

*Emailed* 158-119  
~~PROPOSED ORDINANCE 158-124~~

1  
2  
3 ASSIGNMENT OF CEDARHURST AIR CHARTER, INC. LEASE TO QUAD/AIR, INC.  
4

5 WHEREAS Waukesha County entered into a lease with APW North America, Inc. commencing  
6 July 1, 2000 and terminating June 30, 2005, and  
7

8 WHEREAS the County agreed to an assignment of the lease from APW North America, Inc. to  
9 Cedarhurst Air Charter, Inc. on or about the 12<sup>th</sup> of November, 2002, and  
10

11 WHEREAS Cedarhurst Air Charter, Inc. is now desirous of assigning said lease to Quad/Air,  
12 Inc., and  
13

14 WHEREAS the assignment of the lease provides for consent by the owner, Waukesha County, to  
15 any assignment, and  
16

17 WHEREAS Waukesha County has no objection to the assignment of said lease to Quad/Air,  
18 Inc., and  
19

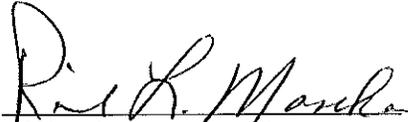
20 WHEREAS Quad/Air, Inc. has directed that an assignment of lease and consent to assignment be  
21 prepared for execution by Waukesha County, and  
22

23 WHEREAS same is on file with the Waukesha County Clerk.  
24

25 THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA DOES  
26 ORDAIN that the assignment on file with the Waukesha County Clerk as of this date is hereby  
27 agreed to and Waukesha County hereby consents to said assignment as set forth in the agreement  
28 on file with the Waukesha County Clerk.

ASSIGNMENT OF CEDARHURST AIR CHARTER, INC. LEASE TO QUAD/AIR, INC.

Presented by:  
Public Works Committee

  
Richard L. Manke, Chair

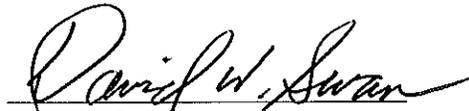
  
James R. Behrend

  
Genia C. Bruce

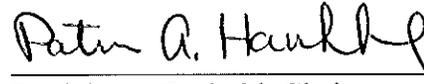
ABSENT  
Hank Carlson

  
Karl Nilson

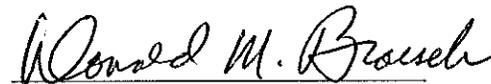
  
Rodell L. Singert

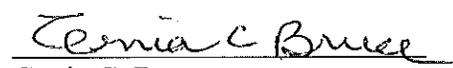
  
David W. Swan

Approved by:  
Finance Committee

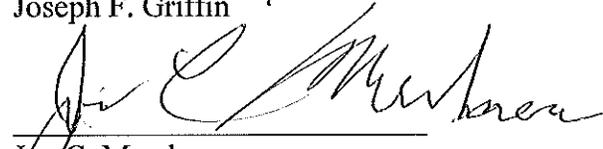
  
Patricia A. Haukohl, Chair

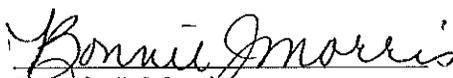
  
James R. Behrend

  
Donald M. Broesch

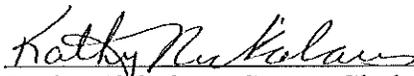
  
Genia C. Bruce

  
Joseph F. Griffin

  
Joe C. Marchese

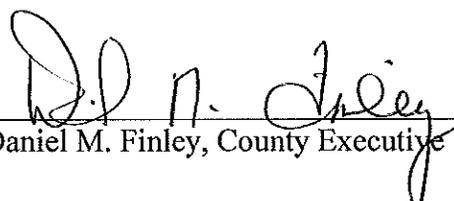
  
Bonnie J. Morris

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: January 16, 2004,   
Kathy Nickolaus, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: ✓  
Vetoed: \_\_\_\_\_

Date: 1-16-04,   
Daniel M. Finley, County Executive

## ASSIGNMENT OF LEASE AND CONSENT TO ASSIGNMENT

THIS ASSIGNMENT OF LEASE AND CONSENT TO ASSIGNMENT is made and entered into this 31st day of December, 2003 by and between Cedarhurst Air Charter, Inc. ("Assignor") and Quad/Air, Inc. ("Assignee").

WHEREAS, Assignor and Assignee are parties to that certain Purchase and Assignment Agreement dated December 31, 2003 (the "Purchase Agreement") pursuant to which Assignor has agreed to assign to Buyer that certain Hangar Lease Agreement between Waukesha County and APW North America Inc. dated June 30, 2000 and attached hereto as Exhibit 1 (the "Lease"), and Buyer has agreed to accept such assignment; and

WHEREAS, the parties desire to confirm the assignment, transfer and conveyance of the Lease to the Assignee; and

WHEREAS, Waukesha County, a municipal corporation and the lessor under the Lease, desires to consent to such assignment and to confirm and agree to certain amendments to the Lease to incorporate provisions of a Stipulation and Order for Dismissal filed November 12, 2002 and attached hereto as Exhibit 2 (the "Stipulation and Order").

NOW, THEREFORE, in consideration of the promises and conditions contained in this Agreement, Assignor and Assignee hereby agree as follows:

1. Assignment and Assumption of Lease. Subject to the provisions of this Agreement, Assignor does hereby assign, transfer, set over and deliver to Assignee all of the right, title and interest in and to the Lease, and by accepting this assignment and by the execution of this Agreement, Assignee hereby assumes the payment and performance of, and agrees to pay, perform and discharge, as a direct obligation of Assignee, all of Assignor's duties and other obligations under the terms, covenants and conditions of the Lease to the extent to be paid, performed or discharged after the date hereof, including, without limitation, the payment of rent and compliance with all terms, covenants and conditions of the Lease. Except as otherwise expressly provided in this Agreement, all the terms, covenants and conditions of the Lease remain in full force and effect.

2. Indemnification.

(a) Assignor hereby agrees to indemnify, defend and hold harmless Assignee from any and all costs, liabilities, losses, damages, expenses, liens or claims (including, without limitation, reasonable attorneys' fees and costs) arising out of or relating in any way to the Lease or the premises identified in the Lease and which arose prior to the date hereof. This indemnity shall survive each of the closing of the Purchase Agreement and the termination of this Agreement.

(b) Assignee hereby agrees to indemnify, defend and hold harmless Assignor from any and all costs, liabilities, losses, damages, expenses, liens or claims

158-0-124

2.

(including, without limitation, reasonable attorneys' fees and costs) arising out of or relating in any way to the Lease or the premises identified in the Lease and which arose on or after the date hereof. This indemnity shall survive each of the closing of the Agreement and the termination of this Agreement.

3. Incorporation of Stipulation and Order for Dismissal Provisions in Lease. The parties and the County hereby agree that paragraph 3 of the Stipulation and Order is incorporated in the Lease and shall be applied as if incorporated in an amendment to the Lease executed by all necessary parties to the Lease as of November 12, 2002 (the date of the execution of the Stipulation and Order by the U.S. District Court for the Eastern District of Wisconsin). The parties and the County further agree that the rights granted to Assignor in such paragraph (including without limitation the \$28,000 additional credit provided for under paragraph 2) shall inure to the benefit of Assignee and to its successors and assigns.

4. Notice. Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by facsimile, or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

If to Assignor: Cedarhurst Air Charter, Inc.  
N63 W23075 Main Street  
Sussex, WI 53089-2827  
Attention: Terri Warras

If to Assignee: Quad/Air, Inc.  
N63 W23075 Main Street  
Sussex, WI 53089-2827  
Attention: Jane Koch

or to such other address as either party may from time to time specify in writing to the other party. Any notice shall be effective only upon delivery, which for any notice given by facsimile shall mean notice that has been received by the party to whom it is sent as evidenced by confirmation slip.

5. Counterparts. This Agreement may be signed in counterparts and all counterparts so executed shall constitute one contract, binding on the all parties hereto, even though all parties are not signatories to the same counterpart.

6. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest and assigns.

158-0-124

EXHIBIT 1

Lease

The following are attached: Hangar Lease Agreement dated June 30, 2000 (22 pages); Stipulation and Order for Dismissal filed November 12, 2002 (2 pages); and Assignment of Lease dated \_\_\_\_\_ (\_\_\_ pages).

158-0-124

5.

## REVISED FISCAL NOTE

### ASSIGNMENT OF CEDARHURST AIR CHARTER, INC. LEASE TO QUAD/AIR, INC.

This ordinance authorizes the consent to the assignment of the Airport lease from Cedarhurst Air Charter, Inc. to Quad/Air, Inc. in accordance with the agreement on file with the County Clerk. This change results in no additional obligations or fiscal impacts to the County. The lease does incorporate a provision of a stipulation agreement with Cedarhurst Air conveying the \$28,000 credit toward the purchase of the hanger to Quad/Air, Inc.



Keith K. Swartz  
Budget Manager  
Revised 01/06/04

LGW

N:\DOAWPDATA\ORDIN\Airportlease.doc

158-0-124

5.

## FISCAL NOTE

### ASSIGNMENT OF CEDARHURST AIR CHARTER, INC. LEASE TO QUAD/AIR, INC.

This ordinance authorizes the consent to the assignment of the Airport lease from Cedarhurst Air Charter, Inc. to Quad/Air, Inc. in accordance with the agreement on file with the County Clerk. This change results in no additional obligations or fiscal impacts to the County. In addition, the agreement will no longer require the County to provide a location for an above ground tank (AGT) and will no longer be required to pay (an amount not to exceed \$40,000) for a fuel filtration system needed for a tanker truck to fuel its planes.



---

Keith K. Swartz  
Budget Manager  
12/23/03

LGW

N:\DOA\WPDATA\ORDIN\Airportlease.doc

158-0-124

6.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

---

CEDARHURST AIR CHARTER, INC.,

Plaintiff,

v.

Case No. 99-C-1199

WAUKESHA COUNTY,

Defendant.

---

STIPULATION AND ORDER FOR DISMISSAL

---

STIPULATION

The parties by and through its undersigned counsel, hereby stipulate and agree as follows:

1. That this matter shall be dismissed forthwith on the merits, with prejudice and without cost to either party.
2. That Waukesha County consents to the assignment of a certain lease between Waukesha County and APW NORTH AMERICA, INC., commencing July 1, 2000 and terminating June 30, 2005, to Plaintiff, Cedarhurst Air Charter, Inc.
3. That in the event Cedarhurst Air Charter, Inc. elects to exercise the "option to purchase" contained in said lease, Waukesha County will grant an additional credit beyond that set forth in the lease to Cedarhurst Air Charter, Inc. in the amount of \$28,000.00.
4. The County agrees to provide Cedarhurst Air Charter, Inc. with a location for an AGT in the existing fuel farm at one of two locations: 1) the existing jet A fuel saddle; 2) some other location inside the existing fuel farm.

158-0-124

7.

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-01/13/04

(ORD) NUMBER-1580124

- 1 K. HERRO.....AYE
- 3 D. STAMSTA.....AYE
- 5 J. MARCHESE.....AYE
- 7 J. JESKEWITZ.....AYE
- 9 P. HAUKOHL.....AYE
- 11 K. HARENDA.....AYE
- 13 J. MORRIS.....AYE
- 15 D. SWAN.....AYE
- 17 J. BEHREND.....AYE
- 19 W. MITCHELL.....AYE
- 21 W. KOLB.....AYE
- 23 P. PRONOLD.....AYE
- 25 K. CUMMINGS.....AYE
- 27 D. PAULSON.....AYE
- 29 M. THOMAS.....AYE
- 31 V. STROUD.....AYE
- 33 D. PAVELKO.....AYE
- 35 C. SEITZ.....AYE

- 2 R. THELEN.....AYE
- 4 H. CARLSON.....AYE
- 6 D. BROESCH.....AYE
- 8 J. DWYER.....AYE
- 10 S. WOLFF.....AYE
- 12 J. GRIFFIN.....AYE
- 14 J. LA PORTE.....AYE
- 16 R. MANKE.....AYE
- 18 B. MORRIS.....AYE
- 20 M. KIPP.....AYE
- 22 G. BRUCE.....AYE
- 24 A. SILVA.....AYE
- 26 S. KLEIN.....AYE
- 28 P. JASKE.....AYE
- 30 K. NILSON.....AYE
- 32 P. GUNDRUM.....
- 34 R. SINGERT.....

TOTAL AYES-33

TOTAL NAYS-00

CARRIED \_\_\_\_\_

DEFEATED \_\_\_\_\_

UNANIMOUS X

TOTAL VOTES-33