CITY OF EL PASO, TEXAS
DEPARTMENT HEAD'S SUMMARY REQUEST FOR COUNCIL ACTION (RCA)

DEPARTMENT: **AIRPORT**

AGENDA DATE: **June 6, 2006**

CONTACT PERSON/PHONE: **Patrick T. Abeln, A.A.E. – 780-4724**

DISTRICT(S) AFFECTED: 3

SUBJECT:
Three Resolutions approving that the City Manager be authorized to sign three Lessor's Approvals of Sublease between the City of El Paso (Lessor), Cutter Aviation El Paso Limited Partnership (Lessee) and: Border Aviation, Med Flight Air Ambulance, Inc., and Volare Air Charter (Sublessees).

BACKGROUND / DISCUSSION:
Cutter Aviation has been a fixed base operator ("FBO") at El Paso International since November 1963 and recently relocated into its new FBO facility on Shuttle Columbia. As a consequence, all of the approved existing sublessees in the old facility must execute new pertinent subleases as they, too, relocated into the new facility and come under a new lease.

PRIOR COUNCIL ACTION:
Has the Council previously considered this item or a closely related one? If so, when?

Yes. Standard Lessor's Approvals of Sublease are common going to Council on a regular basis with the most recent going to Council on March 21, 2006.

AMOUNT AND SOURCE OF FUNDING:

There will be no economic impact on Airport funds.

BOARD / COMMISSION ACTION:
Enter appropriate comments or N/A

These Lessor's Approvals of Sublease were presented to the Airport Board on April 13, 2006.

**********REQUIRED AUTHORIZATION**********

LEGAL: (if required) Raymond L. Telles, Asst. City Attorney **FINANCE:** (if required) _____

OTHER: Patrick T. Abeln, A. A. E., Director of Aviation Patrick Abeln
(Example: if RCA is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the City Manager be authorized to sign a Lessor's Approval of Sublease between the City of El Paso ("Lessor"), Cutter Aviation El Paso Limited Partnership ("Lessee") and Volare Air Charter Co. ("Sublessee") regarding a portion of the premises located at 1771 Shuttle Columbia Drive, El Paso, Texas.

APPROVED this _____ day of _____ 2006.

CITY OF EL PASO

_____
John F. Cook, Mayor

ATTEST:

_____
Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

Raymond L. Telles
Assistant City Attorney

APPROVED AS TO CONTENT:

Patrick T. Abeln, A.A.E.
Director of Aviation

Doc. No.: 21251
Doc. Name: Cutter Sublease - Volare Air Charter
Doc. Author: RTEL

STATE OF TEXAS §
§ **LESSOR'S APPROVAL OF SUBLEASE**
COUNTY OF EL PASO §

THIS Lessor's Approval of Sublease is made and entered into by and between the City of El Paso ("Lessor"), Cutter Aviation El Paso Limited Partnership ("Lessee") and Volare Air Charter Co. ("Sublessee"), effective the ____day of _____, 2006.

WHEREAS, Lessor entered into a Fixed Base Operator's Lease and Operating Agreement effective November 1, 2003 as amended by the First Amendment dated February 22, 2005 (collectively referred to as the "Lease") covering the following described property:

> A parcel of property known as Site 5, El Paso International Airport Tracts, Unit 11, El Paso, El Paso County, Texas containing 435,612.927 square feet of land and municipally known and numbered as 1771 Shuttle Columbia Drive, El Paso, Texas ("Premises").

WHEREAS, Lessee desires to sublease a portion of the Premises to Sublessee by and through an Office Sublease Agreement ("Sublease");

WHEREAS, Lease requires the prior written consent of the Lessor for a sublease of all or part of the Premises; and

WHEREAS, Lessor is willing to approve the proposed sublease subject to the terms and conditions set forth in this Lessor's Approval of Sublease, and accepted and agreed to by Lessee and Sublessee;

NOW, THEREFORE, in consideration of the mutual covenants of the parties, Lessor, Lessee, and Sublessee agree as follows:

1. **Acceptance of Lease Terms and Covenants.** Sublessee acknowledges that it has been provided with a copy of the Lease and agrees to accept and abide by all the terms, covenants, and conditions of the Lease.

2. **Subleased Premises.** Sublessee acknowledges that the subleased premises located at 1771 Shuttle Columbia Drive, El Paso, El Paso County, Texas are described as the portion of the Premises known as **Office #7**.

3. **Permitted Use of Premises.** Sublessee acknowledges that the subleased premises will not be used for any activity other than for office uses in support of the storing of Sublessee's aircraft in Lessee's hangar. Sublessee also acknowledges that its

use of the subleased premises shall be further limited by those restrictions and prohibitions enumerated within the Lease.

4. **Proof of Insurance.** Sublessee has provided Lessor with a certificate of insurance to evidence compliance with the insurance requirements of the Lease and understands and agrees that Lessor's consent to Sublease is expressly contingent upon Sublessee maintaining the required levels of insurance and Sublessee's providing proof of such to Lessor. Failure to comply with any insurance requirements may result in a revocation of Lessor's consent to the subleases and termination of the Lessor's Approval of Sublease and the Sublease.

5. **Reporting Requirements.** As additional consideration for Lessor's approval, Sublessee agrees that it shall furnish to Lessor, on or before the tenth (10th) day of each month, an accurate report of Sublessee's operations at the Airport during the preceding month. The report shall include, but not be limited to: (i) the amount of cargo, freight, or mail loaded or off-loaded from any aircraft by Sublessee, its customers, contractors, or agents; and (ii) the type of aircraft and name of aircraft operator handled. Sublessee agrees to provide this information in such detail and on the form as prescribed by the Director of Aviation. Failure to comply with the reporting requirements may result in a revocation of the Lessor's consent to the sublease and termination of the Lessor's Approval of Sublease and the Sublease.

6. **Lessee's Obligations.** Notwithstanding any provision to the contrary in the Sublease, this Lessor's Approval of Sublease shall in no way release the Lessee or any person or entity claiming by, through, or under Lessee, including Sublessee, from any of its covenants, agreements, liabilities, and duties under the Lease, as same may be amended from time to time. Lessee shall remain liable to Lessor for any defaults under the Lease, whether such default is caused by Lessee or Sublessee or anyone claiming by or through either Lessee or Sublessee. The foregoing shall not be deemed to restrict or diminish any right which Lessor may have against Lessee or Sublessee, in law or in equity, for violation of the Lease.

7. **Purpose.** This Lessor's Approval of Sublease does not constitute approval by Lessor of any of the provisions of the Sublease document or agreement; nor shall the same be construed to amend the Lease in any respect. The sole purpose of the Sublease shall be to set forth the rights and obligations between Lessee and Sublessee. In no event, however, shall Lessor be deemed to be in privity of contract with Sublessee or owe any obligation or duty to Sublessee under the Lease or otherwise; any duties of Lessor under the Lease being in favor of, for the benefit of, and enforceable solely by Lessee.

8. **Non-Waiver.** Nothing herein shall be deemed a waiver of any of Lessor's rights under the Lease. This Lessor's Approval of Sublease does not end the need for Lessor's approval of any future subleases or for any other matter for which Lessor's approval is required under the Lease or otherwise.

9. **Subordinate Rights.** The Sublease is, in all aspects, subject and subordinated to the Lease as the same may be amended. The terms of the Lease shall prevail in the case of any conflict between the provisions of the Lease, Sublease, or this Lessor's Approval of Sublease.

If, at any time prior to the expiration of the term of the Sublease, the Lease shall terminate or be terminated for any reason (or Lessee's right to possession shall terminate without termination of the Lease), this Lessor's Approval of Sublease and the Sublease shall simultaneously terminate.

10. **Authorized Parties.** The persons signing this Lessor's Approval of Sublease on behalf of the Lessee and Sublessee represent and warrant that they have the authority to legally bind the Lessee and Sublessee to the provisions of this instrument. Further, Lessee and Sublessee acknowledge and agree to be bound by all the terms and conditions of this Lessor's Approval of Sublease as set forth herein.

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

IN WITNESS WHEREOF, this Lessor's Approval of Sublease has been executed and shall be effective as of the date first noted above.

CITY OF EL PASO, TEXAS

_____
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Raymond L. Telles
Assistant City Attorney

APPROVED AS TO CONTENT:

Patrick T. Abeln, A.A.E.
Director of Aviation

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me this _____ day of _____ 2006, by **Joyce A. Wilson**, as **City Manager** of the **City of El Paso**.

_____
Notary Public, State of Texas

Doc. No.: 21251
Doc. Name: Cutter Sublease - Volare Air Charter
Doc. Author: RTEL

ATTEST:

Printed Name: Annie Moreno

LESSEE: CUTTER AVIATION EL PASO LIMITED PARTNERSHIP

Printed Name: Alfonso Moreno Jr.
Title: V.P. / G.M.

ATTEST:

Printed Name: IRIS Valdivia

SUBLESSEE: VOLARE AIR CHARTER CO.

Printed Name: CARMEN D JUNEAU
Title: President

ACKNOWLEDGMENT

THE STATE OF Texas)
)
COUNTY OF El Paso)

This instrument was acknowledged before me on this 26th day of April, 2006, by Alfonso Moreno Jr as VP/GM of Cutter Aviation El Paso Limited Partnership (Lessee).

Notary Public, State of Texas

My Commission Expires:
02.24.2007

ACKNOWLEDGMENT

THE STATE OF Texas)
)
COUNTY OF El Paso)

This instrument was acknowledged before me on this 26th day of April, 2006, by Carmen D Juneau as President of Volare Air Charter Co. (Sublessee).

Notary Public, State of Texas

My Commission Expires:
08-30-08

IRIS VALDIVIA
Notary Public
State of Texas
My Commission Expires
August 30, 2008

Doc. No.: 21251
Doc. Name: Cutter Sublease - Volare Air Charter
Doc. Author: RTEL