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

DEPARTMENT: **AIRPORT**

AGENDA DATE: **August 29, 2006**

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

DISTRICT(S) AFFECTED: 3

SUBJECT:
Resolution approving that the City Manager be authorized to sign two separate Lessosr's Approval of Sublease between the City of El Paso (Lessor), Chenausky Properties & Investments, LLC, (Lessee), El Paso Aero, Inc. and WJN Corporation (Sublessees).

BACKGROUND / DISCUSSION:
The City recently approved the assignment of this lease from WJN to Chenausky who, in turn, has agreed to allow WJN and El Paso Aero to remain on the premises. El Paso Aero provides aircraft repair and maintenance service to other General Aviation tenants while WJN Corporation leases a small office and partial hangar space for personal use.

The terms of the lease requires that the City approve any proposed sublease of a Lessee's premises. By this approval, the Lessee will be responsible for Sublessee's compliance with the Lease.

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

Yes. Standard Lessor's Approval of Subleases are common going to Council on a regular basis with the most recent going to Council on June 6, 2005.

AMOUNT AND SOURCE OF FUNDING:
How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

There will be no economic impact on Airport funds.

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

These two Lessor's Approvals of Sublease were presented to the Airport Board on February 16, 2006.

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

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

OTHER: Patrick T. Abeln, A. A. E., Director of Aviation _____
(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"), Chenausky Properties & Investments, LLC ("Lessee") and WJN Corporation ("Sublessee") regarding a portion of the premises located at 7305 Boeing 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.: 19951
Doc. Name: Chenausky Sublease – WJN Corporation
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"), Chenausky Properties & Investments, LLC ("Lessee") and WJN Corporation ("Sublessee"), effective the ____day of _____, 2006.

WHEREAS, Lessor entered into a General Aviation Commercial Ground Lease effective February 1, 2006 ("Lease") covering the following described property:

> **Lot 19 and west ½ of Lot 20, Block 4, El Paso International Airport Tracts, Unit 2, El Paso, El Paso County, Texas consisting of approximately 30,000 square feet of land and municipally known and numbered as 7305 Boeing Drive, El Paso, Texas ("Premises");**

WHEREAS, the Lessee desires to sublease a portion of the Premises to Sublessee by and through a Lease for Hangar/Office/Storage Agreement ("Sublease");

WHEREAS, the 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 7305 Boeing Drive, El Paso, El Paso County, Texas are described as a portion of the Premises to include: (i) an area of the hangar measuring thirty-three by eighty-two feet (33' x 82') located on the western side of said hangar; (ii) the office located in the southwestern corner of the building; (iii) an area measuring eleven by sixteen feet (11' x 16') just east of the dividing wall on the western side of the hangar; and (iv) parking sufficient for various automobiles (the number of automobiles shall be subject to discretion of Lessee).

3. **Permitted Use of Premises.** Sublessee acknowledges that the subleased premises will not be used for any activity other than for non-competing hangar maintenance, office, and storage uses. 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

(SIGNATURES CONTINUE ON FOLLOWING PAGE)

Doc. No.: 19951
Doc. Name: Chenausky Sublease – WJN Corporation
Doc. Author: RTEL

ATTEST:

Printed Name: _____

LESSEE: CHENAUSKY PROPERTIES & INVESTMENTS, LLC

Printed Name: R.D. Chenausky Sr.
Title: President

ATTEST:

Printed Name: _____

SUBLESSEE: WJN CORPORATION

Printed Name: William J. Nelson
Title: Pres

ACKNOWLEDGMENT

THE STATE OF Texas)
)
COUNTY OF El Paso)

This instrument was acknowledged before me on this 7 day of July, 2006, by R.D. Chenausky Sr as President of Chenausky Properties & Investments, LLC (Lessee).

Notary Public, State of Texas

My Commission Expires:
August 30, 2008

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

ACKNOWLEDGMENT

THE STATE OF Texas)
)
COUNTY OF El Paso)

This instrument was acknowledged before me on this 7th day of July, 2006, by W.J. Nelson as President of WJN Corporation. (Sublessee).

Notary Public, State of Texas

My Commission Expires:
01-27-2009

CHERYL LYNN CHENAUSKY
NOTARY PUBLIC
STATE OF TEXAS
EXPIRES
1-27-2009

Doc. No.: 19951
Doc. Name: Chenausky Sublease – WJN Corporation
Doc. Author: RTEL