
PH: 479-718-7642
FAX: 479-718-7646

FLYING INVESTMENTS LLC:

Flying Investments
P. O. Box 8157
Fayetteville, Arkansas 72703
PH: 479-530-4000
FAX: 470-443-9424

21. **NON-DISCRIMINATORY CLAUSE.**

A. Flying Investments agrees to not discriminate by segregation or otherwise against any person or persons because of race, creed color, religion, national origin, sex, martial status, or handicap in the furnishing, or by refusing to furnish, to such persons the use of any facility, including any and all services, privileges, accommodations, and activities provided thereby. Nothing herein shall require the furnishing to the general public of the use of any facility customarily furnished by the City solely to tenants, their employees, customers, patients, client, guests, and invites.

B. This Agreement shall be construed under the laws of the State of Arkansas.

22. All the covenants, conditions, and provisions under this agreement shall extend to and bind the legal representatives, successors, and assign of the respective parties hereof.

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

CITY OF FAYETTEVILLE, ARKANSAS

By: *Dan Coody*
Dan Coody, Mayor

ATTEST:

By: *Sondra Smith*
City Clerk

Flying Investments:

By: *Daniel Hollman*

Director of Aviation
Title

ATTEST:

By: _____

Title: _____

LEASE ATTACHMENT NUMBER ONE

Rent adjustments shall be made as of the commencement of each of the Dates Upon Which Rent Increases Apply and shall be determined by the following formula:

Rent as last so increased under this Lease

multiplied by:

$$1 + \frac{\text{Current Index} - \text{Base Index}}{\text{Base Index}}$$

plus

one percent (1%) of the Rent as last so increased under this Lease

Where, "Current Index" shall be the CPI (*D-I Consumer Price Index-All City Average, "all items groups, subgroups and special groups, "published monthly in the Monthly Labor Review of the Bureau of Labor Statistics of the United States Department of Labor*) for the month immediately prior to the applicable Dates Upon Which Rent Increases Apply, and Base Index shall be the CPI for the month immediately prior to the Commencement Date or the most recent Dates Upon Which Rent Increases Apply, whichever is applicable. In no event, however, shall the Rent for any period be less than the Rent as last so increased under this Lease. In the event that such CPI is no longer published or otherwise available, the adjustment provided for herein shall be by the successor (or the most nearly comparable successor index) thereto, adjusted as appropriate to the applicable dates.

LEASE ATTACHMENT NUMBER TWO

Fuel stored in the Airport Fuel Storage Facility shall be coordinated with the Airport Administration Office and all fees and charges required by City Ordinance shall be remitted to the City of Fayetteville. Deliveries shall be coordinated so as not to overfill the fuel storage tanks. In addition to Buyer and Supplier Fees (Fuel Flowage Fees) charged by City of Fayetteville Ordinance, an In-To-Plane Fee shall be charged at the following rate schedule for each calendar year.

First:	100,000 gallons delivered in-to-plane\$.25 per gallon
Second:	100,000 gallons delivered in-to-plane\$.20 per gallon
Third:	100,000 gallons delivered in-to-plane\$.15 per gallon
Fourth:	
And Subsequent:	100,000 gallons delivered in-to-plane\$.10 per gallon

NO OBSTACLE FREE ZONE

44'-05" 73.50

RUNWAY OBSTACLE FREE ZONE

SURVEY SAFETY AREA

100' x 200' HANGAR
(20,000 S.F.)

6-100' x 100'
(10,000 S.F.)

FBO AND
TERMINAL

GRAVEL

FUTURE
PARKING

ENTRANCE SIGN

FLYING INVESTMENTS LLC
4560 S. SCHOOL AVENUE

Exhibit "A"

ADN

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

To: Ray Boudreaux
Airport

From: Clarice Buffalohead-Pearman 
City Clerk Division

Date: 3/20/2003

Re: Res. No. 39-03

Attached please find an executed copy of the above resolution passed by the City Council on March 18, 2003, approving a ground lease agreement with Flying Investments, LLC for space at the Fayetteville Municipal Airport to construct a hangar and an office/shop.

I am returning one executed contract to you. The other original contract will be microfilmed and filed with the city clerk's office. If anything else is needed please let the city clerk's office know.

/cbp

cc: Nancy Smith, Internal Auditor

(14) RES 3/18/2003 39-03

STAFF REVIEW FORM

X AGENDA REQUEST
X CONTRACT REVIEW
GRANT REVIEW

March 18, 2003

For the Fayetteville City Council meeting of March 4, 2003

FROM:

Ray M. Boudreaux Airport Aviation & Economic Development
Name Division Department

ACTION REQUIRED: Review and approve ground lease to Flying Investments, L.I.C. for construction of a hangar and office/shop complex at Fayetteville Municipal Airport, Drake Field.

COST TO CITY:

Cost of this Request Category/Project Budget Category/Project Name
Account Number Funds used to date Program Name
Project Number Remaining Balance Airport Fund

BUDGET REVIEW: X Budgeted Item Budget Adjustment Attached

Budget Manager Date Administrative Services Dir. Date

CONTRACT/GRANT/LEASE REVIEW:

Maisha Farthing 2/20/03 Internal Auditor Date GRANTING AGENCY
City Attorney Date AIDA Coordinator Date
Purchasing Officer Date Grants Coordinator Date

STAFF RECOMMENDATION: Approve Lease for Mayor Signature.

Division Head Date
Department Director Date
Administrative Services Director Date
Mayor Date

Cross Reference
New Item: Yes X No
Prev. Ord/Res#:
Orig Cont. Date:
Orig Cont #:

STAFF REVIEW FORM

Meeting Date: March 4, 2003

Comments: Flying Investments, LLC has a ground lease on Fayetteville Municipal Airport, Drake Field and is in construction of their first hangar. This ground lease will allow the company to construct an additional hangar and to connect the two buildings with a shop and office complex. Flying Investments represents several companies in the aircraft maintenance and repair, aircraft modifications, aircraft sales and aircraft management businesses.

Budget Manager

Reference Comments:

Accounting Manager

Reference Comments:

City Attorney

Reference Comments:

Purchasing Officer

Reference Comments:

Internal Auditor

Reference Comments:

ADA Coordinator

Reference Comments:

Grants Coordinator

Reference Comments:

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS
DAN COODY, MAYOR

MEMORANDUM


TO: Dan Coody, Mayor
City Council Members

THRU: Staff Review Committee

FROM: Ray M. Boudreaux, Director, Aviation and Economic Development

DATE: February 14, 2003

SUBJECT: Ground Lease for Flying Investments LLC



Background: The Airport Board approved at their meeting of February 13, 2003, a ground lease to Flying Investments, LLC for the construction of a second hangar and connecting shop/office complex at Fayetteville Municipal Airport, Drake Field. Flying Investments is in construction of their first hangar. The second hangar will be adjacent to and west of the first hangar. Flying Investments, LLC represents several aviation related businesses that are partners in the enterprise located at the airport.

Purpose: Review, approval and signature by the Mayor

Budget Considerations: Lease of 15,600 square feet of ground at \$.05 per SF with increases every 5 years at the rate of increase in the CPI plus 1%. Initial term is 30 years with one renewal for 20 years.

Requested Action: Mayor, sign the ground lease contract.

Attachments: Staff Review Form
Ground Lease Contract (2 cys)

Aviation and Economic Development Department
Fayetteville Municipal Airport, Drake Field
4500 South School Avenue, Suite F
Fayetteville, Arkansas 72701
Ray M. Boudreaux, Director