

**COUNCIL ACTION FORM**

**SUBJECT: AIRPORT LAND LEASE TRANSFER**

**BACKGROUND:**

The City of Ames entered into a Land Lease Agreement with Field of Dreams, Inc. on February 9, 1993, to lease a parcel of airport land, on which there is a privately owned aircraft hangar to store their company aircraft. The lease was renewed in April 2007 for an additional 5-year term. Field of Dreams, Inc. will no longer need this space and has agreed to a transfer of this lease.

Staff has received a request from Art Harrison, President of Field of Dreams, Inc., to transfer this land lease to Craig A. Sommerfeld. The parties agree to transfer this land lease to Craig A. Sommerfeld in accordance with the real estate purchasing contract terms.

According to the current lease requirements, the City must approve all transfers or assignments of this lease. Failure of Craig A. Sommerfeld to fulfill the obligations of the contract to purchase the property from Field of Dreams, Inc. will cause the lease to revert back to the original existing conditions between the City of Ames and Field of Dreams, Inc.

Lease provisions are similar to the ones that are incorporated into all the airport corporate land leases. Land lease rates have been established in accordance with the current Airport Master Plan. The rental rates of this lease will expire on March 31, 2012.

**ALTERNATIVES:**

1. Approve the airport land lease transfer from Field of Dreams, Inc. to Craig A. Sommerfeld.
2. Reject the lease transfer and draft a new lease.

**MANAGER'S RECOMMENDED ACTION:**

It is the recommendation of the City Manager that the City Council adopt Alternative 1, thereby approving the transfer of the airport land lease from Field of Dreams, Inc. to Craig A. Sommerfeld.

Prepared by and Return to:  
Lauren E. Jacobson, 612 Kellogg Avenue, Ames, IA 50010; (515) 232-1761

Lauren E. Jacobson ISBA #AT0000294

SPACE ABOVE THIS LINE FOR RECORDER

Address Tax Statement: Craig A. Sommerfeld,

### REAL ESTATE CONTRACT-INSTALLMENTS

IT IS AGREED this 22 day of February, 2008, by and between Harrison/Hempe/Davis, Inc., Harrison Associates, Inc., and Field of Dreams, Inc., all Iowa corporations, of the County of Story, State of Iowa, Seller; and Craig A. Sommerfeld of the County of Story, State of Iowa, Buyer;

That the Seller, as in this contract provided, agrees to sell to the Buyer, and the Buyer in consideration of the premises, hereby agrees with the Seller to purchase the following described real estate situated in the County of Story, State of Iowa, to-wit:

All of Seller's leasehold estate created by certain Airport Lease Agreement (the "Lease") between the City of Ames, Iowa ("City"), as Lessor, and Seller, Harrison Associates for Field of Dreams, Inc., including the aircraft hangar structures thereon, and described therein as "Parcel H;" and further described as BOLL HANGAR (AMES AIRPORT) of Section 15, Township 83 North, Range 24 West of the 5<sup>th</sup> P.M., Story County, Iowa; and further described as Parcel 001 09 15 400 014 by the Story County Auditor and Treasurer's offices; and locally known as the 8,000 sq. ft. hangar located at 714 Airport Road, Ames, Iowa (the "Premises");

all upon the following terms and conditions:

1. TOTAL PURCHASE PRICE. The Buyer agrees to pay for said structure, described personal property, and leasehold interest, the total of \$250,000.00 due and payable at Story County, Iowa, as follows:

(a) DOWN PAYMENT of \$50,000.00 on February 20, 2008 (the "Closing Date"); and

(b) BALANCE OF PURCHASE PRICE. \$200,000.00, together with interest at the rate of 7% per annum in equal yearly installments of principal and interest in the amount of \$59,045.62, beginning on the first day of January, 2009, and continuing on the first day of January each year thereafter, with the total balance due on the first day of January, 2012.

2. POSSESSION. Buyer currently possesses and occupies the Premises as the subtenant of Seller pursuant to a sublease, and, it shall be entitled to continued possession under this Contract immediately upon January 1, 2008 and thereafter so long as it shall perform the obligations of this contract. As of January 1, 2008 Buyer assumes all expenses and liabilities for the Premises. In addition, Buyer receives all income from the Premises as of January 1, 2008.

3. TAXES AND SPECIAL ASSESSMENTS. Seller shall be responsible for any and all taxes and installments of special assessments becoming due and payable in respect of the Premises for all tax years prior to the tax year in which the Closing Date occurs (the "Current Tax Year") (except as may otherwise be provided in the Sublease), and Buyer shall be responsible for timely payment of all such taxes and installments of special assessments in respect of the Premises for all tax years subsequent to the Current Tax Year. Taxes and installments of special assessments for fiscal year 2007-2008, due and payable in fiscal year 2008-2009, shall be prorated as of January 1, 2008, and upon receiving proper credit against the downpayment for Seller's prorated portion thereof, Buyer shall pay all such taxes and assessments.

4. LEASE OBLIGATIONS. Buyer shall be responsible for the timely payment of all rentals and other charges and perform all other obligations due to the City under and pursuant to the Lease, and Buyer hereby agrees with and for the benefit of Seller to timely make and perform each and all of such payments, charges and other obligations. Without limitation of the foregoing, Buyer shall indemnify, defend and hold the City and Seller harmless from and against any and all loss, cost, damage, expense and liability in any way arising out of or resulting from Buyer's use and possession, or rights to use and possession, under the terms hereof and the Lease.

5. INSURANCE. Except as may be otherwise included in the last sentence of paragraph 1 (b) above, Buyer on and from said date of possession, shall constantly keep in force insurance, premiums therefore to be prepaid by Buyer (without notice or demand) against loss by fire, tornado and other hazards, casualties and contingencies as Seller may reasonably require on all buildings and improvements, now on or hereafter placed on said premises and any personal property which may be the subject of this contract, in companies to be reasonably approved by Seller in an amount not less than the full insurable value of such improvements and personal property or not less than the unpaid purchase price herein whichever amount is smaller with such insurance payable to Seller and Buyer as their interests may appear. Seller's interest shall be protected in accordance with a standard or union-type loss payable clause. Buyer SHALL PROMPTLY DEPOSIT SUCH POLICY WITH PROPER RIDERS WITH Seller and City for the further security for the payment of the sums herein mentioned. In the event of any such casualty loss, the insurance proceeds may be used under the supervision of the Seller to replace or repair the loss if the proceeds be adequate; if not, then some other reasonable application of such funds shall be made; but in any event such proceeds shall stand as security for the payment of the obligations herein.

6. CARE OF PROPERTY. Buyer shall take good care of this property; shall keep the buildings and other improvements now or hereafter placed on the said premises in good and reasonable repair and shall not injure, destroy or remove the same during the life of this contract. Buyer shall not make any material alteration in said premises without the written consent of the Seller. Buyer shall not use or permit said premises to be used for any illegal purpose.

7. LIENS. No mechanics' lien shall be imposed upon or foreclosed against the real estate described herein.

8. ADVANCEMENT BY SELLER. If Buyer fails to pay such taxes, special assessments and insurance and effect necessary repairs, as above agreed, Seller may, but need not, pay such taxes, special assessments, insurance and make necessary repairs, and all sums so advanced shall be due and payable on demand or such sums so advanced may, at the election of Seller, be added to the principal amount due hereunder and so secured. (For Buyer's rights to make advancements, see paragraph 5 above.)

9. TIME IS OF THE ESSENCE. Time is of the essence in this Agreement. Failure to promptly assert rights of Seller herein shall not, however, be a waiver of such rights or a waiver of any existing or subsequent default.

10. TITLE. Buyer has conducted such investigation as it deems proper in respect of the title of the City to the land and improvements covered by the Lease, as well as Seller's title to the Lease, and therefore agrees that the Assignment of the Lease by Buyer shall be without warranty. Upon full performance by Buyer of its obligations herein, Seller shall deliver to Buyer Seller's fully executed and acknowledged Assignment and Bill of Sale of the Lease and improvements constructed thereon, together with the Declaration of Value, and such other documents as may be required of Seller by law and this Contract shall be deemed fully performed.

11. SUBLEASE BY SELLER. Buyer agrees to sublease to Seller the exclusive use of the upper lounge for the Seller's use as an office and pilot guest hangout, one garage stall, and one aircraft slot. This sublease will begin on the closing date and continue until January 1, 2012. Seller will pay to Buyer the total sum of \$36,182.48 for the five year sublease, in four equal yearly installments in the amount of \$9,045.62, beginning on the first day of January, 2009, and continuing on the first day of January each year thereafter, with the final payment due on the first day of January, 2012. Buyer shall be permitted to offset the payments due under this paragraph against the installment payments due under this Agreement.

12. FORFEITURE. If Buyer (a) fails to make the payments aforesaid, or any part thereof, as same become due; or (b) fails to pay the taxes or special assessments or charges, or any part thereof, levied upon said property, or assessed against it, by any taxing body before any of such

items become delinquent; or (c) fails to keep the property insured; or (d) fails to keep it in reasonable repair as herein required; or (e) fails to perform any of the agreements as herein made or required; then Seller, in addition to any and all other legal and equitable remedies which it may have, at its option, may proceed to forfeit and cancel this contract as provided by law (Chapter 656 Code of Iowa). Upon completion of such forfeiture Buyer shall have no right of reclamation or compensation for money paid, or improvements made; but such payments and/or improvements if any shall be retained and kept by Seller as compensation for the use of said property, and/or as liquidated damages for breach of this contract; and upon completion of such forfeiture, if the Buyer or any other person or persons shall be in possession of said real estate or any part thereof, such party or parties in possession shall at once peacefully remove therefrom, or failing to do so may be treated as tenants holding over, unlawfully after the expiration of a lease, and may accordingly be ousted and removed as such as provided by law.

**13. FORECLOSURE AND REDEMPTION.** If Buyer fails to timely perform this contract, Seller, at its option, may elect to declare the entire balance immediately due and payable after such notice, if any, as may be required by Chapter 654, The Code. Thereafter this contract may be foreclosed in equity and the court may appoint a receiver to take immediate possession of the property and of the revenues and income accruing therefrom and to rent or cultivate the same as the receiver may deem best for the interest at all parties concerned, and such receiver shall be liable to account to Buyer only for the net profits, after application of rents, issues and profits from the costs and expenses of the receivership and foreclosure end upon the contract obligation.

It is agreed that if this contract covers less than ten (10) acres of land, and in the event of the foreclosure of this contract and sale of the property by sheriff's sale in such foreclosure proceedings, the time of one year for redemption from said sale provided by the statutes of the State of Iowa shall be reduced to six (6) months provided the Seller, in such action files an election to waive any deficiency judgment against Buyer which may arise out of the foreclosure proceedings: all to be consistent with the provisions of Chapter 628 of the Iowa Code. If the redemption period is so reduced, for the first three (3) months after sale such right of redemption shall be exclusive to the Buyer, and the time periods in Sections 628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to four (4) months.

It is further agreed that the period of redemption after a foreclosure of this contract shall be reduced to sixty (60) days if all of the three following contingencies develop: (1) The real estate is less than ten (10) acres in size; (2) the Court finds affirmatively that the said real estate has been abandoned by the owners and those persons personally liable under this contract at the time of such foreclosure; and (3) Seller in such action files an election to waive any deficiency judgment against Buyer or his successor in interest in such action. If the redemption period is so reduced, Buyer or his successor in interest or the owner shall have the exclusive right to redeem for the first thirty (30) days after such sale, and the time provided for redemption by creditors as provided in Sections 628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to forty (40) days. Entry of appearance by pleading or docket entry by or on behalf of Buyer shall be presumption that the property is not abandoned. Any such redemption period shall be consistent with all of the provisions of Chapter 628 of the Iowa Code. This paragraph shall not be construed to limit or otherwise affect any other redemption provisions contained in Chapter 628 of the Iowa Code.

**14. ATTORNEY'S FEES.** In case of any action, or in any proceedings in any Court to collect any sums payable or secured herein, or to protect the lien or title herein of Seller, or in any other case permitted by law in which attorney's fees may be collected from Buyer, or imposed upon him, or upon the above described property, Buyer agrees to pay reasonable attorneys' fees.

**15. INTEREST ON DELINQUENT AMOUNTS.** Either party will pay interest at the highest legal contract rate applicable to a natural person to the other on all amounts herein as and after they became delinquent, and/or on cash reasonably advanced by either party pursuant to the terms of this contract, as protective disbursements.

**16. WARRANTY and "AS IS" CONDITION.** Seller represents and warrants to Buyer that Seller is the fee simple owner of the leasehold improvements and that said improvements are not encumbered in any manner. Buyer acknowledges that he has been in possession of the Premises for over one year and is fully familiar with the condition of the leasehold improvements and; therefore, Buyer acknowledges that he is taking the improvements in "AS IS" condition and state of repair, and is relying upon no representation, warranty, agreement, obligation or responsibility of Seller with regard to the condition of the improvements.

17. ASSIGNMENT. Buyer shall have no right to assign this contract in whole or in part, or to effect any assignment of or change in the Lease in whole or in part, without the prior written consent of Seller.

18. CONDITIONS SUBSEQUENT. Notwithstanding anything herein to the contrary, it is agreed that this Contract shall be subject to and conditioned upon Seller's receipt of the written consent of the City to this Contract and the Assignment and Bill of Sale from Seller to Buyer as herein provided. It is further agreed that the Consent of the City is based upon the Lease being supplemented by an Addendum between and binding upon the City and Buyer only during the term of this Contract and the Lease. By its execution of the Consent hereinafter set forth, City agrees that: (a) the City has secured the execution by Buyer of such Addendum in form and content satisfactory to it; (b) in the event of forfeiture or foreclosure of this Contract, or if by any other means this Contract shall be terminated and Seller shall recover the Lease, the terms of the Lease shall again be the same as before this Contract, and said Addendum shall be void and of no effect with respect to Seller and Seller's rights in and to the Lease; (c) no such Addendum between the City and Buyer shall entitle the City to terminate the Lease as to the rights of Seller thereto nor shall Seller be liable, responsible or obligated in respect of any of the agreements of Buyer or City contained in said Addendum; and (d) the City will promptly give written notice in reasonable detail to Seller of any breach or default by Buyer in its obligations under said Addendum so long as this Contract is in effect and Seller shall have a reasonable time thereafter in which, at Seller's option and without further obligation, to cure such breach or default. Buyer further agrees that any breach or default by it in the provisions of said Addendum shall, at the sole option of Seller, be deemed a breach and default in the provisions of the Lease and this Contract.

19. PERSONAL PROPERTY. All personal property remaining on the Premises as of the Closing Date shall be included in the sale, with the exception of the artwork, the library of books, aircraft models, aircraft memorabilia and aircraft parts. In the event of the forfeiture or foreclosure of this contract, such personalty shall be considered indivisible with the real estate above described; and any such termination of Buyers' rights in said real estate shall concurrently operate as the forfeiture or foreclosure hereof against all such personal property. Buyer shall have no duty or responsibility for the care

20. CONSTRUCTION. Words and phrases herein, including acknowledgments hereof, shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context.

Executed in duplicate.

Dated: 2/22/08

Harrison/Hempe/Davis, Inc.,  
Harrison Associates, Inc.  
Field of Dreams, Inc., Seller

By: Arthur L. Harrison  
Arthur L. Harrison, President

Craig A. Sommerfeld  
Craig A. Sommerfeld, Buyer

STATE OF IOWA     )  
                              ) ss:  
COUNTY OF STORY )

On this 22nd day of February, 2008, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Arthur L. Harrison, to me personally known, who, being by me duly sworn, did say that he is the President of the corporations executing the foregoing instrument; that the instrument was signed on behalf of the corporations by authority of its Board of Directors; and Arthur L. Harrison acknowledged the execution of the instrument to be the voluntary act and deed of the corporations, by it and by him voluntarily executed.

Lawrence E. Jacobsen

Notary Public In and For The State of Iowa

Lauren E. Jacobson  
(Printed Name of Notary Public)

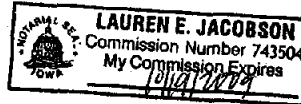


STATE OF IOWA     )  
                              ) ss:  
COUNTY OF STORY )

On this 22nd day of February, 2008, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared **Craig A. Sommerfeld**, to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that he executed the instrument as his voluntary act and deed.

Lauren E. Jacobson  
Notary Public In and For The State of Iowa

Lauren E. Jacobson  
(Printed Name of Notary Public)



#### CONSENT AND RELEASE

Effective upon the full execution thereof by Buyer and Seller, and upon resolution of the Ames City Council, the undersigned consents to the assignment and transfer of the Lease to Buyer and releases Seller Field of Dreams, Inc. and Harrison Associates, Inc. from liability for the performance of further obligations of the Tenant arising under said Lease.

Dated: \_\_\_\_\_

City of Ames, Iowa

By: \_\_\_\_\_

Title: \_\_\_\_\_