Report to the Auburn City Council

Action Item
Agenda Item No. 3

City Manager's Approval

To:	Honorable Mayor and City Council Members
From:	Robert Richardson, City Manager
	Andy Heath, Administrative Services Director
Date:	July 25, 2011
Subject:	Auburn Municipal Airport East Area Hangars Ground Lease – Auburn East Hangars Row "Foxtrot", Shawn A. Bickford & Donald D. Wolfe, Lessee

The Issue

Shall the City Council approve a ground lease at the Auburn Municipal Airport between the City of Auburn and Auburn East Hangars Row "Foxtrot", Shawn A. Bickford & Donald D. Wolfe, Lessees, as it relates to the build-out of the East Area Hangar Project – Row "Foxtrot", and authorize the execution of all related documents?

Conclusions and Recommendations

By **RESOLUTION,** authorize the City Manager or his designee to execute a 40-year ground lease between the City of Auburn, a Municipal Corporation, and Auburn East Hangars Row "Foxtrot", Shawn A. Bickford & Donald D. Wolfe, Lessees.

Background

On May 27, 2008, the City Council approved standard Master Land Lease and Airport Hangar Sublease forms and established a Ground Lease Rental Rate of $0.465 per square foot / year (as amended on June 9, 2008) as they relate to the Auburn Municipal Airport East Hangar Project.

As a means to commence the building phase for Row "Foxtrot" of the East Hangar Project, the City has completed negotiations with Auburn East Hangars Row "Foxtrot" lessees – Shawn A. Bickford and Donald D. Wolfe. Both Mr. Bickford and Mr. Wolfe will work closely with City staff and the City's Airport consultant, Mark Machado, during the development and construction phase, expected to begin with 360 days of the signing of the lease consistent with the terms outlined in Section III (13).

Analysis

The land lease between the City and the Association shall commence once the lease is approved by the City Council and shall remain in effect for a period of forty (40) years. The rent for the land lease will commence immediately. The initial lease rate will be $0.465 per square foot per year, the amount approved by the City Council in May 2008.

The lease rate will be adjusted annually by the change in the Consumer Price Index (CPI) but will not, however, be adjusted below the $0.465 noted above. At the request of either party to the lease, a Fair Market Rental Value analysis may be considered every fifth year, at which time lease rates will be adjusted consistent with relevant criteria. Airport Fund lease revenues generated pursuant to the lease agreement for Row "Foxtrot" will be $1,860.00 during the first year.

Alternatives Available to Council; Implications of Alternatives

1. Adopt a resolution authorizing the City Manager or his designee to approve a ground lease at the Auburn Municipal Airport between the City of Auburn and Auburn East Hangars Row "Foxtrot", Shawn A. Bickford & Donald D. Wolfe, Lessees as it relates to the build-out of the East Area Hangar Project – Row "Foxtrot", and authorize the execution of all related documents.

2. Do not adopt a resolution and direct staff accordingly.

Fiscal Impact

Execution of the land lease between the City and the Association will result in $1,860.00 additional lease revenue for the Airport Fund during the first year of the lease. Annual lease amounts will be adjusted by upward changes in CPI and subsequent to Fair Market Rental Value analysis, if requested, every five years.

Exhibit A – Auburn Municipal Airport Ground Lease – East Area Hangars – Row "Foxtrot"

RESOLUTION NO. 11-

RESOLUTION APPROVING A 40-YEAR GROUND LEASE AT THE AUBURN MUNICIPAL AIRPORT BETWEEN THE CITY OF AUBURN AND AUBURN EAST HANGARS ROW "FOXTROT", SHAWN A. BICKFORD & DONALD D. WOLFE, LESSEES

THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

That the City Council of the City of Auburn does hereby authorize the City Manager or his designee to execute a 40-year ground lease at the Auburn Municipal Airport between the City of Auburn, a Municipal Corporation, and Auburn East Hangars Row "Foxtrot", Shawn A. Bickford & Donald D. Wolfe, Lessees.

DATED: July 25, 2011

_____
William W. Kirby, MD, Mayor

ATTEST:

_____
Joseph G. R. Labrie, City Clerk

I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify that the foregoing resolution was duly passed at a regular meeting of the City Council of the City of Auburn held on the 25th day of July, 2011 by the following vote on roll call:

Ayes:
Noes:
Absent:

_____
Joseph G. R. Labrie, City Clerk

AUBURN MUNICIPAL AIRPORT GROUND LEASE

EAST AREA HANGARS – ROW " FOXTROT"
(City of Auburn as Lessor)
(Shawn A. Bickford & Donald D. Wolfe, Lessee)

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GROUND LEASE

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AUBURN MUNICIPAL AIRPORT GROUND LEASE
EAST AREA HANGARS – ROW "CHARLIE"

This Lease, made and entered into as of this _____ day of _____, 2011 (the "**Commencement Date**"), by and between the City of Auburn, a Municipal Corporation ("**City**" or "**Lessor**"), and Shawn A. Bickford and Donald D. Wolfe (together, "**Lessee**").

Recitals

A. WHEREAS: City owns and maintains an airport, comprised of several parcels of real property located in the City, commonly known as the Auburn Municipal Airport, together with improvements and appurtenances consisting of equipment, aprons, taxiways, runways, approaches, buildings and structures located upon said real property, and certain avigation rights (herein **"Airport"** or **"Airport Property"**).

B. WHEREAS: This Lease relates to that certain parcel of unimproved real property located in the City, commonly known as the Auburn Airport East Area Hangars Row "Foxtrot," a part of Assessor Parcel Number 052-190-045-000, and more particularly described on **Exhibit "A"** attached hereto and incorporated herein by reference (the **"Premises")**.

C. WHEREAS: Lessor intends (i) that City approved aircraft hangars (herein **"Hangar"** or **"Hangars"**), suitable for the storage and parking of aircraft individually owned by Hangar sub-lessees, be constructed upon the Premises, (ii) that all costs of such construction be borne by the Lessee or its subtenant, and not the City, (iii) that the hangars shall serve as an accommodation to the users of the airport, and ultimately (iv) that the ownership of the hangars will revert to the City at the termination of this Lease.

D. WHEREAS: Lessee desires:

(i) To enter into this ground lease to lease the aforesaid Premises; and,

(ii) To promptly commence construction of the aforesaid Hangars, and to diligently prosecute such construction to completion.

For and in consideration of the mutual covenants hereof, City hereby leases to Lessee and Lessee hereby hires from City the Premises upon the terms and conditions hereinafter set forth.

I. Premises

1. The leased Premises ("**Premises**") consist of real property being a portion of the Auburn Municipal Airport (the "Airport"), particularly described and shown on the Legal Description, **Exhibit A**, and Map, **Exhibit B**, made part of this Lease. The Premises are located on the ground by property boundary pins placed by City in conformance with the legal description. After the Commencement Date it shall be the responsibility of the Lessee to maintain the boundary pins for the full term of this Lease.

2. Said Premises consist of that portion of the parcel of real property which the aforesaid Hangars will physically occupy (herein "**Footprint**") as defined by the outer perimeter of the Hangars and any overhanging eves or structures attached thereto, together with the remainder of the demised Premises that lies without said Footprint, which, for all purposes, shall remain as non-exclusive common area for the benefit of all users of the airport, and shall be denominated herein as **"Premises Common Area"**.

3. In conjunction with, and as a part of this Lease, Lessor hereby grants to Lessee the non-exclusive right to use, during normal business hours and at all reasonable times, and for the intended purposes, the specified areas indicated on the Airport site plan which are normally open to and usable by members of the public, including but not limited to aprons, taxiways and runways, all subject to all Airport rules and regulations (herein **"Airport Common Area"**). It is the intent of the parties herein that the aforesaid Premises Common Area be a part of the Airport Common Area, for all purposes, including but not limited to rights-of-way for public ingress and egress, as well as rights-of-way for all underground utilities. Lessor reserves unto itself, for itself and for the benefit of the public and all airport users, all rights in and to the aforesaid Premises Common Area not otherwise specifically granted to Lessee herein.

4. In conjunction with, and as a part of this lease, Lessor hereby grants to Lessee for the duration of this lease unless sooner terminated, rights in and to the Airport Common Area, consisting of (a) a non-exclusive utility right-of-way reasonably necessary and convenient to provide utilities for the operation and maintenance of Lessee's improvements and equipment, and (b) a non-exclusive right-of-way for ingress and egress reasonably necessary and convenient to construct the aforesaid improvements, and (c) a non-exclusive right-of-way for ingress and egress reasonably necessary and convenient to store, operate, and maintain the aircraft and related equipment stored on the Premises. The location of said rights of way shall become fixed upon construction of the improvements contemplated herein.

5. In conjunction with, and as a part of this Lease, Lessor hereby grants to Lessee the right to construct improvements upon the Premises consisting of City approved, aircraft storage Hangars, together with other usual and necessary related improvements, as approved by Lessor, including but not limited to necessary and convenient approach aprons and other aircraft related structures, but not including fueling facilities.

6. Notwithstanding paragraph 50 below, Lessee shall neither have nor acquire any right, to remove, destroy, dismantle, disassemble or otherwise compromise the physical structure of the Hangars constructed or to be constructed as contemplated hereunder, or any other permanent structure on or improvement to the Premises. Neither shall Lessee have any right to sell, transfer, assign, sub-lease nor in any manner alienate any interest in the structure of the Hangars or any permanent structure on or improvement to the Premises, except to the extent Lessee shall have the right to sell, transfer, assign or sub-lease its interest in this Lease as such right is set forth in paragraphs 28 through 36 below.

7. Lessor covenants that Lessor is seized of good and sufficient title and interest to the Premises. Lessor Covenants that Lessee shall peaceably and quietly enjoy all of the Lease rights herein granted.

II. Use & Inspection

8. Lessee's use of the Premises shall be specifically limited to (i) the construction of the aforesaid improvements, (ii) storage of private aircraft, (iii) access to, and use of airport facilities such as taxiways and runways, and (iv) related activities such as routine maintenance and repair of the resident aircraft; but not for the use of retail space, and not for the maintenance and repair of non-resident aircraft.

9. Lessee shall not use the Premises, or permit anything to be done in or about the Premises, which will in any way conflict with any law, statute, ordinance or governmental rule, regulation or guideline now in force or which may hereafter be enacted or promulgated. Lessee shall comply with the licensing and permit requirements of any and all federal, state, municipal or local authorities, and shall at all times comply with all federal, state, municipal or local statues, ordinances, laws, rules, regulations and guidelines.

10. Lessor shall be given access to the Premises and all structures thereon, and shall be permitted to enter and inspect the Leased Premises and structures thereon at any and all reasonable times.

III. Term

11. The term of this Lease shall commence on the Commencement Date (which date is the resolution date of City Council of the City of Auburn approving ground lease and has been written in the introductory paragraph to this Lease), and shall remain in effect until the fortieth (40th) anniversary of the Commencement Date unless terminated as provided below.

12. [Reserved].

13. Provided however, that (a) if Lessee shall not have commenced construction of the Hangars as contemplated herein within three hundred sixty (360) days after the Commencement Date, or (b) if Lessee shall not have completed the construction of the Hangars as contemplated herein within 18 months after the Commencement Date, then in either of these events, Lessor shall have the unilateral right to terminate this Lease and all extensions hereto upon sixty (60) days' notice of such failure to so commence or complete said construction.

14. Provided further, that if Lessee shall have properly and timely completed construction of the Hangars as contemplated in the preceding paragraph 13, then upon demand therefore, Lessor shall promptly execute a certification of compliance or an estoppel certificate evidencing such completion of construction by Lessee.

15. Provided finally, Lessee shall have the unilateral right to terminate this Lease at any time, provided that three (3) months prior notice is first given to Lessor.

IV. Rent

16. Rent ("**Rent**") in consideration for the Lease of the Premises described herein shall be payable annually in advance on the Commencement Date and each anniversary of the Commencement Date, continuing annually thereafter, as adjusted below. The Annual Rent shall be paid and received by Lessor on or before the 10th day after each anniversary of the Commencement Date, or be late. At Lessor's election, the Annual Rent may be payable on the first day of the first calendar month following the first anniversary of the Commencement Date, and annually thereafter. Upon such election, in addition to the Annual Rent, Lessee shall pay Rent attributable to the number of days from the first anniversary of the Commencement Date until first day of the following month. Following thirty (30) days written notice of default in the payment of Rent, a late charge shall be due in the amount of ten percent (10%) of the rent then remaining unpaid.

17. The calculation of Rent for each calendar year shall utilize the following terms:

a. Base Year: The Base Year shall be the first year of each five-year adjustment period, commencing on the Commencement Date and every fifth anniversary of the Commencement Date thereafter.

b. Base Year CPI: The Base Year CPI (see § 20, below) shall be the most recently available CPI as of the Commencement Date and every fifth anniversary of the Commencement Date thereafter. As an example, as of May 1, 2011, the most recently available CPI is the CPI for February 2011.

c. Base Year Rent: Initially, the Base Year Rent is the Rent set forth at Section 18.c. below; thereafter, the Base Year Rent is the Annual Rent determined by a Fair Market Rental Value adjustment, if requested by either party, or if not requested by either party, the annual Rent as of each fifth anniversary of the Commencement Date.

d. Annual Rent: The actual Rent due on the Commencement Date and on each anniversary of the Commencement Date thereafter.

18. Commencing for the Base Year:

a. The Base Year shall be the year commencing on the Commencement Date.

b. The Base Year CPI shall be the most recently available CPI as of the Commencement Date.

c. The Base Year Rent shall be based upon the actual square footage of the hangar Footprint times the base rental rate of $0.465/ sq. ft./ year, initially estimated to be One Thousand Eight Hundred Sixty and no/100 Dollars ($1,860.00) per year. (4000 sq.ft. x $0.465/ sq. ft./ yr = $1,860/ yr.) This Base Year Rent ($1,860.00) shall be adjusted for the actual square footage of the Footprint as constructed or planned to be constructed. Provided however, that said rental adjustment shall not be adjusted downward.

d. The initial Annual Rent shall be the Base Year Rent, to wit $1,860.00.

19. A new Base Year shall be established on every fifth anniversary of the Commencement Date:

a. The lease year commencing on each fifth anniversary of the Commencement Date shall become the new Base Year.

b. The Base Year CPI shall be changed to the most recently available CPI for the Commencement Date of the new Base Year.

c. At the request of either party, the Base Year Rent shall be set to the Fair Market Rental Value, as determined below (see §§ 24 through 27); if neither party requests a Fair Market Rental Value adjustment, then the Base Year Rent shall be the prior year's Annual Rent adjusted for the increase in CPI.

d. The Annual Rent for the new Base Year shall be the newly set Base Year Rent.

V. CPI Adjustment

20. CPI shall mean the Consumer's Price Index – California, All Urban Consumers, for the California area, published by the Bureau of Labor Statistics of the United States Department of Labor (All Items, 1982-1984 = 100). (See http://www.dir.ca.gov/DLSR.)

21. If the "base year" for the CPI tables is changed, then the CPI calculation shall be made utilizing the appropriate conversion factor(s) published by the U.S. Department of Labor, Bureau of Labor Statistics (or successor agency) to equate the new tables to the base year of the CPI herein specified. If no such conversion factor is published, the parties shall, if possible, make the necessary calculation to achieve such conversion in a manner that shall avoid any compounding effect. If such conversion is impossible, or if the publication of the CPI is discontinued, or if the basis of calculating the CPI is materially changed, CPI shall mean comparable statistics on the cost of living as computed by an agency of the United States Government performing a function similar to the Bureau of Labor Statistics, or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the CPI.

22. For each year of this Lease except for a Base Year for which a party has requested a Fair Market Rent Value adjustment, the Annual Rent shall be adjusted annually to an amount that bears to the Base Year Rent in the same proportion as the most recently available CPI for the current anniversary of the Commencement Date bears to the Base Year CPI. In the event the CPI shall decline for a given year, the adjusted Annual Rent shall not be reduced from the preceding year's Annual Rent, but instead shall remain unchanged. Lessor shall give Lessee thirty (30) days notice of the adjusted Annual Rent. If a dispute arises between Lessor and Lessee concerning the adjustment pursuant to this Section V, it shall be resolved by mediation/arbitration under the provisions of Article XXIV.

23. By example, assume the Commencement Date is October 1, 2005, and the most recent CPI available is for the prior June:

Annual Rent Oct 1, 2006 = Base Year Rent 2005 x CPI June 2006/CPI June 2005

Assume:

Base Year Rent = $1,000.00

CPI June 2005 = 300

CPI June 2006 = 306

CPI June 2007 = 302 (negative CPI)

CPI June 2008 = 318

CPI June 2009 = 318 (no change)

Then:

Annual Rent Oct 1, 2005 = $1,000.00 (Annual Rent = Base Year Rent)

Annual Rent Oct 1, 2006 = $1,000.00 x (306/300) = $1020.00

Annual Rent Oct 1, 2007 = $1,000.00 x (302/300) = $1020.00 (no reduction)

Annual Rent Oct 1, 2008 = $1,000.00 x (318/300) = $1060.00

Annual Rent Oct 1, 2009 = $1,000.00 x (318/300) = $1060.00 (no change)

VI. Fair Market Value Adjustment

24. Effective every Base Year commencing on the fifth anniversary of the Commencement Date, and continuing thereafter for the tenth, fifteenth, twentieth, twenty-fifth, thirtieth and thirty-fifth anniversaries of the Commencement Date (each such anniversary, an "**Adjustment Date**"), at the request of either party, the Annual Rent shall be adjusted to correspond with the Fair Market Rental Value ("FMRV") of the Premises.

25. The Fair Market Rental Value shall be established according to the following standards:

FMRV shall be the then current fair market value of Rent for the Premises as of that Adjustment Date, excluding the value added to the fair market value of Rent by virtue of the construction by Lessee of the Hangar.

The FMRV shall be established according to the rental rates at which tenants lease comparable land for similar purposes at comparable general aviation airports, at the time of the adjustment. Comparable general aviation airports are: Nevada County, Placerville, Georgetown, Columbia, Truckee, Marysville and Lincoln. Should one or more of the listed airports cease operations or not have a comparable facility, a FAA classified comparable airport lying Northerly or Easterly of Sacramento shall be substituted in its place.

The FMRV for comparable land shall not be established by a simple averaging of rental rates, but shall be weighted in comparison to the Auburn Municipal Airport to reflect relative size, the population served, the amount of air traffic, the commercial value of air traffic, the supporting and surrounding commercial development and its value, and such other factors as shall fairly compare the rental rates at each respective airport.

26. In the event the parties are unable to establish by agreement what sum represents the FMRV of the Premises, it shall be determined as follows:

Within 15 days after the Adjustment Date the parties shall select a licensed appraiser, or a licensed and practicing real estate broker, who must have at least 10 years experience and be familiar with Placer and surrounding counties. Within 15 days after selection of such neutral, each party shall submit to the neutral its determination of the FMRV together with the assumptions, calculations, methods and comparables underlying its determination. Within 15 days after receipt of both parties' determination of FMRV the independent realtor shall select one of the party's determination of FMRV, and that shall be the FMRV as of the Adjustment Date. The independent realtor shall not recalculate FMRV, nor select an FMRV between the two parties' determinations; the only authority of the independent realtor is to choose one of the parties' determination of the FMRV. The parties shall bear the cost of the independent realtor equally.

27. Provided however, that if neither party requests a FMRV adjustment prior to a new Base Year, then the Annual Rent for the new Base Year shall be the Annual Rent for the prior year adjusted in accordance with the provisions of §§20 through 23, CPI Adjustment, above.

VII. Assignment and Sub-Lease

28. Lessee shall not be permitted to sell, transfer, assign or sub-lease, in whole or in part, any interest in this Lease or in Lessee's rights hereunder, without first having received the written consent of the Lessor, which consent to such sale, transfer, assignment, sub-lease or other transfer shall not unreasonably be withheld, delayed or conditioned.

29. As a reasonable condition of such consent, Lessor shall not be obligated nor required to release Lessee from all or any of its obligations and duties hereunder.

30. As a further and reasonable condition of such consent, Lessee shall demonstrate by clear and convincing proof of the creditworthiness of the purchaser, transferee, assignee or sub-lessee (herein **"Assignee"**), and of the ability of said Assignee to assume the financial, regulatory, administrative and enforcement requirements of this lease, and to respond to all liabilities of Lessee hereunder contemplated.

31. Notwithstanding the foregoing, and as a further and reasonable condition of such consent, Lessor may require that said Assignee shall execute a written assumption of this Lease wherein Assignee shall assume each and every covenant of this lease, shall be bound to each and every term and condition hereof, and shall discharge each and every obligation imposed hereunder.

32. In the event of any such sale, transfer, assignment or sub-lease, Lessor shall not be obligated nor required to release Lessee from all or any of its obligations and duties hereunder, and unless so released in writing, Lessee shall continue to remain obligated under all covenants and conditions of this Lease. Any such sale, transfer, assignment or sub-lease shall not be valid unless the purchaser, transferee, assignee or sub-lessee shall first assume in writing, all obligations of Lessee under this Lease.

33. Any sale, transfer, assignment or sub-lease in violation of the foregoing paragraphs 28 through 32, shall be for all purposes a default hereunder and a material breach hereof, and shall be cause for termination of this lease and forfeiture of all right, title and interest hereunder or otherwise, without notice.

33.5 Should a dispute arise with respect to a sale, transfer, assignment or sub-lease and the interpretation of this Article VII, Lessor and Lessee agree that Article XXIV (Mediation/Arbitration) shall apply.

VIII. Hangar Sub-Leases

34. Lessee shall not be permitted to enter into separate Hangar Sub-Leases with any person or entity without first having obtained Lessor's written approval of the form of the proposed Lessee/Sub-lessee sub-lease, and without first having received the written

consent of the Lessor through the City Manager of the City of Auburn or his or her designee (the "**City Manager**"), which approval and consent to such Hangar Sub-Lease shall not unreasonably be withheld, conditioned or delayed.

35. As a reasonable condition of such consent, Lessor shall require substantial and continued compliance with, and proof of, the following:

a. The identity of the hangar Sub-Lessee, including but not limited to the name, address and telephone number of the hangar Sub-Lessee, as well as such other information related to the ownership, maintenance and operation of the aircraft as may reasonably be required by Lessor or by the Federal Aviation Administration (Herein **"FAA"**);

b. The identity of all resident aircraft to be stored in the sub-leased hangar, including but not limited to the owner's name, registration number, make, model and year of the aircraft;

c. Proof of all Premises and residence aircraft insurance as required by the City of Auburn, the Auburn Airport and/or by the FAA;

d. The express written agreement between the Lessee and the Hangar Sub-Lessee that the Hangar Sub-Lessee will comply with all of the requirements sought to be imposed upon the Hangar Sub-Lessee by this Lease, and will cooperate with Lessee in Lessee's compliance with all of the requirements imposed upon the Lessee by this Lease; and,

e. The ability of the Hangar Sub-Lessee to assume the financial, regulatory and administrative requirements sought to be imposed under this lease upon the Hangar Sub-Lessee, and to respond to all liabilities of sub-lessee hereunder contemplated.

36. If any Hangar Sub-Lessee shall be in violation of the foregoing paragraphs 34 and 35, such violation shall be considered for all purposes a default hereunder and a material breach hereof, and shall be cause for termination of this lease and forfeiture of all right, title and interest hereunder or otherwise, if not cured within one-hundred eighty (180) days written of notice thereof to Lessee.

IX. Hangar Sub-Lease Insurance

37. Lessee shall require each Hangar Sub-Lessee to carry and maintain, during the term of Hangar Sub-Lessee's Sub-Lease, general liability insurance coverage in relation to the sub-leased Premises and aircraft insurance in relation to each of the resident aircraft stored in Hangar Sub-Lessee's sub-leased premises, which insurance coverage

shall comply with each of the insurance provisions under this Lease at paragraphs 60.a and 60.b.

38. Lessee is required hereunder to enforce all of these insurance requirements against each such Hangar Sub-Lessee. Failure by Lessee to require, and to promptly and diligently enforce the requirement, that each Hangar Sub-Lessee provide and maintain the insurance required by this Lease shall constitute, and for all purposes be, a default hereunder and a material breach hereof, and shall be cause for termination of this lease and forfeiture of all right, title and interest hereunder or otherwise, if not cured within one-hundred eighty (180) days of written notice thereof to Lessee.

X. Right of First Refusal

39. **In Favor of Lessor.**

a. Before Lessee may sell, transfer, assign or sub-lease this Lease or any interest in this Lease (except as provided at paragraphs 34 through 36) Lessee shall give sixty (60) days written notice to Lessor of Lessee's intention to so sell, transfer, assign or sub-lease this Lease or any interest in this Lease to a *bona fide* transferee for value. Within said sixty (60) days, Lessor shall give notice of its intention to meet the terms of such *bona fide* offer and to acquire Lessee's interest sought to be transferred

b. Within an additional sixty (60) days, Lessor shall pay to Lessee the consideration of the *bona fide* offer, or Lessor's offer to acquire such interest shall, for all purposes, be deemed withdrawn, and Lessee shall be free, for a period of three years, to sell, transfer, assign or sub-lease this Lease in accordance with the provisions of paragraphs 28 through 33.

40. **In Favor of Lessee**

a. If, at the expiration of the term of this Lease, City should wish to lease the Premises, City shall first give notice to Lessee of the terms and conditions of any offer to lease said Premises. Lessee shall thereafter have a period of 60 days in which to enter into a new lease for the Premises.

b. If Lessee does not lease the Premises within 60 days after notice of said offer, City thereafter shall be relieved of any obligation to Lessee as herein provided.

XI. Lessee Improvements

41. Lessee, at Lessee's sole cost and expense, shall design, finance and construct aircraft hangars similar to hangars currently existing at the Airport (herein **"Lessee**

Improvements"). Design of the Lessee Improvements shall be prepared by an architect or engineer licensed by the State of California and subject to review and approval by the City Manager. Construction of the Lessee Improvements shall be performed by a contractor and/or sub-contractors licensed by the State of California.

42. Lessor shall promptly cooperate and reasonably approve the design of the aforesaid Lessee Improvements within a reasonable time not to exceed sixty (60) days of Lessee's submittal of same to Lessor. The scope of Lessor's approval shall contemplate aesthetic design, as well as the overall functionality of the improvements in relation to the Airport site plan, when current and future airport uses are considered as a whole. Lessor's approval shall not unreasonably be withheld, delayed or conditioned. Within the meaning of this paragraph, Lessor's approval shall neither mean nor include that approval required to be obtained for new construction from the City Building Department, or otherwise, but rather is intended to mean acceptance by the City Manager of the design and functionality of the Hangars, and of the Airport usages, when taken as a whole.

43. Lessee shall secure, and maintain in full force and effect during the course of construction, any and all certificates, permits and approvals necessary for the construction of the Lessee Improvements that may be required by any federal, state, municipal or local authority, as well as satisfactory soil boring tests (herein **"Approvals and Tests"**). Lessor shall cooperate with Lessee in its efforts to obtain such Approvals and Tests and shall take no action that would adversely affect the status of the subject real property with respect to the proposed use by Lessee. In the event any of the aforesaid Approvals and Tests shall for any reason be unsatisfactory to Lessee, including but not limited to cancellation, lapse, or termination of such Approvals, then in that event, Lessee may terminate this Lease with ninety (90) days notice in writing to Lessor.

44. Lessee shall commence construction of the Hangars within 360 days after the Commencement Date, and thereafter shall diligently prosecute such construction to completion, or otherwise be in material breach hereof. All construction shall be completed within 18 months of the Commencement Date.

45. At all times during the construction of Lessee Improvements, Lessee and Lessee's contractors shall comply with the licensing and permit requirements of any and all federal, state, municipal or local authorities, and shall at all times comply with all federal, state, municipal or local statues, ordinances, laws, rules, regulations and guidelines. Lessee shall comply with all FAA requirements as more specifically set forth in **Exhibit "C"**, attached hereto and incorporated herein by reference.

46. In the event of Lessee's default during the construction of the aforesaid Lessee Improvements, City shall have the right, but not the obligation, to assume Lessee's

obligations and rights under any contract related to, or for any portion of, the construction of the aforesaid Hangars.

47. Lessee will defend and indemnify City against all loss, claims, costs, damage, expense, and liability, arising out of, or connected with the work of improvement.

48. At all time during the construction of Lessee Improvements, Lessee shall defend, indemnify and hold harmless Lessor from any injury to persons, including death, or from any damage to property, arising out of construction activities undertaken by Lessee pursuant to this Lease. The scope of Lessee's obligations under this paragraph shall be co-extensive with the obligations set forth in paragraphs 70 through 71, *infra*, and the text thereof is incorporated herein by this reference.

49. Lessee shall promptly commence, diligently pursue to completion the construction of the aforesaid Lessee Improvements, and cause to be filed a notice of completion for such improvements within 18 months of the Commencement Date. Lessee's failure to timely complete the construction of the aforesaid Lessee Improvements shall be a material breach of this Lease.

50. Consistent with the strictures of paragraph 6, hereinabove, all improvements constructed on the Premises by Lessee shall be owned by Lessee until expiration of the term of this Lease or earlier termination hereof. Except as otherwise provided in this Lease, all improvements made by or for Lessee, whether temporary or permanent in character, shall automatically at the end of the terms hereof, whether by expiration or by earlier termination, become the property of Lessor, and shall be surrendered to Lessor in good condition, reasonable use, wear and tear excepted, without compensation to Lessee and without further instrument of transfer. Provided further, that upon such expiration or termination, and upon written request by Lessor, Lessee shall deliver to Lessor a quit claim deed or such other instrument of transfer which shall be duly and properly executed and acknowledged, and which shall be adequate for the intended purpose.

51. Once construction of the Lessee Improvements is completed, Lessee shall not remove, dismantle, demolish or otherwise destroy said improvements without Lessor's prior written consent. If Lessee shall so remove, dismantle, demolish or otherwise destroy said improvements without Lessor's prior written consent, Lessee shall be obligated to Lessor for the cost of reconstruction, which cost shall include site restoration cost.

52. Lessor shall be wholly responsible for the removal, amelioration and/or remediation of any and all latent contamination, toxic substances, or hazardous materials (as that term is defined by the Placer County Department of Public Works) previously existing or newly discovered on the Premises during the course of Lessee's installation of the aforesaid Lessee improvements.

53. Lessee shall be wholly responsible for the removal, amelioration and/or remediation of any and all contamination, toxic substances, or hazardous materials which have been deposited upon the Premises during the course of Lessee's installation of the aforesaid Lessee improvements, or otherwise as a result of Lessee's activities on or in relation to the Premises.

XII. Mandatory Improvements

54. All improvements, additions, changes or alterations of the Premises mandated or otherwise, required by federal, state or local law, rule, regulation or ordinance, that apply solely to Lessee's Premises or to activities on or in relation to the Premises, which shall be imposed after Lessee shall have commenced usage of the Premises, shall be the sole responsibility of the Lessee.

55. All improvements, additions, changes or alterations of the Premises mandated or otherwise, required by federal, state or local law, rule, regulation or ordinance, that apply solely to Lessor's presence or to activities on or in relation to the Premises, which shall be imposed after the Commencement Date shall be the sole responsibility of the Lessor.

56. All improvements, additions, changes or alterations of the Premises mandated or otherwise, required by federal, state or local law, rule, regulation or ordinance, that do not apply solely to either party as set forth directly above, which shall be imposed after the Commencement Date shall be the responsibility of both parties hereto on an equal basis.

XIII. Utilities

57. Subject to applicable ordinances and regulations, Lessee may, at Lessee's expense, connect to sewer, water and electrical facilities and Lessee shall thereafter maintain said facilities within the boundaries of Premises. Lessee shall prevent the entrance of objectionable quantities of petroleum products and other deleterious wastes into the sewage and storm water drainage systems serving the airport. Discharge of industrial waste and hazardous materials is prohibited. For discharge of anything other than domestic waste, Lessee must obtain permission or permits from Placer County Department of Public Works, or any other governmental unit or agency having jurisdiction over the discharge of wastes other than domestic waste, including, without limitation, hazardous materials. The parties hereto shall be responsible for and pay all utilities separately metered or according to their respective usage. If a common service is utilized, and no means of determining either party's respective usage exists, then equally.

XIV. Maintenance and Repairs

58. Lessee shall be responsible for all maintenance and repairs to the Premises.

a. Lessee accepts the Premises on an "as is" basis. It is the intention of the parties hereto that the Rent for the term of the Lease shall constitute a net return to the City free of any expense, charge or other deduction whatsoever with respect to the Premises or any improvements, fixtures and equipment which may now or hereafter exist thereon. Lessee shall keep Premises and any improvements or equipment thereon in good and sanitary order and repair and in a good, safe and presentable condition consistent with the highest of business practices. If, after 30 days' notice from the City, Lessee fails to maintain or repair any part of the Premises or any improvements or equipment thereon, City may, but shall not be obligated to, enter upon the Premises and perform such maintenance or repair, and Lessee agrees to pay the costs thereof to City upon demand plus a percentage of costs incurred to sufficiently reimburse City for all overhead, fees and other costs and expenses, including attorneys' fees, arising from City's involvement with such repairs, and interest at the legal rate until paid in full.

b. Lessee shall be solely responsible for all actions, costs and expenses incurred to comply with any and all structural requirements, abatement ordinances, zoning requirements, statutes, rules and regulations imposed by any governmental authority with jurisdiction relating to safety or the abatement of hazardous materials found in the Premises or any buildings or facilities constructed thereon, including, without limitation, compliance with requirements, laws or orders for asbestos abatement, lead abatement and seismic retrofit.

c. Lessee shall be solely responsible for compliance with any requirements or obligations imposed or arising from the use of the Premises, or buildings or facilities constructed thereon relating to the Americans with Disabilities Act ("ADA").

d. City shall have no obligation to make any repairs to the Premises other than as expressly and specifically set forth in this Lease. Lessee hereby waives any and all rights provided in Sections 1941 through 1942, inclusive, of the Civil Code of California and hereby waives, to the extent permissible, any rights other than statutes or laws now or hereafter in effect which are contrary to the obligations of Lessee under this Lease, or which place obligations upon City in addition to those provided in this Lease.

XV. Taxes

59. Lessee shall be responsible for and shall promptly pay all property taxes assessed against or otherwise attributable to any assets of Lessee that are attached to the realty herein or used in conjunction therewith. In accordance with California Revenue and Taxation Code Section 107.6(a), City states that entering into this Lease may create a possessory interest subject to property taxes. During the original term and any additional term of this Lease, Lessee or any other party in whom the possessory interest is vested shall pay prior to delinquency any taxes upon the assessed value of the entire Premises, not merely the assessed value of Lessee's estate.

XVI. Lessee Insurance

60. Lessee shall carry and maintain, during the entire term hereof, at Lessee's sole cost and expense, the following types of insurance, in the amounts and with the endorsements as herein specified:

a. General Liability Insurance: Broad form comprehensive general liability insurance with combined single limits of not less than $1,000,000 insuring against any and all liability of Lessee with respect to the Premises, or grounds, or arising out of the maintenance, use or occupancy thereof, naming Lessor as an additional insured, and providing 10 days written notice to Lessor of any cancellation or change in coverage protection.

b. Fire Insurance (Contents): Fire insurance with all risk type standard form extended coverage endorsement, for the full insurable value of Lessee's fixtures, which may from time to time be located within the hangar or upon the Premises, and the fixtures of others which are in Lessee's possession and which are located within the hangar or upon the Premises. The proceeds from any such policy shall be used for the repair or replacement of such fixtures. Lessor shall have no interest in the insurance on Lessee's or others' aircraft fixtures, equipment and merchandise and will sign all documents necessary or proper in connection with the settlement of any claims or loss by Lessee or others. Lessee shall be solely liable for its airplanes, fixtures equipment and merchandise and all of the contents located within the hangar or upon the Premises, and further understands and agrees that Lessor will not carry personal property insurance to cover same.

c. Fire Insurance (Structures): Fire insurance with all risk type standard form extended coverage endorsement, for the full insurable value of Lessee's hangar and all other related improvements located on the Premises, including vandalism and malicious mischief endorsements. The proceeds

from any such policy shall be used by Lessee for the repair and replacement of the Premises. Lessee shall cooperate with Lessor to maximum extent possible to assure said proceeds are so utilized.

61. In relation to the foregoing insurance, Lessee shall furnish proper endorsements thereto (i) evidencing the aforesaid coverages, (ii) naming the Lessor as an additional insured, and (iii) providing for thirty (30) days written notice to Lessor of any termination or change in coverage protection, or reduction in coverage limits (except ten (10) days notice shall be required for non-payment of premium).

62. At all times, Lessee shall keep and maintain in full force and effect, throughout the Term of this Lease, policies of insurance required by this Lease, which policies shall be issued by companies with a Best's Rating of A: VII or higher, or shall be issued by companies approved by the City Risk Manager.

63. Provided however, that said insurance may be subject to standard policy exclusions, which exclusions shall be approved by Lessor, and provided further, that said exclusions shall not serve to reduce or otherwise limit the liability of Lessee as set forth herein. Said insurance shall be primary and not abated by any coverage maintained by Lessor.

64. Lessee's obligation to insure under the foregoing provisions, paragraphs 60 through 63, may be provided by appropriate amendment, rider, or endorsement on any blanket policy or policies carried by Lessee.

65. Lessee shall be solely liable for any loss to its aircraft, fixtures and equipment occasioned by any occurrence not the sole negligence of the Lessor, its officers, agents and employees.

66. Failure by Lessee to provide and maintain the insurance policies (including Best's ratings) required by this Lease shall constitute, and for all purposes be, a default hereunder and a material breach hereof, and shall be cause for termination of this lease and forfeiture of all right, title and interest hereunder or otherwise, if not cured within thirty (30) days of written notice thereof to Lessee.

XVII. Lessor Insurance

67. Lessor shall carry and maintain, during the term hereof, at Lessor's sole cost and expense, broad form comprehensive general liability insurance with combined single limits of not less than One Million Dollars ($1,000,000), insuring against any and all liability of Lessor with respect to the Premises or arising out of the use and enjoyment thereof, and upon request shall furnish to Lessee an endorsement evidencing the aforesaid coverage.

68. Lessor shall be solely liable for any loss to its fixtures and equipment occasioned by any occurrence not the sole negligence of Lessee, its officers, agents and employees.

69. Lessor, at its option, may provide the required limits of liability insurance under a program of self insurance with excess insurance through the County Supervisors Association of California Excess Insurance Authority (CSAC-EIA).

XVIII. Indemnity

70. Nothing herein shall be construed as a limitation of Lessee's liability, and Lessee shall indemnify, defend and hold Lessor harmless from any and all liabilities, claims, demands, damages, losses and expense which Lessor may incur by reason of the willful misconduct, or negligent actions or omissions of Lessee, or the agents, servants, and employees of Lessee, or which may arise out of the use, occupation, and enjoyment of the Premises by Lessee or the agents, servants, and employees of Lessee, or by any person or entity holding under Lessee, or by any of Lessee's invitees or agents.

71. Nothing herein shall be construed as a limitation of Lessor's liability, and Lessor shall indemnify, defend and hold Lessee harmless from any and all liabilities, claims, demands, damages, losses and expense which Lessee may incur by reason of the willful misconduct, or negligent actions or omissions of Lessor, or the agents, servants, and employees of Lessor, or which may arise out of the use, occupation, and enjoyment of the Premises by Lessor or the agents, servants, and employees of Lessor, or by any person or entity holding under Lessor, or by any of Lessor's invitees or agents.

XIX. Default

72. The parties hereto agree that the unlawful detainer provisions of the California Civil Code and the California Code of Procedure apply. The occurrence of any one or more of the following events is a default hereunder and constitutes a material breach of this Lease by Lessee:

a. The abandonment of the Lease by Lessee.

b. The failure by Lessee to make any payment of the Annual Rent required to be made by Lessee hereunder, as and when due, where the failure continues for a period of thirty (30) days after notice thereof from Lessor to Lessee.

c. The failure by Lessee to promptly commence within 360 days after the Commencement Date and diligently pursue to completion the construction

of the aforesaid Hangars, and cause to be filed a notice of completion prior to the first anniversary of the Commencement Date.

d. The failure by Lessee to carry and maintain, or to require each Hangar Sub-Lessee to carry and maintain, any policy of insurance as required hereunder.

e. The failure by Lessee to make any other payment as required hereunder, as and when due, where the failure continues for a period of thirty (30) days after notice thereof from Lessor to Lessee.

f. The failure by Lessee to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by Lessee, where the failure continues for a period of thirty (30) days after written notice thereof from Lessor to Lessee; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commences such cure within the thirty (30) day period and thereafter diligently completes the cure.

g. The failure by Lessee to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by Lessee, where such failure may not be cured.

73. In the event of any such default or other material breach of this Lease by Lessee, Lessor may, after giving notice as provided above, or if not provided, as required by law, pursue those remedies set forth in Civil Codes Sections 1951.2 and/or 1951.4, and by this reference is made a part of this Lease.

74. Lessor shall not be in default unless Lessor fails to perform obligations required of it within a reasonable time, but in no event later than thirty (30) days after written notice of the nature of the problem and request to cure by Lessee to Lessor; provided that if the nature of Lessor's obligation is such that more than thirty (30) days are reasonably required for performance, then Lessor shall not be in default if Lessor commences performance within thirty (30) days and thereafter diligently completes performance.

75. In addition and without limitation of any other remedy, in the event of any such default or other material breach of this Lease by Lessee or by Sub-Lessee, and after giving notice as provided above, or if not provided, as required by law, Lessor may declare such default or other material breach of this Lease to be a nuisance, and may give notice of the imposition of liquidated damages of One Hundred dollars per day ($100.00 / day).

76. If Lessor defaults in the performance of any of the obligations or conditions required to be performed by Lessor under this Lease, Lessee may in no event withhold payment of the Annual Rent, or apply said Annual rent to cure the alleged default.

77. Lessor's waiver of a default shall not be deemed a waiver of any term, condition or covenant hereunder, and shall not be deemed a waiver of Lessor's right to enforce any remedy upon any future default.

XX. Termination of Lease

78. If this Lease shall terminate for any reason, or otherwise expire, then in that event, Lessor shall not be obligated to return, reimburse, compensate or pay to Lessee for the cost or value of the Hangars or any portion thereof, for the cost or value of any improvements whatsoever, or for the costs and expenses attendant to the obligations assumed by Lessee hereunder, or otherwise.

79. If this Lease shall terminate for any reason, or otherwise expire, then in that event, and upon written request by Lessor, Lessee shall promptly deliver to Lessor a quit claim deed or such other instrument of transfer which shall be duly and properly executed and acknowledged, re-conveying to Lessor all of Lessee's right, title and interest in and to the Premises.

During the term of this Lease, title to any and all improvements placed on the Premises by Lessee shall be vested in Lessee. At the end of the Lease term, title to all such improvements shall revert to the City. The improvements shall be transferred to the City in good merchantable condition, including all fixtures, reasonable wear and tear excepted; provided that Lessee shall be under no obligation to retrofit the improvements to comply with building code standards effective as of the termination of this Lease. Lessee shall be responsible for any and all costs, expenses and compliance activities relating to the improvements which will revert to City concerning the removal, amelioration and/or remediation of any and all contamination, toxic substances, or hazardous materials which have been deposited upon the Premises as a result of Lessee's activities on or in relation to the Premises. If City discovers, after title has been transferred to it pursuant to this reversion provision, that Lessee has failed to comply with the requirements set forth in the foregoing two sentences, Lessee shall indemnify and hold harmless City of and from all costs, expenses, damages, losses and claims, including reasonable attorneys' fees, arising from or related to compliance with such provisions by the City. As used in this paragraph, "contamination, toxic substances, or hazardous materials" do not include building materials that were code compliant at the time of installation.

XXI. Notices

80. All acceptances, approvals, consents, notices, demands or other communications required or permitted to be given or sent by either party to the other shall be deemed to have been fully given when made in writing and delivered in person or deposited in the United States mail, certified and postage prepaid, addressed to:

Lessee	**City / Lessor**
Shawn A. Bickford and Donald D. Wolfe 615 Conifer Lane Auburn, CA 95602	City of Auburn Office of the City Manager 1225 Lincoln Way Auburn, CA 95603

81. The address to which any such written communication may be given or sent to either party may be changed by written notice given by such party as above provided.

XXII. Miscellaneous

82. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof. This Lease shall be governed by the laws of the State of California. Venue for purposes of litigation shall be in the City of Auburn. The language in all parts of this Lease shall be construed as a whole according to the fair meaning, and not strictly for or against either Lessor or Lessee.

83. All preliminary and contemporaneous agreements and understandings are merged and incorporated into this Lease that contains the entire agreement between the parties. This Lease may not be modified or amended in any manner except by an instrument in writing executed by the parties hereto.

84. Should Lessor at any time during the term of this Lease or any extension hereof, decide to sell all or any part of the Property to a purchaser other than Lessee, such sale shall be under and subject to this Lease and Lessee's rights hereunder, and any sale by Lessor of the portion of the subject property underlying any right-of-way herein granted shall be under and subject to the right of Lessee in and to such right-of-way.

85. Lessor warrants there are no liens, judgments or impediments of title on the subject property or affecting Lessee's interest in same, and there are no covenants, easements or restrictions that prevent the use of the Premises as contemplated herein by Lessee.

86. This Lease does not create a relationship of principal and agent, or partnership, or joint venture, or any association other than that of Lessor and Lessee.

87. This Lease shall extend to and bind the parties hereto, their representatives, successors and assigns.

88. If more than one person executes this Lease as Lessee, each shall be jointly and severally liable to the City for the faithful performance of this Lease.

89. The parties hereto have specifically bargained for the timely performance of each and every obligation hereunder to be performed. Accordingly, time is of the essence in this agreement.

XXIII. Warranty

90. Each individual executing this Lease on behalf of each respective principal represents and warrants that he or she is duly authorized to execute this Lease on behalf of said principal in accordance with the bylaws, articles, resolutions and ordinances as shall apply, and that this Lease is binding upon each such principal.

XXIV. Mediation / Arbitration

91. All claims, disputes and controversies arising out of or in relation to the performance, interpretation, application or enforcement of this Lease, including, but not limited to, breach thereof ("**Mediation/Arbitration Dispute**"), except (a) the payment of rent, which Lessee acknowledges is an independent covenant not subject to offset or deduction, (b) the matters described in Article VI (regarding the determination of fair market rental value), and (c) the matters described in Section 91.B (4) (regarding a party's right to file with a court for relief as described therein), shall be decided under this Article XXIV pursuant to mediation, and if necessary, arbitration. If Lessee defaults in the payment of rent, this Article XXIV shall not apply and Lessor may pursue any and all legal and equitable remedies provided by law, including, without limitation, an unlawful detainer action, writ of possession, and a money judgment for unpaid rent.

A. Mediation.

(1) Any Mediation/Arbitration Dispute shall be referred to mediation before, and as a condition precedent to, the initiation of any arbitration proceeding.

(2) The parties shall submit any Mediation/Arbitration Dispute to an impartial neutral mediator selected by mutual consent of the parties. In the event the parties cannot agree on the selection of a mediator, the Mediation/Arbitration Dispute shall be referred to JAMS, a professional mediation service. The parties

shall equally bear the cost of mediation fees, subject only to the exception set forth in the next paragraph.

(3) If during the mediation a party ("**offering party**") makes a written offer of compromise to another party which is not accepted by such party ("**refusing party**") and the refusing party fails to obtain a more favorable result through arbitration, the refusing party shall pay the offering party all costs and expenses, including reasonable attorney fees and the cost of the mediator and arbitrator, incurred from the time the offer is refused.

B. Arbitration.

(1) A Mediation/Arbitration Dispute which is not resolved through mediation, as set forth above, shall be decided by neutral, binding arbitration and not by administrative proceeding or court action, except as provided by California law for judicial review of arbitration proceedings. The arbitration shall be conducted in accordance with the rules governing the conduct of arbitration proceedings set forth in the California Code of Civil Procedure and the California Rules of Court. The parties may agree in writing to use different rules. The parties shall have the right to discovery in accordance with the provisions of the California Code of Civil Procedure. Judgment on any award of the arbitrator may be confirmed and entered by the court as provided for by California law.

(2) An arbitrator may be selected by mutual consent of the parties. If the parties cannot agree on selection of an arbitrator within 15 days from the date either party first requests arbitration, an arbitrator familiar with handling similar disputes shall be appointed by JAMS. The cost of the arbitrator, arbitration costs and attorney fees shall be borne by the parties as may be determined by the arbitrator.

(3) Any demand for arbitration must be made in writing to the other party. No demand for arbitration may be made after the date on which the institution of legal proceedings based on the claim is barred by the applicable statute of limitations.

(4) The parties shall each have the right to file with a court of competent jurisdiction an application for temporary or preliminary injunctive relief, writ of attachment, writ of possession, temporary protective order, or appointment of a receiver if the arbitration award to which the applicant may be entitled may be rendered ineffectual in the absence of such relief or if there is no other adequate remedy. This application shall not waive a party's arbitration rights under this Lease.

(5) The arbitrator shall have the power to grant legal and equitable remedies, and award damages, that may be granted or awarded by a judge of the Superior Court of the State of California or the Federal District Court of the Eastern District of California. The arbitrator shall prepare and provide to the parties a written decision on all matters subject to the arbitration, including factual findings and the reasons that form the basis of the arbitrator's decision. The arbitrator shall not have the power to commit errors of law or legal reasoning and the award of the arbitrator shall be vacated or corrected for any such error or any other grounds specified in Code of Civil Procedure Section 1286.2 or Section 1286.6. The award of the arbitrator shall be mailed to the parties no later than 30 days after the close of the arbitration hearing. The provisions of the California Evidence Code shall apply to the arbitration hearing. The arbitration proceedings may be recorded by a certified shorthand court reporter. The party requesting a reporter shall pay for the reporter and if both sides request a reporter, the cost of the reporter shall be divided equally. Written transcripts of the proceedings may be prepared at the request of a party. A party requesting a transcript shall pay for the cost thereof.

(signature page follows)

IN WITNESS WHEREOF, the parties have executed this Lease effective upon the complete execution hereof by the parties hereto.

"CITY" or "LESSOR"

CITY OF AUBURN, CALIFORNIA, a Municipal Corporation

By: _____
Robert Richardson
City Manager

"LESSEE"

Shawn A. Bickford and Donald D. Wolfe

_____

Name: Shawn A. Bickford

_____

Name: Donald D. Wolfe

APPROVED AS TO FORM:

_____
Michael Colantuono, City Attorney

Michael Allderdice
Acting City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF THE PREMISES

EXHIBIT "A"

CITY OF AUBURN AIRPORT
HANGAR CHARLIE LEASE

Being a portion of the northwest quarter of the northwest quarter of Section 27, T. 13 N., R. 8 E., M.D.M., and also being a portion of that certain Tract of Land recorded by Deed in Book 496, at Page 279, Official Records of Placer County, and also being a portion of the Auburn Airport as shown on that certain Record of Survey No. 1847, and recorded in Book 14 of Surveys, at Page 66, Official Records of Placer County, more particularly described as follows:

Beginning at a point from which the northwest corner of Parcel 1 as designated in Book 25 of Parcel Maps, Page 124, Official Records of Placer County, bears the following two (2) courses: 1) South 36° 45' 40" West for a distance of 469.02 feet to a point on the South Line NW ¼ NW ¼ Section 27, T. 13 N., R. 8 E., N.D.M.; 2) along said South Line, South 88° 18' 54" West for a distance of 1123.45 feet. Thence from the point of beginning the following five (5) courses: 1) North 36° 45' 40" East for a distance of 13.13 feet; 2) North 06° 12' 04" West for a distance of 83.39 feet; 3) South 83° 47' 56" West for a distance of 52.00 feet; 4) South 06° 12' 04" East for a distance of 93.00 feet; 5) North 83° 47' 56" East for a distance of 43.05 feet to the point of beginning.

APN: 052-190-045
Contains 4,793 sq. ft.

End of Description

The Basis of Bearings for the above Legal Description is identical to the West line of Parcel 1 as shown on Parcel Map No. P-75040 recorded in Book 25 of Parcel Maps, at Page 124, Official Records of Placer County, which bears South 00° 19' 31" East.

See Exhibit "B", plat to accompany description, attached hereto and made a part hereof.

REGISTERED PROFESSIONAL ENGINEER
GEORGE H. ATTERBERRY
No. 31419
LICENSE EXPIRATION ON 12/31/12
CIVIL
STATE OF CALIFORNIA

\\ROBBINS\Projects\08031\easements\foxtrot-exhibit-a.doc

EXHIBIT B

MAP

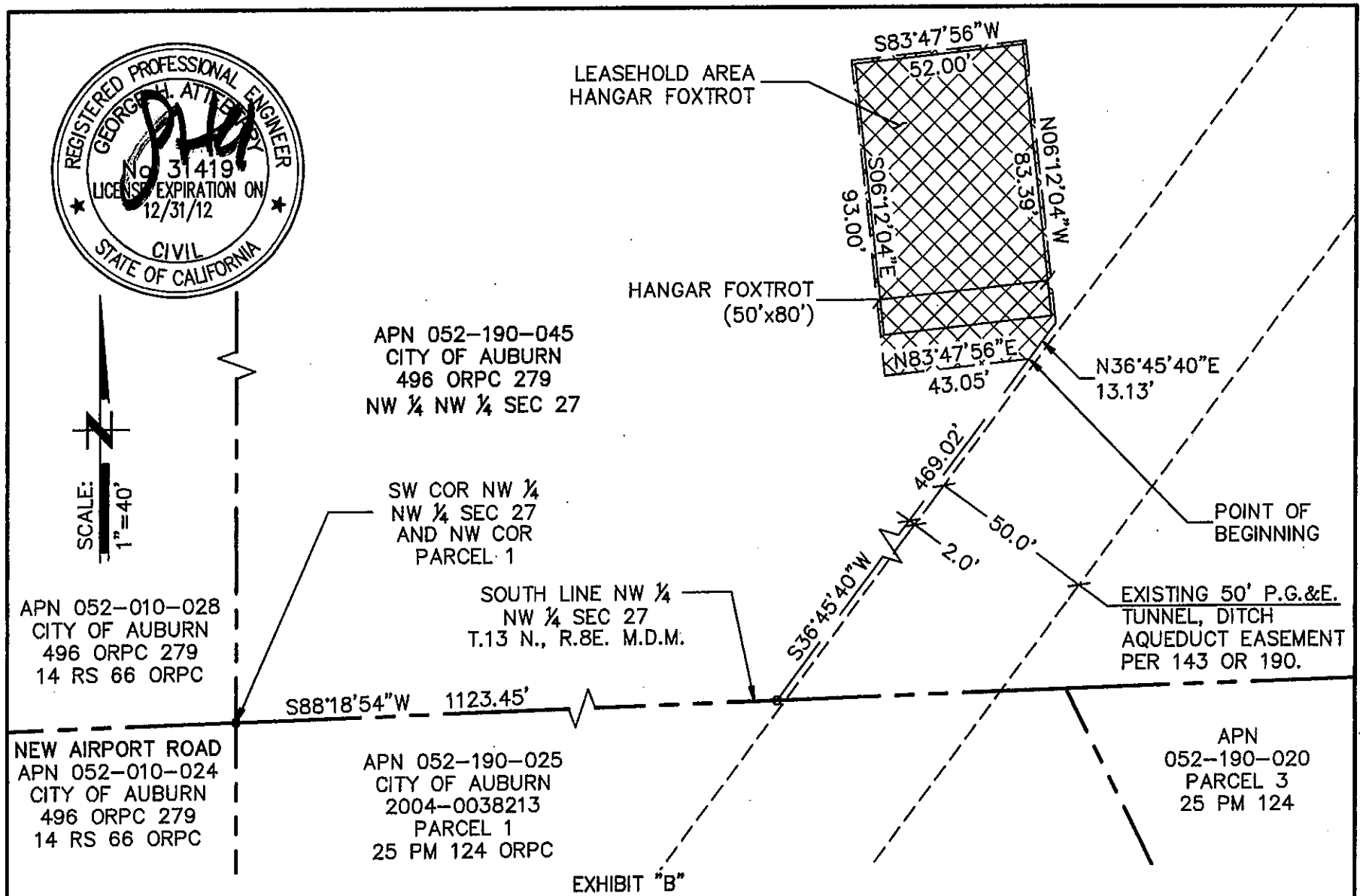

EXHIBIT "B"

CITY OF AUBURN AIRPORT
HANGAR FOXTROT LEASE

A PORTION OF PARCEL B, 11 P.M. 12, O.R.P.C.
BEING A PORTION OF THE NW ¼ NW ¼ SECTION 27,
T. 13 N., R. 8 E., M.D.M.

A.R. ASSOCIATES
P.O. BOX 5396, AUBURN, CA
95604-5396 (530) 888-1288

EXHIBIT C

FAA REQUIREMENTS

A. Lessee, for itself, its 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 program or activity is extended or for another purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to (i) Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, or as said Regulations may be amended; (ii) Title 14, Code of Federal Regulations, Part 152, Subpart E, or as said Regulations may be amended; (iii) Part 77 of the Federal Aviation Regulations, or as said Regulations may be amended; and (iv) any and all federal laws, rules or regulations relating to the operations of Lessee on the Premises.

B. Lessee, for itself, its 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: (i) that 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; (ii) 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 subject to discrimination; and (iii) that Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

C. That in the event of breach of any of the above nondiscrimination covenants, City shall have the right to terminate the Lease and to reenter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued. This provision does not become effective until the procedures of Title 49, Code of Federal Regulations, Part 21, are followed and completed, including expiration of appeal rights.

D. Lessee shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided, that Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar

type of price reductions to volume purchasers.

E. Noncompliance with paragraph D. above shall constitute a material breach thereof and, in the event of such noncompliance, City shall have the right to terminate this Lease and the estate hereby created without liability therefor or at the election of City or the United States either or both said Governments shall have the right to judicially enforce provisions.

F. Lessee agrees that it shall insert paragraphs A through E in any lease agreement 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.

G. Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Premises.

H. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. Section 1349a).

I. This Lease and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said Airport or the exclusive or nonexclusive use of the Airport by the United States of America during the time of war or national emergency.

J. The Lessee, in the operations and use of the Auburn Municipal Airport, will not on the grounds of race, color or national origin discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 15 of the Federal Regulations. The City of Auburn is granted the right to take such action as the United States government may direct to enforce such covenant.

EXHIBIT C

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