



City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 3 Ordinance/Resolution# 17-084

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of November 7, 2016
(Adoption Date)

Please check box that applies to this item:

QUASI JUDICIAL

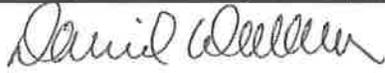
LEGISLATIVE

ADMINISTRATIVE

TITLE: A RESOLUTION AUTHORIZING AN ASSIGNMENT OF LAND LEASE FOR PARCEL 36 AT THE LAS CRUCES INTERNATIONAL AIRPORT FROM MESILLA CAPITAL INVESTMENTS, LLC TO ICARUS AERO, LLC.

PURPOSE(S) OF ACTION:

To authorize an assignment of land lease.

COUNCIL DISTRICT: 4		
<u>Drafter/Staff Contact:</u> Lisa Murphy	<u>Department/Section:</u> Transportation/Airport	<u>Phone:</u> 541-2471
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Mesilla Capital Investments, LLC (Dr. Osvaldo De La Vega, Principal) currently holds a land lease for a 100' x 100' parcel known as Parcel 36 at the Las Cruces International Airport. The lease was originally approved in favor of Rocket Racing, Inc. pursuant to Resolution No. 06-308 on April 17, 2006 for a term of 20 years. On November 10, 2010, Rocket Racing, Inc. assigned the lease to Mesilla Capital Investments, LLC pursuant to Resolution No. 11-119. There is a large single-bay hangar used for the storage of aircraft on the leased property.

Dr. Osvaldo De La Vega requests that the lease be assigned from Mesilla Capital Investments, LLC to Icarus Aero, LLC another company he owns. The lease terms allow assignment with the approval of City Council and also states that the owner of the improvements on the parcel must also hold the land lease. Section 7.5-3 of the Las Cruces Municipal Code, 1997, as amended requires City Council approval of all airport land leases.

The Airport Advisory Board (AAB) unanimously recommended approval of the assignment of the lease request at their September 15, 2016 meeting.

(Continue on additional sheets as required)

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Assignment of Lease, Legal Description, and Parcel Location Map.
3. Attachment "A", Parcel 36 Land Lease.
4. Attachment "B", Letter from Dr. Osvaldo De La Vega, Principal of Icarus Aero, LLC requesting the assignment of lease for Parcel 36.

SOURCE OF FUNDING:

N/A	Is this action already budgeted?	
	Yes	<input type="checkbox"/> See fund summary below
	No	<input type="checkbox"/> If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/> Expense reallocated from: _____ <input type="checkbox"/> Proposed funding is from a new revenue source (i.e. grant; see details below) <input type="checkbox"/> Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?	Yes	<input type="checkbox"/> Funds will be deposited into this fund: _____ in the amount of _____ for FY_____.
	No	<input checked="" type="checkbox"/> There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will authorize Mesilla Capital Investments, LLC to assign the land lease for Parcel 36 at the Las Cruces International Airport to Icarus Aero, LLC.
2. Vote "No"; this will not authorize Mesilla Capital Investments, LLC to assign the land lease for Parcel 36 at the Las Cruces International Airport to Icarus Aero, LLC. They would have to enter into a new lease for the parcel.
3. Vote to "Amend"; as deemed appropriate. This will not authorize Mesilla Capital Investments, LLC to assign the land lease for Parcel 36 at the Las Cruces International Airport to Icarus Aero, LLC.

(Continue on additional sheets as required)

4. Vote to "Table"; and direct staff accordingly. This will not authorize Mesilla Capital Investments, LLC to assign the land lease for Parcel 36 at the Las Cruces International Airport to Icarus Aero, LLC.

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

1. Resolution No. 06-308.
2. Resolution No. 11-119.



City of Las Cruces[®]

PEOPLE HELPING PEOPLE

COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of November 7, 2016
(Adoption Date)

TITLE:

A RESOLUTION AUTHORIZING AN ASSIGNMENT OF LAND LEASE FOR PARCEL 36 AT THE LAS CRUCES INTERNATIONAL AIRPORT FROM MESILLA CAPITAL INVESTMENTS, LLC TO ICARUS AERO, LLC.

Purchasing Manager's Request to Contract (PMRC) {Required?} Yes No

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact	<i>Lisa Murphy</i>	541-2471	9-29-16
Department Director	<i>Dick West</i>	541-2048	10-3-16
Other			
Assistant City Manager /CAO Management & Budget Manager	<i>Andrew Macgregor</i>	541-2078 541-2080	10/6/16 10/5/16
Assistant City Manager/COO	<i>John D. Ayala</i>	541-2271	10/7/16
City Attorney	<i>W. B. [Signature]</i>	541-2128	
City Clerk	<i>[Signature]</i>	541-2115	10/14/16

RESOLUTION NO. 17-084

A RESOLUTION AUTHORIZING AN ASSIGNMENT OF LAND LEASE FOR PARCEL 36 AT THE LAS CRUCES INTERNATIONAL AIRPORT FROM MESILLA CAPITAL INVESTMENTS, LLC TO ICARUS AERO, LLC.

The City Council is informed that:

WHEREAS, Mesilla Capital Investments, LLC executed a land lease agreement with the City of Las Cruces (City) for Parcel 36 at the Las Cruces International Airport on November 10, 2010, pursuant to Resolution No. 11-119; and

WHEREAS, Paragraph 9a of the lease provides that the Lessee may request an assignment of lease; and

WHEREAS, the owner of the hangar must also hold the land lease; and

WHEREAS, Mesilla Capital Investments, LLC has requested that the lease be assigned to Icarus Aero, LLC the owner of the hangar on the leased parcel.

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

(I)

THAT the Mayor is hereby authorized to sign the assignment of lease currently held by Mesilla Capital Investments, LLC to Icarus Aero, LLC attached hereto as Exhibit "A" and made a part of this Resolution.

(II)

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

DONE AND APPROVED this _____ day of _____, 20____.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:



City Attorney

VOTE:

Mayor Miyagishima: _____

Councillor Gandara: _____

Councillor Smith: _____

Councillor Pedroza: _____

Councillor Eakman: _____

Councillor Sorg: _____

Councillor Levatino: _____

ASSIGNMENT OF LEASE

Mesilla Capital Investments, LLC, assignor herein and lessee of premises described as follows:

A portion of the lease, that portion being all of Parcel 36 as shown on the attached map marked Exhibit "A" and made a part hereof,

which was leased to Mesilla Capital Investments, LLC by the Las Cruces City Council Resolution 11-119 on November 10, 2010. Icarus Aero, LLC, assignee of the lease accepts the assignment and shall perform all the terms and conditions thereof, including payment of all rent applying to Parcel 36 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 _____, 2016.

MESILLA CAPITAL INVESTMENTS, LLC, by
Dr. Osvaldo De La Vega,
Principal
Assignor

ATTEST:

(Seal)

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

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by Mesilla Capital Investments, LLC, by Dr. Osvaldo De La Vega, Principal.

Notary Public

My Commission Expires:

ICARUS AERO, LLC, by Dr. Osvaldo De La Vega,
Principal
Assignee

ATTEST:

(Seal)

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

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by Icarus Aero, LLC, by Dr. Osvaldo De La Vega.

Notary Public

My Commission Expires:

CITY OF LAS CRUCES, NEW MEXICO
A municipal corporation

By: _____
Ken Miyagishima, Mayor

Approved as to form:

City Attorney

ATTEST:

(Seal)

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, 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:



March 29, 2006
 Lease Parcel 36
 05-S-036D

DESCRIPTION OF A 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 NW1/4 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 Reserve and more particularly described as follows, to wit:

— **BEGINNING** at a ½ inch rebar with City of Las Cruces identification cap set on the east side of a 35 foot wide road for the northwest corner of the lease parcel herein described, whence station CRUCESAIR of the New Mexico High Accuracy Reference Network bears S86°51'53"W a distance of 2,499.97 feet;

THENCE FROM THE POINT OF BEGINNING leaving the 35 foot wide road N89°48'33"E — 100.00 feet to a ½ inch rebar with City of Las Cruces identification cap set for the northeast corner of the lease parcel herein described;

THENCE S00°11'27"E — 100.00 feet to a ½ rebar with City of Las Cruces identification cap set for the southeast corner of the lease parcel herein described;

THENCE S89°48'33"W — 100.00 feet to a ½ inch rebar with City of Las Cruces identification cap set on the east side of said 35 foot wide road for the southwest corner of the lease parcel herein described;

THENCE along the road, N00°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 legal description meets the "Minimum Standards for Land Surveying in New Mexico."

THIS PROPERTY DESCRIPTION WAS PREPARED SOLELY FOR THE PURPOSE OF NEGOTIATIONS FOR LEASE. A FILED SUBDIVISION WILL BE REQUIRED FOR COMPLIANCE WITH THE CITY OF LAS CRUCES SUBDIVISION CODE.

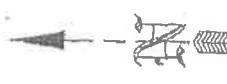
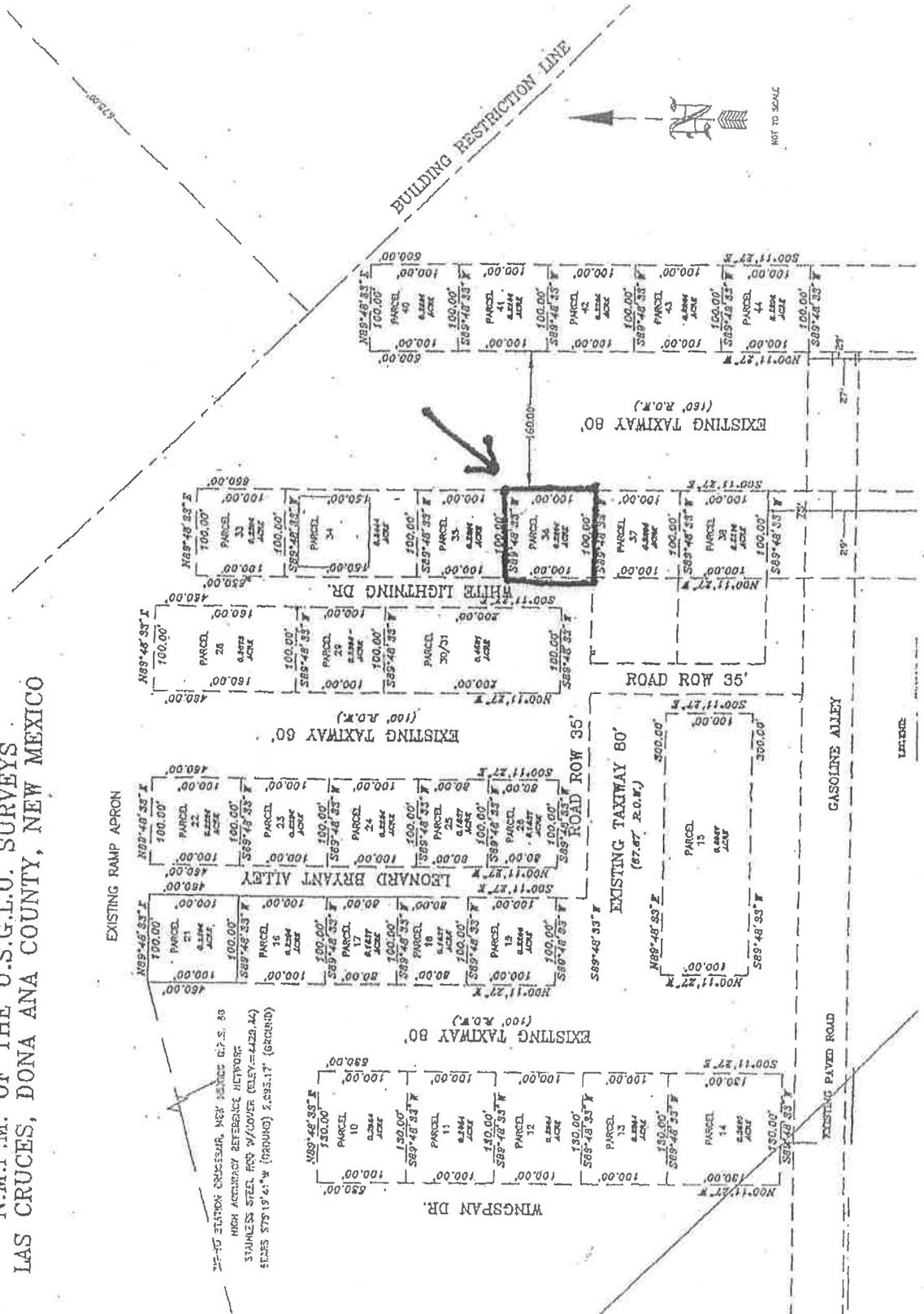
Gilbert Chavez
 NMPS 6832

P.O. BOX 20000
 LAS CRUCES
 NEW MEXICO
 88004-9002
 505.541.2000

AN EQUAL OPPORTUNITY EMPLOYER

PRELIMINARY
 PLAT SHOWING LEASE PROPERTIES
 AT THE LAS CRUCES INTERNATIONAL AIRPORT
 NW 1/4 OF SECTION 26, T.23S., R.1W.,
 N.M.P.M. OF THE U.S.G.L.O. SURVEYS
 LAS CRUCES, DONA ANA COUNTY, NEW MEXICO

35-15 STATION CURVISAR, NEW MEXICO D.P.S. 33
 HIGH ACCURACY REFERENCE NETWORK
 STAINLESS STEEL PPS W/ADJUSTER (RELEV=4229.44)
 SECS 575.19' 4.1" W (ADJUNDED) 2.055.17' (CORRECTED)



NOT TO SCALE

Land Lease
City of Las Cruces, New Mexico, International Airport.
ROCKET RACING INC., LESSEE

WHEREAS, the City of Las Cruces ("City"), a Municipal Corporation of the State of New Mexico, is the owner of certain real properties known collectively as the Las Cruces International Airport ("Airport") in Dona Ana County, New Mexico; and,

WHEREAS, the City maintains designated areas on the Airport specifically to lease said areas to aviation-related businesses and individuals to develop the Airport, its infrastructure, and aviation business for the benefit of the citizens of the City; and

WHEREAS, Rocket Racing Inc. ("Lessee") desires to lease particular Parcels of that real property on the Airport for the purpose of furthering the Lessee's aviation interests; and

WHEREAS, the City is willing to Lease the Parcels desired to the Lessee, and the parties desire to execute a written Lease containing the terms and conditions of their Lease.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the following is agreed:

1. **The Leased Area Described.** The City hereby Leases to the Lessee, six 10,000 square foot (100 feet by 100 feet) Parcels of real Property located in the NW 1/4 of Section 26, T23S., R.1W., N.M.P.M. of the U.S.G.L.O. Surveys, within the City Limits of Las Cruces in the County of Dona Ana, State of New Mexico, described as Parcels 36, 37, 41, 42, 43, and 44 on the Plat Showing Lease Properties and more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference, together with an easement for ingress and egress to the property (hereinafter "Parcels") by the Lessee.

2. **Terms.**

a. **Initial Lease Term.** The term of this Lease shall be twenty (20) years (hereinafter "Lease Term") commencing on the "Commencement Date," as hereinafter defined, and terminating on the twentieth (20th) anniversary of the Commencement Date. The Commencement Date shall be the 1st day of May, 2006 and the twentieth anniversary date shall be the 30th day of April, 2026. Possession of the Parcels by the lessee shall begin on the Commencement Date.

b. **Subsequent Lease.** At the conclusion of the Lease Term, the Lessee shall have the right to enter into two additional five-year terms at the land lease rate in effect at the beginning of each of the five year terms. Should the Lessee elect to not enter into a new agreement, the provisions of paragraph 7.f.(2) shall apply.

3. **Fees and Charges.** Lessee shall pay the following fees and charges:

a. **Earnest Money.** Lessee has made an earnest money deposit with the City of Las Cruces in the sum of Two Hundred Fifty Dollars and no cents (\$250.00), which shall be part of the annual rent for the first year of the Lease. However, this fee shall revert to the City should the Lessee fail to execute this Lease within sixty (60) days of its approval by the City Council.

b. **Closing and Processing Fee.** Lessee shall pay a one-time closing and processing fee of Five Hundred Dollars and no cents (\$500.00), which is due with the first annual rent payment on the Commencement Date.

c. **Rent.** Beginning on the Commencement Date, the Lessee shall pay the City a fixed annual rental payment ("Rent"). The amount of the Rent shall be twenty cents (\$0.20) per square foot per year for 10,000 square feet, which equals two thousand dollars and no cents (\$2,000.00) for each Parcel per year for a total of twelve thousand dollars and no cents (\$12,000.00) for the first five years of the Initial Lease Term. The rent shall be adjusted on the fifth, tenth, and fifteenth anniversary of the Commencement Date based on the increase or decrease in the cumulative Average Annual U.S. Consumer Price Index, or its successor report issued by the Federal Government, over the preceding five (5) calendar years of reporting. The adjusted Rent payment shall be due on the next payment date. Should the lessee remain in possession of the Parcels as a hold-over Lessee, the rent shall be adjusted to the then current Fair Market Value of the land and building then in effect after the initial lease term and the two five-year renewals.


 (Lessee's Initials)

Land Lease
 City of Las Cruces, New Mexico, International Airport
 ROCKET RACING INC. . LESSEE

4. Payments Due.

a. **Due In Advance.** In addition to those payment dates specified above, all rent payments shall be due and payable in advance, beginning on the Commencement Date and continuing regularly and annually without notice from City thereafter during the Lease Term. However, the City may elect to invoice payment notices.

b. **Due Annually.** The first annual payment shall be due and payable on the Commencement Date. All subsequent payments shall be due on the Commencement Date Anniversary each year thereafter.

c. **Late Fee Due.** On any annual rental payment made 10 days after the payment due date, Lessee shall in addition pay a late charge of ten percent (10%) of the annual rent for each month or part thereof that the payment is late.

5. **No Refunds.** Lessees may relinquish this Lease to the City, however the Lessee shall not be entitled to a refund of any fees of any kind paid.

6. Insurance Requirements.

a. **General Liability.** Lessee shall maintain general liability insurance insuring such claims. This insurance shall name the City of Las Cruces (City) as an additional insured. The insurance shall have a minimum per occurrence limit of \$ 1,000,000 or as required to meet the mandatory requirements of the New Mexico Tort Claims Act or its successors in law, whichever is greater.

b. **Property Insurance.** Lessee shall maintain property insurance covering the improvements to the Parcels and the contents thereof. Such insurance shall be a property insurance policy with the broadest cause of loss endorsement including vandalism and malicious mischief. The insurance shall be on a replacement cost basis and shall name the City of Las Cruces as an additional insured, as its interests may appear.

c. **Proof of Insurance.** Such insurance shall be with a licensed and authorized company to do business in the State of New Mexico. The lessee shall furnish annually to the City on the rent payment due date of this Lease, a certificate or other evidence and proof of maintenance of the above required insurances. The certificate of insurance shall provide the City of Las Cruces with a minimum 60 days notice of cancellation or renewal of the insurance policy. Lessee shall provide the City with notice of any changes thereof and furnish to the City evidence of acquirement of a substitute therefore and payment of premium thereof. If the Lessee shall fail to maintain such insurance coverage, then the City may obtain same and add the cost of such insurance to the next due lease payment. If the City does so, it may charge interest thereon at the rate of 15% per annum from the time of payment, which shall be added to the rental becoming due and shall be collected as an additional fee.

d. **Self Insurance.** Lessee may self-insure by filing with the City a letter of credit in the amounts listed above or other promissory or escrowed monetary instrument.

7. **Quiet Enjoyment.** The Lessee, upon payment of the required fees and rents, and the faithful performance of such covenants, agreements and conditions required by law, or this agreement, shall and may, peaceably and quietly have, enjoy those portions of the Airport authorized for their use. Such use shall be free from molestation, eviction or disturbance by the City or any person claiming by, through, or under it, subject to the terms and conditions of the law or agreement entered into. Such quiet enjoyment is conditional upon Lessee adhering to the following conditions:

a. **Permitted Uses.** Lessee shall have use of the Parcels only for construction of a hangar of at least 3,600 square feet and the housing, manufacture and maintaining of aircraft, as well as for the construction, maintenance and operation of said hangar in connection with these uses, in so far as it does not disturb the peaceful enjoyment of other tenants and conforms to airport permitted use under the current or any revised Standards, Regulations, Codes and Policies.


 (Lessee's Initials)

Land Lease
City of Las Cruces, New Mexico, International Airport
ROCKET RACING INC. , LESSEE

b. **Additional Uses Require Permission.** The Lessee shall not use or permit the use of the Parcels, or improvements thereto, for any purpose or use other than those expressly and specifically authorized by this Lease. Additional uses may be hereafter authorized in writing by the City, but only upon such terms and conditions as may be set out in such authorization.

c. **Commercial Use of Parcels and Future Improvements.** Lessee agrees to obtain permission from the City prior to commencing or permitting any commercial use of the Parcels not specifically listed, or additional improvements thereto, in accordance with the current Airport policies, code and/or standards. In the event that this Parcels, or improvements thereto is used for business purposes, the Lessee shall at all times maintain and pay any required permits, licenses, insurances, and taxes as required by law.

d. **Construction and Ownership of Improvements.**

(1) **Title to Improvements.** During the Lease Term, title to all improvements existing or constructed upon the Parcels by Lessee are and shall be vested in Lessee.

(2) **Proposed Improvements.** The Lessee is required to construct improvements on the Parcels in accordance with Exhibit "B", Design Standards for Improvements attached hereto and incorporated herein by this reference. Lessee shall begin such process with no less than submission of a building permit application to the City, not later than six (6) months following the Commencement Date of this Lease, that date being October 1, 2006.

(3) **City Codes Apply.** Lessee must meet City standards as specified in the Las Cruces Municipal Code for all design, planning, and construction activities, including development or extension of infrastructure. In addition, Lessee shall pave all access from the Parcels, or improvements thereto, to taxiways and roads, and such construction shall match the existing grade.

(4) **Septic Systems.** Lessee shall be allowed to use and maintain an easement on common City Property adjacent to the building to construct an individual on-site septic system, if necessary and as required to meet New Mexico Environment Department Regulations. The location and dimensions of this easement and constructed improvement shall be shown on the site plan submittal. In the event that the City provides a waste water disposal service to the Airport at such time in the future, Lessee shall be required to cease use of the individual on-site septic system and hook up to the City waste water system for sewage disposal, in accordance with the Las Cruces Municipal Code.

(5) **Time Restrictions.** Construction of a minimum 3,600 square foot Hangar on each parcel in accordance with Exhibit "B", Design Standards for Improvements, must be completed on or before the second anniversary date of the Commencement Date of the Lease, that date being May 1, 2008.

(6) **Additional Improvements Constructed During the Initial Lease Term or Extended Term.** Lessee may construct additional improvements or modifications at a later date, adhering to the requirements of those codes and regulations then in effect on the Airport. However, in all cases, construction must be completed within eighteen (18) months of approval by the City.

e. **Condition, Maintenance and Repairs of Leasehold and Improvements Thereto.**

(1) **Lessee Shall Maintain.** Lessee shall maintain, at its own expense, the Parcels and any improvements, fixtures or equipment on the Parcels in a safe, sanitary, orderly, and sightly manner, in accordance with all applicable codes and regulations. Lessee shall also maintain the cleanliness of all paved area on the Parcels, and shall be responsible for mowing all grass, watering lawns, controlling weeds, and maintaining shrubs and trees on the Parcels.

(2) **Erosion Control.** Where the slope, terrain, or soil disturbance is such that active soil or wind erosion may be present, Lessee must carry out erosion control practices to mitigate the erosion. These practices include, but are not limited to drainage facilities constructed and maintained by Lessee, landscaping, and/or seeding and maintaining of vegetation.


 (Lessee's Initials)

Land Lease
City of Las Cruces, New Mexico, International Airport
ROCKET RACING INC., LESSEE

(3) **City's Right to Correct Deficiencies.** The City has the right to require reasonable maintenance and repairs to the Parcels or the improvements thereon by Lessee as required by this lease. Should the Lessee fail to make the required corrections, the City shall have the right to enter the Parcels, or improvements thereto, correct the deficiency, and recover the cost of activities from Lessee as rent due on the next rent payment date.

(4) **Repair of Damage.** If the Parcels, or improvements thereto is partially destroyed or damaged by fire or other casualty, then Lessee shall repair and restore the Parcels, or improvements thereto as soon as it is reasonable and practicable. Such repair or restoration shall commence not later than six (6) months after such damage, and be completed within six (6) months thereafter. Such restoration shall be to substantially the same condition in which the Parcels or improvements thereto was before such damage. In the event that Lessee has not commenced repairs within six (6) months from the date of said damage and thereafter completed such repairs within six (6) months, this Lease may be immediately terminated by the City. Such termination shall be made effective by serving notice upon the Lessee, and effective on the date of receipt of such notice by the Lessee.

(5) **Destruction of the Parcels or Improvements Thereto.** In the event the Parcels, or improvements thereto is completely destroyed or so badly damaged that repairs cannot be commenced within six (6) months and completed within six (6) months thereafter, then this Lease may be terminated. Such termination shall be effective as of the date of the occurrence of the damage or destruction, and made effective by either party hereto by serving written notice upon the other.

f. Removal of Improvements.

(1) **When Requested by Lessee.** If at any time during the Lease Term, when all Rent then due and owing has been fully paid and Lessee is not in default under this Lease, Lessee may request to remove any or all improvements. Lessee shall give forty-five (45) days advance written notice of its intent to remove the improvements to the City, which shall not unreasonably withhold consent. When removing improvements, the Lessee shall restore the Parcels to its previously existing condition, including filling excavations, returning the surface to grade, and leaving the Parcels safe and free from all debris and hazards.

(2) **At Expiration or Termination of Lease.** At the expiration or termination of this Lease, any or all buildings and other permanent improvements to the Parcels will, at the direction and sole discretion of the City, either remain intact on the Parcels and become the property of the City, or be removed by the Lessee. Should the City elect for the Lessee to remove any or all improvements, the Lessee shall do so within forty-five (45) days. When removing improvements, the Lessee shall restore the Parcels to its previously existing condition, including filling excavations, returning the surface to grade, and leaving the Parcels safe and free from all debris and hazards. All improvements not removed as aforesaid shall, without compensation to or by City, become City's property free and clear of all liability and expenses. Lessee shall thereafter be released from any and all liability, cost or expense associated with the Parcels, including the improvements thereon, or associated with termination of this Lease. However, if Lessee fails to promptly remove said improvements if and as required by the city, the City may assess and bill Lessee based on receipt of an itemized statement of costs of removal and restoration of the Parcels.

g. Installation of Utilities. City warrants that all utilities, except for wastewater collection and treatment service, which are necessary for the conduct of Lessee's activities are available at the Airport. However, Lessee shall obtain and install underground at its own expense any necessary electrical, gas, water, sewer and septic tank, and any other utility service, subject to the Development Guidelines, rules and regulations or building codes of the State of New Mexico and the City of Las Cruces.

h. Hazardous Waste. No toxic materials or hazardous waste subject to regulation by the EPA or NM Environment Department shall be stored or disposed of on the Airport without the written permission of the Airport Manager.


 (Lessee's Initials)

Land Lease
City of Las Cruces, New Mexico, International Airport
ROCKET RACING INC., LESSEE

i. **Environmental Assessment and Remediation.** At the expiration or termination of this Lease, the City may require that Lessee furnish to the City an Environmental Assessment Report on the place of business, conducted in accordance with the laws, codes and regulations in effect at that time. The costs of remediation, if any should be required by law, shall be the responsibility of the Lessee.

j. **Signs.** Lessee must obtain City consent to paint or construct any exterior signs; including approval for a City Sign Permit. Lessee further agrees that upon vacating the Facilities, Lessee will restore exterior signs to same condition as received at time of occupancy. The Lessee shall be responsible for all cost and expense of maintaining its signs as permitted hereby. Lessee shall not erect, paint or maintain any temporary signs or advertising displays, such as banners, balloons, flashing sign boards, and/or any similar visual devices whatsoever.

8. 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.

9. Assignment And Sublease.

a. **City Consent Required.** Lessee shall not assign or sublease the rights granted by this Lease, nor the Leased Parcels, 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. All approved assignments or subleases shall be in accordance with the Minimum Standards For Commercial Airport Aeronautical Activity And Service Providers At The Las Cruces International Airport. 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.

10. 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.

b. **Written Notice Required.** The City shall provide the Lessee with written notice of any determination of default.

c. **Compliance Time.** The Lessee shall then have ten (10) days to cure or remedy said default or otherwise comply with any demand contained within such written notice which cures or remedies the default.


 (Lessee's Initials)

Land Lease
City of Las Cruces, New Mexico, International Airport
ROCKET RACING INC. . LESSEE

d. **Failure to Comply.** If the Lessee fails to correct the default as specified by the City's notice within the specified period, or if the Lessee receives a third notice of default within any 18 consecutive month period, the City may, at its option, terminate this Lease immediately, or at any time thereafter. Such termination may be made without further notice or demand. Upon such termination, without further notice or demand, the City may enter upon and into the Leased area, or improvements thereto, or any part thereof, and take absolute possession of the same fully and absolutely, and such re-entry shall not be judged trespass. In addition, the City may also require all associated and permitted operations to cease and be removed from the Airport.

e. **Lease Remains Binding.** All provisions of this Lease remain binding upon the Lessee while the Lessee is in default, and if this Lease is terminated due to default.

11. **Airport Development.** The City reserves the right to further develop the Airport as it sees fit, without unreasonable interference or hindrance from Lessee.

a. **Eminent Domain Rights.** If the physical development of the Airport requires the relocation, removal or alteration of Lessee's business from the Airport, the City has the right to condemn the business area wholly under the City's eminent domain rights.

b. **Notice of Total Taking.** In the case of a total taking by the City of the areas authorized for use by this Lease, the City will provide a minimum of ninety (90) days notice of such impending action. In the event of such a total taking, Lessee's obligation to pay rent and other charges shall terminate on the date of the taking.

c. **Actions in the Event of Total Taking.** In the case of a total taking, both parties hereto agree that the value of this Lease shall be declared to be zero dollars (\$0.00). The value of the Building will be determined by an independent appraisal at Fair Market Value. The Lessee will have the option of receiving the monetary FMV of the building or having a similar building constructed at another site and entering into a new lease agreement at the then current land lease rate.

12. **Amendment.** This Lease shall not be altered, changed or amended except by instrument in writing executed by the City and Lessee.

13. **Severability.** If any clause or provision herein shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision, which shall remain in full force and effect.

14. **Right of Aircraft Operations.** The City hereby reserves a right of aircraft ground operations on and above the surface of the Airport, when conducted in accordance with the Federal Aviation Regulations, together with the right to cause such noise, odors and other disturbances as may be inherent in such operation.

15. **Reserved Water, Gas, Oil, and Mineral Rights.** The City reserves, subject to the BLM Patent all water, gas, oil, hydrocarbon and mineral rights in and under the surface of the Airport. However, the City shall not conduct any operations on the surface of the Airport for the exploration, development or recovery of the rights and substances reserved which would unreasonably interfere with the Lessee's use of the Airport.

16. **Easements and Right of Way.**

a. **Existing Easements.** This Lease is subject to all existing rights-of-way or easements of record and all other Leases granted by the City to other parties at the Airport, and to those retained by the City.

b. **City's Right to Use Existing Easements.** The City retains the right to locate utilities as necessary on existing easements on the Airport.

c. **Easements to be Accessible.** Lessee shall leave any utility easements upon the Airport open and unobstructed. A perpetual easement and right-of-way for the construction, maintenance, removal and replacement of any and all utility lines, manholes, and related facilities through, over, across and under the Airport is hereby reserved for the benefit of the City.


 (Lessee's Initials)

Land Lease
City of Las Cruces, New Mexico, International Airport
ROCKET RACING INC. . LESSEE

d. **City's Right to Establish Easements.** The City may at any time and from time to time relocate, in whole or in part, any easement serving the Airport, provided that such relocation does not diminish or permanently interrupt the rights or operations of the Lessee nor increase the costs to be incurred by Lessee. The City may temporarily interrupt operations with respect to such Easements during the period of relocation, and the City agrees to restore the Airport to a condition substantially similar to the condition existing prior to any alterations thereto by the City.

e. **City's Right to Protect Aerial Approaches.** The City reserves the right to take such action as may be reasonably necessary to establish and protect aerial approaches to the Airport against obstruction, including the right to prevent persons from erecting or permitting to be erected any improvements on the Airport which would constitute a hazard to aircraft.

17. **Right to Perform Own Aircraft Servicing and Maintenance.** It is clearly understood by the Lessee that no rights or privileges have been granted which would prevent any legal person from performing any services that it may choose to perform on its own aircraft at locations reserved for such purposes. All such servicing, maintenance and repair shall be conducted in accordance with Federal Aviation Regulations and applicable law.

18. **Security and Safety.** Lessee will participate in the City's security and safety programs as they relate to the Airport.

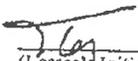
19. **Airport Access.** Subject to the rules and regulations established by the City, the Lessee has the right of free access, ingress to and egress from those parts of the Airport authorized for the Lessee's use by this Lease. Such access also applies to the Lessee's employees, agents, patrons and invitees, its suppliers of materials and furnishings of services and its equipment, vehicles, and machinery. The City may, at any time, temporarily or permanently close or consent to the closing of any roadway or other right-of-way for such access, ingress, and any other area at the Airport or in its environs presently or hereafter used as such. In such a case, a means of access, ingress and egress reasonably equivalent to that formerly provided may be substituted and concurrently made available subject to the Airports Security and Operational needs.

20. **City's Right to Enter.** The City, its officers, agents and representatives, subject to any security regulations imposed by any governmental authority, shall have the right to enter all parts of the premises at all reasonable hours to inspect the premises when reasonably required and as it may deem necessary or desirable.

21. **Operational Reports.** Lessee agrees to submit to the City, upon request by the City any report or reports or information regarding Lessee's operations at the Airport. The City agrees to receive from Lessee, upon request by Lessee, any reports the Lessee deems appropriate for the purpose of keeping the City informed of any operational problems and of any suggested improvements at the Airport.

22. **Automobiles and Other Vehicles.** The City reserves the exclusive right to control, by security gate, uniform driving regulations, or otherwise, all vehicular ingress and egress to, and operations on, the aircraft operating areas including but not limited to all taxiways, runways and ramp areas on the Airport.

23. **Attorney's Fees.** City and Lessee agree that if either is found by a court to have breached this Lease, reasonable attorney's fees and the cost of litigation may be recovered from the defaulting party.


 (Lessee's Initials)

<p>Land Lease City of Las Cruces, New Mexico, International Airport ROCKET RACING INC. . LESSEE</p>
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24. Notices. Whenever any notice is required or permitted hereunder, such notice shall be in writing. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered whether actually received or not, when deposited in the United States mail, as Certified Mail, postage prepaid, return receipt requested, and addressed to the parties at their respective addresses, as set forth below:

Airport Manager
City of Las Cruces
P.O. Box 20000
Las Cruces, New Mexico 88004

Rocket Racing Inc.
PO Box 16377
Las Cruces, New Mexico 88004-6377

25. Exhibits. The following exhibits are attached and made part of this Lease:

- A. EXHIBIT "A": LEGAL DESCRIPTION OF PARCELS.
- B. EXHIBIT "B": DESIGN STANDARDS FOR IMPROVEMENTS

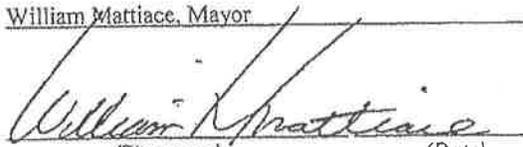
IN WITNESS WHEREOF, City and Tenant have executed the Lease to be in effect as of the date first written above.

CITY OF LAS CRUCES, LESSOR

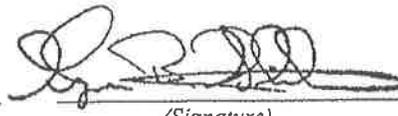
LESSEE

William Mattiace, Mayor

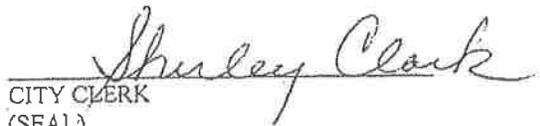
Granger Whitelaw, President/CEO



(Signature) (Date)

 7/21/06

(Signature) (Date)



CITY CLERK
(SEAL)

APPROVED AS TO FORM:


City Attorney



(Lessee's Initials)

Icarus Aero, LLC
Osvaldo R De La Vega Sole MBR
755 S. Telshor, Suite S101
Las Cruces, NM 88011

June 22, 2016

Ms. Lisa Murphy
Airport Administrator
Las Cruces International Airport
P.O. Box 20000
Las Cruces, New Mexico 88004



Re: Lease Transfer Request – **715 White Lightning**

Dear Ms. Murphy:

We request approval to transfer the existing subleasehold interest for the referenced location to **Icarus Aero, LLC**, a New Mexico limited liability company whose principal is Dr. Osvaldo De La Vega

The new lessee will use the facility only for aviation-related purposes authorized under the main lease and as approved by the airport authority.

We ask that you assist with all arrangements and City Council approvals for this assignment to be completed. Thank you.

Sincerely,