

AGENDA REPORT

To: Mayor Pat Humphrey and the Clare City Commission
From: Jeremy Howard, City Manager
Date: February 3, 2022
Regarding: Airport Lot Lease – Northern Michigan Land & Cattle Company

For the Agenda of February 7, 2022

Background. Marvin Heintz has requested that the City enter a lease agreement for Lot 404 (vacant property) of the Clare Municipal Airport Hangar Plat to permit him to construct a new airport hangar on this lot to hangar an airplane. The Airport Manager and the Airport Advisory Board recommend approval of the lease; I endorse this recommendation. The City Commission is asked to consider approval of the lease agreement (*copy attached*).

Issues & Questions Specified. Should the City Commission approve a lease agreement with Marvin Heintz for Lot 404 of the Clare Municipal Airport Hangar Plat?

Alternatives.

1. Approve the lease.
2. Approve the lease with modifications and/or stipulations.
3. Deny/disapprove the lease agreement.
4. Set the matter aside for further consideration and/or deliberation.

Financial Impact. Approval of the lease agreement assures the City of lease revenue (presently \$158.13) plus any applicable, levied property taxes once the construction of the new hangar is completed for the duration of the lease.

Recommendation. I recommend that the City Commission approve the lease agreement by adoption of Resolution 2022-015 (*copy attached*).

Attachments.

1. Lease Agreement.
2. Resolution 2022-015.

CITY OF CLARE
CLARE MUNICIPAL AIRPORT
PROPERTY LEASE AGREEMENT

This agreement is made on February 7, 2022, by and between the CITY OF CLARE, a Michigan Municipal Corporation, of Clare, Michigan 48617, (hereinafter called "Lessor"), and Northern Michigan Land and Cattle Company, (Lessee), 750 Industrial Drive, Clare, MI 48617 (hereinafter called "Lessee").

I. DESCRIPTION, USE, AND TERM

- A. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor certain property hereinafter called the "Leased Premises" situated in the Clare Municipal Airport, County of Clare, and State of Michigan described as follows:

_____ Lot 404 _____
(Property ID)

- B. Said Leased Premises are to be used and occupied as, and for, an aviation hangar including any and all activities normally incident thereto and for no other purposes.
- C. The term of this Lease shall be for ten (10) years, commencing on the 7th day of February, 2022 and ending on the 6th day of February, 2032. The lease is renewable for additional ten (10) year periods.

II. RENT

- A. Lessee shall pay to Lessor for the Leased Premises, the minimum annual sum of one hundred fifty-eight and 13/100 dollars (\$158.13 as of January 1, 2022), in a single annual installment on the day of signing of this lease and thereafter annually until termination of this Lease.
- B. The Lessor reserves the right to annually adjust the lease rate by a cost-escalator. This will be determined by the end of year National Consumer Price Index (CPI). Annual adjustments will not exceed the annual CPI or 3% of the lease amount, whichever is less. There will be no annual adjustment to the lease rate if the annual CPI falls below zero.

III. TAXES

- A. Lessee shall pay and discharge all personal property taxes, general and special assessments, and other charges of every description which, during the term hereof and any extension thereof, may be levied on or assessed against the Leased Premises and all improvements thereon.
- B. Lessee agrees to and shall protect and hold harmless Lessor and the Leased Premises from liability for any and all such taxes, assessments, and charges, together with any interest, penalties, or other sums thereby imposed.

IV. INDEMNITY

The lessee shall indemnify the City of Clare and hold the City of Clare (including all of its subordinate bodies, officials, officers and employees) harmless from any and all liabilities, claims, damages whatsoever, arising from Lessee's exercise of its rights under this lease.

V. UTILITIES

Lessee shall, during the term of this Lease Agreement and any extensions thereof, pay all charges for electricity, telephone gas water, and sewer used in or on the Leased Premises.

VI. WASTE AND NUISANCE

Lessee shall not commit, or cause to be committed, any waste upon or within the Leased Premises, nor shall it maintain, commit, or permit the commission of any nuisance on the Leased Premises.

VII. RIGHTS RESERVED TO THE LESSOR

- A. During time of war or national emergency, Lessor shall have the right to enter into an agreement with the United States Government for military or naval use of part or all of the landing area, the publicly owned air navigation facilities and/or other areas or facilities of the airport. If any such agreement is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the agreement with the Government shall be suspended.
- B. This Lease Agreement shall be subordinate to the provisions of any outstanding agreement between the Lessor and the United States relative to the maintenance, operation, or development of the airport.
- C. It is hereby specifically understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to provide aeronautical services to the public as prohibited in Section 308 (a) of the Federal Aviation Act of 1958, as amended, and the Lessor reserves the right to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature.
- D. The Lessor reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or view of the Lessee, and without interference or hindrance.

- E. The Lessor reserves the right, but shall not be obligated to the Lessee, to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of the Lessee in this regard.
- F. There is hereby reserved to the Lessor, its successors, and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises herein leased. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from, or operation on the Clare Municipal Airport.

VIII. IMPROVEMENTS

- A. The Lessee shall have the right to construct a building on the leased premises. The Lessee shall be required to submit plans for any proposed construction on the leased parcel. Said plans must be submitted and approved prior to any construction. Further, the Lessor shall have the right to refuse or deny approval of any plans submitted for good cause.
- B. It is specifically provided that such building shall not be used for any purpose other than the Lessee's private aviation related use unless written permission for any nonconforming use is received by the Lessee from the Lessor in advance. The Lessor reserves the right to deny permission for any nonconforming use. If permission for nonconforming use is granted by the Lessor, the Lessor reserves the right to demand reasonable additional charges above the stipulated annual rental fee for the nonconforming use.

IX. RIGHT OF INSPECTION

The Lessor shall have reasonable rights of inspection of the premises during normal business hours.

X. SURRENDER OF PREMISES

- A. All buildings placed upon the land leased by the Lessee shall remain his own personal property, and at the expiration of the term of this lease agreement or any renewal therein, the Lessee will have 120 days in which the Lessee may remove such improvements or buildings provided that he restores the premises to their condition at the time of making this Lease, insofar as practicable. In the event the buildings are not removed within 120 days, past the expiration of the term or any renewal thereof, the building shall become the property of the Lessor, and the Lessor may retain, remove, or demolish said building without any liability on its part. Any costs of restoring the premises to their previous condition shall be borne by the Lessee.

- B. It is further agreed that in the event Lessee remains in possession of the Leased Premises after the expiration of the lease, or any renewal thereof, the Lessee shall be deemed to be occupying said premises as a tenant from month to month, subject to all conditions, provisions, and obligations of this lease insofar as the same is applicable to a month-to-month tenancy.

XI. DEFAULTS AND REMEDIES

If Lessee shall allow the rent to be in arrears more than thirty (30) days after written notice of such delinquency, Lessor may at its option, without notice to Lessee, terminate this Lease Agreement and re-enter and take possession of said premises and remove all property there from without being deemed guilty of any manner of trespass and relet the Leased Premises.

XII. ADDITIONAL COVENANTS BY LESSEE

- A. The lessee, for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Lease for a purpose for which a Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the DOT, and as said Regulations may be amended.
- B. The Lessee, for himself, his heirs, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (a) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (b) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (c) that the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR part 21, Nondiscrimination in Federally Assisted Programs of the DOT, and as said Regulations may be amended.
- C. The Lessee agrees, if applicable, to furnish service on a fair, equal, and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable, and no unjustly discriminatory prices for each unit or service, provided, that the Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- D. The Lessee covenants that it will comply with pertinent statutes, Executive Orders, and such rules as are promulgated to assure that no person shall, on the grounds

of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the Lessee or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the Provision obligates the Lessee or any transferee for the longer of the following periods: (a) the period during which the property is used by the Lessee or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; of (b) the period during which the Lessor or any transferee retains ownership or possession of the property.

- E. The Lessee agrees that it will practice nondiscrimination in their activities and will provide Disadvantaged Business Enterprise (DBE) participation in any sublease as required by the Lessor, in order to meet the goals of the Lessor, or required by the Federal Aviation Agency in order to obtain an exemption from the prohibition against Long-term exclusive leases.
- F. The Lessee agrees that it shall insert the above five (5) provisions in any sublease or consign by which said lessee grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the premises herein leased or owned.
- G. The Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event any future structure or building is planned for the leased premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the leased premises.
- H. The Lessee, by accepting this Lease expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the land leased hereunder such that it penetrates the safety zones surrounding the airport. In the event the aforesaid covenants are breached, the Lessor reserves the right to enter upon the land leased hereunder and remove the offending structure, object or tree, all of which shall be at the expense of the Lessee.
- I. The Lessee, by accepting this Lease, agrees for itself, its successors, and assigns that it will not make use of the leased premises in any manner which might interfere with the landing and taking off of aircraft from the Clare Municipal Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the Lessor reserves the right to enter upon the premises hereby leased and cause the abatement of such interference at the expense of the Lessee.
- J. Any person, firm, or corporation operating aircraft on the airport may perform any services on its own aircraft, including but not limited to, maintenance and repair that the Lessee may choose to perform.

XIII. Bankruptcy

Neither this Lease, nor any interest herein nor any estate thereby created shall pass to any trustee or receiver or assignee for the benefit of creditors or otherwise by operation of law.

In the event the estate created hereby shall be taken in execution or by other process of law or if Lessee shall be adjudicated insolvent or bankrupt pursuant to the provisions of any State or Federal insolvency or bankruptcy act, or if a receiver trustee of the property of Lessee shall be appointed by final order un-appealed from by reason of Lessee's insolvency or inability to pay its debts, or if any assignment shall be made of Lessee's property for the benefit of creditors, then and in any of such events, Lessor may, at its option, terminate this Lease and all rights of Lessee hereunder, by giving to Lessee, notice in writing, of the election of Lessor to so terminate.

Lessee shall not ensue or give cause for institution of legal proceedings seeking to have Lessee adjudicated bankrupt, reorganized or rearranged under the bankruptcy laws of the United States, and shall not cause or give cause for the appointment of a trustee or receiver for Lessee's assets, and shall not make an assignment for the benefit of creditors, or become or be adjudicated insolvent. The allowance of any petition under the bankruptcy law, or the appointment of a trustee or receiver of Lessee or its assets, shall be conclusive evidence that Lessee caused, or gave cause, thereof, unless such allowance of the petition, or the appointment of a trustee or receiver, is appealed from or has not become final.

XIV. MISCELLANEOUS

- A. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns when permitted by this Agreement.
- B. This Agreement shall be construed under and in accordance with the laws of the State of Michigan.
- C. No amendment, modification, or alteration of the terms of this Lease Agreement shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the Parties hereto.
- D. No waiver by any Party hereto of any default or breach of any term, condition, or covenant of this Lease Agreement shall be deemed to be a waiver of any other breach of the same or any other term, condition, or covenant contained herein.
- E. The Lessor may grant or withhold its permission for assignment, in its sole discretion. Any assignment or sublet shall not relieve the Lessee hereunder of its obligations.
- F. The Lessee has one (1) year from the signing of this lease to complete construction of an approved Hangar. The hangar occupancy permit is the final inspection of the completed hangar. If construction is not substantially completed

prior to the 1-year timeframe, the lot will revert back to the City of Clare and the lease will be terminated.

- G. This lot does come with a height restriction based upon the proximity to the approach to Runway 9. Any portion of the proposed building shall not exceed 20' in height AGL. Application will have to be made with the FAA Tall Structures online tool. MDOT Aeronautics will also need a copy of the building prints and approve that they adhere to the lot requirements.

Signed in Clare, Michigan, by:

LESSOR

City Of Clare

BY Pat Humphrey, Mayor

LESSEE(S)

Northern Michigan Land and Cattle
Name (printed)

BY _____
(Lessee Signature)

Phone Number

RESOLUTION 2022-015

A RESOLUTION OF THE CLARE CITY COMMISSION APPROVING A LEASE AGREEMENT FOR AIRPORT PROPERTY LOT 404 WITH NORTHERN MICHIGAN LAND & CATTLE COMPANY (MR. MARVIN HEINTZ).

WHEREAS, the City of Clare owns all the property at the Clare Municipal Airport and leases specific portions of said property to allow the construction and maintenance of airplane hangars by private owners; and

WHEREAS, Lot 404 of the Clare Municipal Airport Plat is currently an un-leased, vacant lot; and

WHEREAS, Mr. Marvin Heintz desires to lease Lot 404 of the Clare Municipal Airport Plat from the City of Clare for the purpose of constructing a new airplane hangar on said lot;

NOW THEREFORE BE IT RESOLVED THAT, the Clare City Commission hereby approves a lease agreement with Northern Michigan Land & Cattle Company for Lot 404 of the Clare Municipal Airport Plat, the terms, conditions, and stipulations of said lease agreement as outlined therein.

ALL RESOLUTIONS AND PARTS OF RESOLUTIONS INSOFAR AS THEY CONFLICT WITH THE PROVISIONS OF THIS RESOLUTION BE AND THE SAME ARE HEREBY RESCINDED.

The Resolution was introduced by Commissioner _____ and supported by Commissioner _____. The Resolution declared adopted by the following roll call vote:

YEAS:

NAYS:

ABSENT:

Resolution approved for adoption on this 7th day of February, 2022.

Diane Lyon, City Clerk