

City of Las Cruces®

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Council Action and Executive Summary

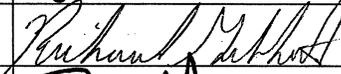
Item # 10 Ordinance/Resolution# 10-312 Council District: 4

For Meeting of June 21, 2010
(Adoption Date)

TITLE:

A RESOLUTION AUTHORIZING AN ASSIGNMENT OF LEASE FOR PARCEL 19 AT THE LAS CRUCES INTERNATIONAL AIRPORT FROM STEIN FAMILY TRUST TO SUNDANCE AVIATION, LLC. (KEN CADY, OPERATING MANAGER).

PURPOSE(S) OF ACTION: To assign the Lease for Parcel 19 at the airport, currently leased by the Stein Family Trust, to Sundance Aviation, LLC (Ken Cady, Operating Manager).

Name of Drafter: Lisa Murphy, Airport Administrator LM		Department: Facilities/Airport		Phone: 541-2471	
Department	Signature	Phone	Department	Signature	Phone
Facilities		541-2651	Budget		2300
			Assistant City Manager		2271
Legal		541-2128	City Manager		2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Stein Family Trust (William L. Stein, Trustee), currently holds a 30-year land lease for a 10,000 square foot parcel of airport land known as Parcel 19. The Lease was approved December 3, 2001 pursuant to Resolution 02-250, and the rent is \$857.25 per year. There is a 3,600 square foot hangar on the parcel which is used for the storage of aircraft. The terms of the lease allow assignment, with the approval of City Council. Mr. Stein has made such a request.

The assignee would be Sundance Aviation, LLC (Ken Cady, Operating Manager). The assignment would allow Sundance Aviation, LLC, to obtain the Lease for Parcel 19 and all improvements thereon. The assignee has requested that all terms and conditions of the Lease remain the same. If the assignment is approved, Sundance Aviation, LLC will be responsible for payment of land rent for Parcel 19 and must abide by all terms and conditions of the Lease.

The Airport Advisory Board considered this request at their May 13, 2010 meeting and recommend that it be approved.

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
N/A	N/A	N/A

1. Resolution
2. Exhibit "A", Assignment document for signature
3. Excerpt from the Lease with conditions to assign
4. Letter from William L. Stein requesting the assignment of lease

OPTIONS / ALTERNATIVES:

1. Vote "yes" and approve the Resolution. This will allow Stein Family Trust to assign the lease for Parcel 19 to Sundance Aviation, LLC.
2. Vote "no" and do not approve the Resolution. This will not allow Stein Family Trust to assign the lease for Parcel 19 to Sundance Aviation, LLC.
3. Amend the Resolution. This may include approving a different lease term than is requested.
4. Postpone consideration of the lease assignment and direct staff to negotiate other terms.

(Continue on additional sheets as required)

RESOLUTION NO. 10-312

A RESOLUTION AUTHORIZING AN ASSIGNMENT OF LEASE FOR PARCEL 19 AT THE LAS CRUCES INTERNATIONAL AIRPORT FROM STEIN FAMILY TRUST TO SUNDANCE AVIATION, LLC. (KEN CADY, OPERATING MANAGER).

The City Council is informed that:

WHEREAS, on December 2, 2001, the City Council approved a lease for land known as Parcel 19 at the Las Cruces International Airport to the Stein Family Trust pursuant to Resolution 02-250; and

WHEREAS, paragraph 3a of Exhibit C of the Lease provides that the City may approve a transfer of the Lease held by Stein Family Trust, and that such approval will not be unreasonably withheld; and

WHEREAS, the Stein Family Trust has now requested that the City approve assignment of the Lease to Sundance Aviation, LLC; and

WHEREAS, both staff and the Airport Advisory Board recommend approval of this request.

NOW THEREFORE, be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the Mayor of the City of Las Cruces is hereby authorized to sign the Assignment of Lease for Parcel 19 currently held by the Stein Family Trust, to Sundance Aviation, LLC, attached hereto as Exhibit "A" and made part of this Resolution.

Resolution No. 10-312, cont.
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(II)

THAT City staff are hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____, 2010.

APPROVED:

Mayor

ATTEST:

City Clerk

VOTE:

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Connor:	_____
Councillor Pedroza:	_____
Councillor Small:	_____
Councillor Sorg:	_____
Councillor Thomas:	_____

Moved by: _____

Seconded by: _____

APPROVED TO FORM:

Interim *R. J. McDonnell*
City Attorney

ASSIGNMENT OF LEASE

The Stein Family Trust, assignor herein and lessee of premises described as follows:

A portion of the lease, that portion being all of Parcel 19 as shown on the attached map marked Exhibit "A-1" and described in Exhibit "A-2" and made a part hereof,

which was demised by a lease designated to The Stein Family Trust by the Las Cruces City Council Resolution 02-250 on December 3, 2001, for good and valuable consideration paid by Sundance Aviation, LLC, assignee of the lease, assigns the lease to assignee subject to all the terms and conditions thereof, and assignee accepts the assignment and shall perform all the terms and conditions thereof, including payment of all rent applying to Parcel 19 required by the provisions of the lease. Assignee shall enjoy the same right and power to assign the lease as assignor enjoyed under the lease.

The CITY OF LAS CRUCES, NEW MEXICO, a municipal corporation, lessor under the lease, consents to the assignment of the lease to assignee, but does not waive any rights against assignor that lessor has under the lease.

In witness whereof, the parties have executed this assignment at Las Cruces, New Mexico the _____ day of _____, 2010.

WILLIAM L. STEIN, Trustee
Assignor

ATTEST:

(Seal)

STATE OF NEW MEXICO)
) ss.
COUNTY OF DONA ANA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2010, by William L. Stein, Trustee.

Notary Public

My Commission Expires:

KEN CADY, Operating Manager,
Sundance Aviation, LLC

ATTEST:

(Seal)

STATE OF NEW MEXICO)
) ss.
COUNTY OF DONA ANA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2010, by Ken Cady, Operating Manager for Sundance Aviation, LLC.

Notary Public

My Commission Expires:

CITY OF LAS CRUCES, NEW MEXICO
A municipal corporation

By: _____
Ken Miyagishima, Mayor

ATTEST:

(Seal)

STATE OF NEW MEXICO)
) ss.
COUNTY OF DONA ANA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2010, by Ken Miyagishima, Mayor of the city of Las Cruces, New Mexico, a municipal corporation, on behalf of said corporation.

Notary Public

My Commission Expires:

Approved as to form:

Interim City Attorney




City of Las Cruces

Lease Parcel 19
97078
September 2, 1997

DESCRIPTION OF 0.2296 ACRE PARCEL

A parcel of land situate within the corporate limits of the city of Las Cruces, Dona Ana County, New Mexico in the NW 1/4 of Section 26, T.23S., R.1W., N.M.P.M. of the U.S.G.L.O. Surveys. Being part of the Las Cruces International Airport properties and more particularly described as follows, to wit:

BEGINNING at 1/2 inch rebar set on the east side of a 100 foot wide access road for the Northwest corner of the parcel herein described, whence Station CRUCESAIR of the New Mexico GPS High Accuracy Reference Network bears S 85°13'28" W a distance of 2032.71 feet;

THENCE FROM THE POINT OF BEGINNING N 89°48'33" E, 100.00 feet to a 1/2 inch rebar set for the Northeast corner of the parcel herein described;

THENCE S 00°11'27" E, 100.00 feet to a 1/2 inch rebar set on the north side another access road for the Southeast corner of the parcel herein described;

THENCE along the north line of the road S 89°48'33" W, 100.00 feet to a 1/2 inch rebar set on the east side of the 100 foot access road for the Southwest corner of the parcel herein described;

THENCE along the east side of said road N 00°11'27" W, 100.00 feet to the point of beginning, containing 0.2296 acres of land more or less.

AUTHORITY STATEMENT: I, Gilbert Chavez, a New Mexico Registered Professional Surveyor certify that I directed and am responsible for this survey, that this survey is true and correct to the best of my knowledge and belief, and that this survey and plat meet the Minimum Standards for Surveying in New Mexico.

Gilbert Chavez
NMRPS 6832

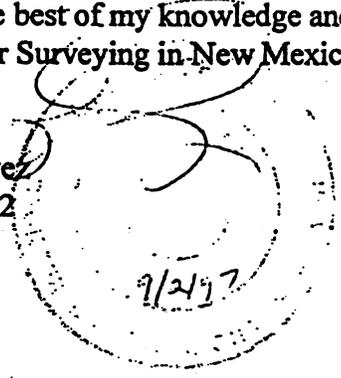


EXHIBIT C

**City of Las Cruces, New Mexico, International Airport. Additional Lease Conditions
PARCEL #19, THE STEIN FAMILY TRUST, LESSEE****1. Obtain Permits, Pay Taxes, and Obey Laws.**

a. Lessee shall pay when due all valid taxes, special assessments, excises, license fees and permit fees of whatever nature applicable to its operation or levied or assessed against the Airport, or improvements thereto. Lessee shall take out and keep current all licenses, permits, and certificates (City, County, State and Federal) required for the conduct of its activities at and upon the Airport, and further agrees not to permit any of said taxes, excise or license fees to knowingly become delinquent.

b. Lessee shall, at its own expense, fully comply with all laws, regulations, rules, ordinances, and requirements of the applicable City, County, State and Federal authorities and agencies which affect this Lease, the land granted by this Lease, any improvements upon the Leasehold, and/or operations thereon. Such compliance shall be with any laws, regulations, rules, ordinances or requirements which have been or may be enacted or promulgated during the effective period of this Lease.

c. Lessee recognizes the authority of the City Council and staff to take those necessary and legal actions required to safeguard any person, aircraft, equipment or property at the Airport. Lessee agrees to abide by any suspension, restriction, or designation of specific procedures applicable to any or all Airport operations whenever such actions are established by such authorities.

2. Obey Federal Non-Discrimination Requirements. Lessee, itself and its successors in interest, and assigns, will abide by the following requirements of the various federal statutes affecting the Airport:

a. **No Discrimination in Service.** Furnish services on a fair, equal, and not unjustly discriminatory basis to all users thereof. No person on the grounds of race, sex, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said business. Further, that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, sex, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.

b. **No Discrimination in Pricing.** Charge fair, reasonable, and not unjustly discriminatory prices for each unit or service, provided, that the Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

c. **Comply with Federal Law.** Lessee shall conduct business in compliance with all other requirements imposed by or pursuant to 48 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation and as said Regulation may be amended.

d. **No Exclusive Rights Granted.** Lessee agrees that no exclusive right for the use of the Airport by any persons is intended or implied by this document.

3. Assignment And Sublease.

a. **City Consent Required.** Lessee shall not assign or sublease the rights granted by this Lease, nor the Leased parcel, nor the improvements constructed or occupied in accordance with this Lease, without the prior written consent of the City, which consent shall not be unreasonably withheld. The City may condition such consent upon an increase in the Rent, and may require other conditions or covenants before consenting to an assignment or sublease. Such additional rent, conditions or covenants shall be in accord with those terms and conditions for similar agreements in effect at the time of the assignment, sublease, or sale. If the Lease is assigned or subleased, all clauses herein binding the parties hereto are also binding on any and all successors and/or assigns, unless specifically amended by the City as a condition of consent.

b. **Assignment Relieves Lessee.** Upon a valid assignment of this Lease, but not upon a sublease, the Lessee shall be relieved of all obligations and liabilities arising from this Lease effective as of the date of the assignment.

4. Default and Termination.

a. **Definition.** If the City determines the Lessee is in violation of any of the terms, conditions or covenants of this Lease, or the Lessee fails to pay, on time, any fees or charges due, the condition shall be considered a default of the Lease.

REQUEST FOR LEASE TRANSFER

**City of Las Cruces
Attn: Lisa Murphy
Las Cruces International Airport**

Lisa,

We have a Purchase Agreement for the hangar located on Parcel #19, 700 Leonard Bryan Alley, at the Las Cruces International Airport.

We wish to transfer our lease agreement with the City of Las Cruces to Sundance Aviation, LLC at your earliest convenience.

Thank you, in advance, for your efforts in this matter.

Sincerely,



**William L. Stein, Trustee
The Stein Family Trust**