



# DeKalb County Government

Manuel J. Maloof Center  
1300 Commerce Drive  
Decatur, Georgia 30030

## Agenda Item

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File #: 2023-1132, Version: 2

Substitute

October 24, 2023

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**Public Hearing:** YES  NO  **Department:** Airport

**SUBJECT:**

**Commission District(s):** 1 and 6

Collateral Assignment of Rights Under Lease and Operating Agreement under DeKalb County Contract No. 15-801194 with Peachtree Aviation, Inc. There is no cost to the County.

**Information Contact:** Mario A. Evans, Airport Director

**Phone Number:** 770.936.5440

**PURPOSE:**

To consider approval of a Collateral Assignment of Rights Under Lease and Operating Agreement under Contract No. 15-801194 with Peachtree Aviation, Inc.; and

To consider authorizing the Chief Executive Officer to execute the Collateral Assignment of Rights Under Lease and Operating Agreement and any other necessary documents recommended by the County Attorney.

**NEED/IMPACT:**

Approval of the Collateral Assignment of Rights Under Lease and Operating Agreement will allow the Lessee and the County to maintain the revenue generating stability of the existing lease agreement. The Lessee's financial obligation to the County will neither increase nor decrease.

The County Attorney has reviewed the document and has approved it as to form pending approval by the Governing Authority.

The Collateral Assignment of Rights Under Lease and Operating Agreement does not require briefing by the Airport Advisory Board.

**FISCAL IMPACT:**

This is a revenue generating lease agreement. There is no cost to the County.

**RECOMMENDATION:**

To approve the resolution and authorize the chief executive officer to execute all necessary documents.....

**Attachment:** Collateral Assignment of Rights Under Lease and Operating Agreement

## COLLATERAL ASSIGNMENT OF RIGHTS UNDER LEASE AND OPERATING AGREEMENT

This **COLLATERAL ASSIGNMENT OF RIGHTS UNDER LEASE AND OPERATING AGREEMENT** (this "Assignment") is entered into as of this \_\_\_\_\_ day of ~~June~~, 2023, by and between United Community Bank, (hereinafter, together with its successors and assigns, referred to as "Lender") whose address is 200 Cherokee St, Marietta, GA 30060, and Dekalb County, Georgia (hereinafter referred to as "Lessor") whose address is The Malcof Center, 1300 Commerce Drive, Decatur, Georgia 30030, and Peachtree Aviation, Inc. (sometimes referred to hereinafter referred to as "Lessee" or as "Obligor") whose address is 3424 Peachtree Road NE, Suite 300, Atlanta, Georgia 30326 (Lender, Lessor, and Lessee shall hereinafter sometimes each be referred to individually or collectively as the case may be as a "Party" or the "Parties").

### WITNESSETH:

**WHEREAS**, by virtue of that certain Lease and Operating Agreement dated as of June 19, 2015 and recorded at Deed Book 26258, Page 327, in the real estate records of DeKalb County, Georgia, (the "**Original Lease Agreement**"), Lessor leased to Lessee certain property on the Dekalb Peachtree Airport identified as Tract 1 consisting of 1.189 acres and including any improvements thereon, and more particularly depicted on the site plan, dated February 4, 2015, prepared by Southeastern Engineering, Inc., attached hereto as Exhibit A and incorporated herein by reference (the "**Leased Premises**"); which Original Lease Agreement was subsequently amended by that certain Lease Amendment No. 1 to Contract 15-801194 by and between Lessor and Lessee dated January 27, 2017 (the Original Lease Agreement, as so amended and assumed and assigned, hereinafter, together with any and all amendments, modifications, restatements, assignments and/or assumptions thereto being hereinafter collectively referred to as the "**Lease**").

**WHEREAS**, there is constructed within the Leased Premises approximately 9,400 square feet of office space (the "**Office Space**") and an approximately 11,500 square foot aircraft storage hangar (the "**Haugar**"; the building in which the Office Space and the Hangar are located is referred to herein as the "**Building**"); and

**WHEREAS** Lessee has of even date herewith, entered into a sublease with Rockhaven Homes, LLC ("Sublessee") ("Sublease"), for a portion of the Office Space commonly referred to as Suite 100, located on the first floor of the Building and containing approximately three thousand two hundred sixteen (3,216) square feet located on the Leased Premises and more particularly shown on Exhibit B attached hereto (the "**Subleased Premises**").

**WHEREAS**, Lender has agreed to make a loan in an amount of up to \$1,260,000 (the "**Loan**") to Lessee, the repayment of which is evidenced by a promissory note from Obligor to Lender dated July 12, 2017 in the original principal amount of up to \$1,645,000.00 (the "**Note**"), which indebtedness of the Loan as evidenced by Note, along with other obligations, liabilities, covenants and agreements is secured, inter alia, by that certain Security Agreement made on or about even date herewith and made and given by Lessee to and in favor of Lender (the "**Security Agreement**") (the Security Agreement shall hereinafter sometimes be referred to as the "**Security Instruments**"), which Security Instruments grant and convey to Lender a security interest in and security title to and lien upon all of Lessee's rights, title, claims, estates and interest in and to the Lease and the Leased Premises (the Note, the Security Instruments, this Assignment (as such term is hereinafter defined), together with any and all other documents, writings, instruments and/or agreements of any kind or nature whatsoever relating to and/or concerning the Loan, whether now or hereafter existing, and including any and all amendments, modifications, extensions, renewals, restatements and/or replacements thereof of any of the foregoing shall hereinafter each be referred to as a "**Loan Document**" or collectively as the "**Loan Documents**").

**WHEREAS**, Section 23A of the Lease provides that the Lease and Lessor's right, title and interest therein and in the Leased Premises shall not without the prior written approval of Lessor be subordinated to the lien priority and security title of any encumbrance of the Lease or the interest of Lessee thereunder as security for any indebtedness Lessee may incur, whether by deed to secure debt, mortgage, deed of trust or other security instrument ("**Leasehold Mortgage**"), and Lessor's right to receive rent and all other benefits thereunder shall have priority over any rights of any Leasehold Mortgage or owners of such Leasehold Mortgage.

**NOW, THEREFORE**, for and in consideration of the making of the Loan by Lender to Lessee, and the acceptance of the Security Instruments from Lessee to and in favor of Lender, and other good and valuable consideration to all Parties, the receipt and sufficiency of which is hereby acknowledged: (i) Lessee does hereby assign, transfer and set over unto Lender, with the right of Lender to reassign, all of Lessee's rights, title and interests in and to the Lease, including but not limited to the Leased Premises, subject to the terms of the Lease; and (ii) the Parties hereby enter into and make such other agreements as set forth hereinafter, all upon and pursuant to the following terms, covenants, limitations and conditions:

1. Lessee shall retain possession of the Leased Premises in accordance with the terms and conditions of the Lease so long as: subject to Lessee notice and cure rights (i) no default is made in the payments of the Note; or (ii) no violation, breach of terms, default or event of default occurs under any of the Loan Documents, or (iii) no default or breach of the Lease by Lessee occurs, except as otherwise provided in the Non-Disturbance, Recognition and Attornment Agreement of even date herewith between Lessor, Lessee and Sublessee.

2. The Parties acknowledge that in the event of a default under the Lease by Lessee subject to Lessee notice and cure rights, Lender shall have the right and option (but not the obligation) to take over the obligations of Lessee under the Lease.

3. The term of this Assignment shall be coterminous with the Lease Term under the Lease, expiring on May 31, 2035, unless terminated earlier in accordance with the termination provisions of this agreement." Sublessee and Lessee shall not, by agreement or alone, modify, amend, or terminate the Sublease without the written consent and approval of Lender.

4. Lessor hereby acknowledges, accepts and consents to the making, delivery and execution of the Security Instruments and other Loan Documents as between Lender, Lessee, and such other parties as may be signatories thereto for the purpose of complying with Section 23A of the Lease regarding the requirement of obtaining Lessor's prior written approval to any mortgaging of the Lessee's interest under the Lease. Lessor hereby further agrees that Lessor shall not unreasonably withhold consent pursuant to Section 23A of the Lease to a prospective Leasehold Mortgagee or purchaser at foreclosure becoming the owner of the Lessee's interest in the Sublease. The Parties each hereby acknowledge and agree that this Agreement and the Security Instruments shall be subordinate and subject to the terms of the Lease, as may be modified, amended, or otherwise affected by this Agreement and/or as otherwise expressly provided by this Agreement.

5. Notwithstanding such consent, there shall be no further transfer or assignment of such leasehold interest, including any foreclosure thereof, without Landlord's further prior written consent and compliance by any such potential transferee with all applicable Federal Aviation Administration, Transportation Security Administration and other federal and state law requirements, including, without limitation, OFAC and FIRRMA. Landlord agrees that such written consent will not be unreasonably withheld nor delayed in its approval.

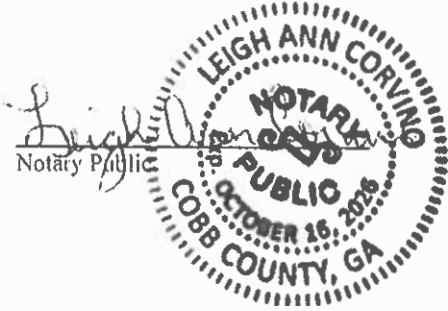
IN WITNESS WHEREOF, the undersigned have set forth their hands and seals as of the \_\_\_\_\_ day and year set forth above.

Sworn and subscribed before me this

8<sup>th</sup> day of June, 2013

LENDER:

UNITED COMMUNITY BANK



By: [Signature] #1689 (seal) 6/8/2013  
RON ALTMAN  
PRESIDENT - COBB/BUCKHEAD

Sworn and subscribed before me this

\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

LESSOR:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

By: \_\_\_\_\_ (seal)



