

Item # 60

**City of Carson City  
Agenda Report**

**Date Submitted:** 11/21/2008

**Agenda Date Requested:** 12/4/2008

**Time Requested:** 10 minutes

**To:** Mayor and Board of Supervisors

**From:** Carson City Airport Authority

**Subject Title:** Action to approve amendment to Airport lease between the Carson City Airport Authority and Airport Structures, LLC along with a Consent to Deed of Trust and Security Agreement and Fixture Filing with Assignment of Rents

**Staff Summary:** This is the first time that an airport tenant has asked to hypothecate an airport lease for the purpose of financing construction on the leasehold. The request also includes an extension of the underlying lease for an additional 4 years to achieve a full 50 year term on the lease. The Carson City Airport Authority considered the request at several meetings culminating in reaching an agreement with Airport Structures LLC at the Airport Authority meeting held on September 17, 2008, and approving it as set forth in the Consent document.

**Type of Action Requested:** (check one)  
 Resolution                       Ordinance  
 Formal Action/Motion               Other (Specify)

**Does This Action Require A Business Impact Statement:**       Yes  No

**Airport Authority Action:** Approved and adopted by the Airport Authority on September 17, 2008.

**Recommended Board Action:** I move to approve the Amendment to the lease between Airport Structures, LLC and the Carson City Airport Authority and the Consent to Deed of Trust and Security Agreement and Fixture Filing with Assignment of Rents; based on the findings contained in the Airport Authority action.

**Explanation for Recommended Board Action:**

The lease amendment extends the lease by 4 years in return for an upfront payment of \$7,471.00, and thus better allows the tenant to fully amortize the investment of hangars he is constructing on the property.

The Consent to Deed of Trust is the first time the Airport Authority has been approached by a tenant with a request to hypothecate their lease to secure construction financing. In this case, it is Airport Structures LLC (Perry DiLoreto) and Nevada State Bank. The Authority has approached this matter with some caution. I had summarized the document as follows for the Authority:

1. That the Authority consents to a loan secured by the airport lease; that Nevada State Bank qualifies as an FBO; that we will recognize a foreclosure sale and the purchaser as the new FBO provided the Authority has approved the purchaser as fit and proper to act as FBO and financially capable to act as FBO.

2. That the Authority will give notice to Nevada State Bank at the same time as Tenant of any default.
3. That Nevada State Bank can perform or cure defaults by Tenant, eg. pay the rent
4. That the lease requires completion of construction by July 30, 2009 and that if the Tenant defaults, the Authority may terminate the lease and take the improvements.
5. Nevada State Bank does not become liable for performance under the lease unless Nevada State Bank takes possession of the property.
6. If Nevada State Bank steps in and cures defaults, then the Authority will assign the lease to Nevada State Bank.
7. That the lease is currently in good standing.

The Authority required additional insurance assurances in Exhibit 1 to the Consent document. In addition, Mr. DiLoreto has personally guaranteed the bank loan.

Carson City is the underlying landowner. As a result, approval by Carson City is needed to effectuate the hypothecation. I was unable to find other examples where the City has done so, but the Airport Authority concluded that they were satisfied that the risk is contained and thus approved it.

**Applicable Statue, Code, Policy, Rule or Regulation:** Statutes of Nevada, Chapter 844.

**Fiscal Impact:** No City impact. Revenue to Airport Authority.

**Explanation of Impact:** Not Applicable.

**Funding Source:** Not Applicable


**Alternatives:** Not Applicable

**Supporting Material:** Amend to Airport lease. Consent to Deed of Trust and Security Agreement and Fixture Filing with Assignment of Rents

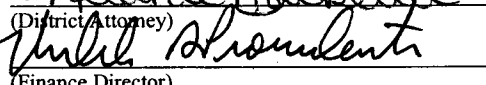
**Prepared By:** Steven E. Tackes, Esq., Airport Counsel

**Reviewed By:**

  
(Department Head)

  
(City Manager)

  
(District Attorney)

  
(Finance Director)

Date: 11-24-2008

Date: 11-24-08

Date: 11-24-08

Date: 11-24-08

**Board Action Taken:**

Motion: _____	1) _____	Aye/Nay
	2) _____	_____
		_____
		_____
		_____
		_____

\_\_\_\_\_  
(Vote Recorded By)

APN No. 008-133-75

**RECORDING REQUESTED BY, AND  
WHEN RECORDED MAIL TO:**

Nevada State Bank  
750 E. Warm Springs Road  
Fourth Floor  
Las Vegas, Nevada 89119

The undersigned hereby affirms that this document, including any exhibits, submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030)

**CONSENT TO DEED OF TRUST AND SECURITY AGREEMENT AND FIXTURE  
FILING WITH ASSIGNMENT OF RENTS**

**THIS CONSENT TO DEED OF TRUST AND SECURITY AGREEMENT AND  
FIXTURE FILING WITH ASSIGNMENT OF RENTS** (this "Consent") is entered into as of the 17th day of September, 2008, by and among **CARSON CITY AIRPORT AUTHORITY** (the "Landlord"), **AIRPORT STRUCTURES, LLC**, a Nevada limited liability company (the "Tenant"), and **NEVADA STATE BANK** (the "Lender").

**WITNESSETH:**

**WHEREAS**, Landlord is the owner of a certain real property located in Carson City County, Nevada, commonly known as Assessor's Parcel No. 008-133-75, and described in **Exhibit "A"** attached hereto (the "Premises");

**WHEREAS**, Landlord and Patrick Dang Enterprises, LLC, a Nevada limited liability company (the "Original Tenant"), are parties to that Carson City Airport Lease Agreement dated May 21, 2004, which was recorded on June 23, 2004, as Document No. 320769, official Records of Carson City County, Nevada (which, as amended, modified, altered, supplemented, recorded, re-recorded, conveyed, transferred, and assigned from time to time, in whole or in part, is hereinafter referred to as the "Lease"), which Lease demises the Premises;

**WHEREAS**, Tenant has acquired all of Original Tenant's rights, title and interest under the Lease as evidenced by an assignment recorded February 12, 2008, as Document No. 376413, Official Records, Carson City County, Nevada;

**WHEREAS**, Tenant intends to borrow up to \$3,600,000.00 (the "Loan") from Lender to assist the Tenant in constructing certain improvements on the Premises;

**WHEREAS**, in order to secure payment of the Loan and other obligations of the Tenant to Lender, Lender has required that Tenant execute and deliver to Lender a deed of trust and security agreement and fixture filing with assignment of rents of even date herewith encumbering Tenant's leasehold interest in the Premises; and

**WHEREAS**, the terms of the Lease require the approval of Landlord prior to the execution of documents which assign, pledge, or hypothecate the Lease, and Landlord has agreed to grant such consent, so long as the following requirements are met and said deed does not conflict with the terms of this Consent.

**NOW, THEREFORE**, for and in consideration of the foregoing Recitals, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this Consent hereby agree as follows:

1. Pursuant to Section 9 of the Lease, Landlord hereby consents to the execution and delivery of the Deed of Trust by Tenant to Lender, and Landlord hereby approves Lender as fit and proper to hold the Lease and financially capable of performing thereunder. Landlord agrees that upon completion of any foreclosure proceedings or sale under the deed of trust or other security securing the loan, the lender or purchaser at such sale will be recognized by Landlord as the lessee under the terms of this Agreement for all purposes (provided Landlord has consented to the list of potential transferees, or any purchaser, heir, successor or assign of lender, as fit and proper to hold the Agreement and financially capable of performing thereunder, which consent will not be unreasonably withheld).
2. Landlord shall give to Lender, simultaneously with service on Tenant, any notices of default or demands for cure made by Landlord on Tenant. No such notice to Tenant shall be effective upon Lender unless a copy is so served upon Lender. For purposes of this Section 2, notices to Lender shall be sent to: Nevada State Bank, 750 E. Warm Springs Road, Fourth Floor, Las Vegas, Nevada 89119, Attn: Greg Barrington until such time as Lender shall give written notice to Landlord of a different notice address for purposes of this Section 2.
3. Provision of notice to Lender shall not excuse Tenant from performance under the Lease. However, Lender shall have the right to perform, in accordance with the terms and provisions of the Lease, any of Tenant's covenants, curing any defaults by Tenant, and exercising any election, option or privilege conferred upon Tenant by the terms of this Lease and Landlord shall accept such performance as if performed by Tenant.
4. Lender acknowledges that the Lease requires construction of hangars on the premises and that Tenant has agreed to complete such construction no later than July 30, 2009. Lender agrees to monitor such construction and acknowledges that this Consent does not require the Landlord to grant any further extensions of time. In the event that Tenant defaults on its construction completion or abandons construction during the term of the loan, Lender may complete such construction. If Lender does not complete such construction, then Landlord shall have the following remedies, separate from any remedies that Lender has with Tenant:
  - a. Landlord may, after providing due notice to Tenant and Lender, terminate the Lease and take possession and ownership of the Lease and all improvements thereon.
5. No liability for the payment of rent or any other payments due Landlord by the terms of the Lease or the performance of any of Tenant's covenants and obligations of the Lease

shall attach to or be imposed upon Lender until such time as Lender is in possession of the Property. This provision does not permit Lender to maintain its right to assignment if the rent is unpaid. In the event that rent is unpaid, Landlord shall be permitted to proceed with termination of the lease, except that no such termination shall be permitted unless Lender is provided with notice of termination and an opportunity to cure the lease payment obligation as would be provided to Tenant under the Lease.

6. If Tenant is in default under the Lease and Lender obtains title to Tenant's interest in the Premises by foreclosure or otherwise, upon payment to Landlord of all rent and other monies due and payable by Tenant under the Lease, and the curing of all defaults under the Lease that are within Lender's power to cure, and the performance of all of the covenants and provisions under the Lease that are within Lender's power to perform, the Lease shall be assigned to Lender and Lender shall be entitled to all of the rights and subject to all of the obligations of Tenant under the Lease.

7. Landlord hereby certifies and confirms to Lender that, as of the date of this Consent: (a) the Lease is in full force and effect, (b) no default exists on the part of Landlord or Tenant under the Lease, and (c) no event or circumstance exists which, but for the giving of notice or passage of time or both would constitute a default under the Lease.

8. Tenant has agreed to maintain insurance as set forth in Exhibit 1.

9. This Consent may be executed in any number of counterparts, each of which shall be an original and all of which when taken together shall be deemed one and the same document.

10. This Consent shall not be changed or modified except by a written instrument executed by all parties hereto.

**IN WITNESS WHEREOF**, the parties hereto have caused this Consent to be duly executed as of the day and year first above written.

**CARSON CITY AIRPORT AUTHORITY**

By:   
Its: Chairman  
"Landlord"

**AIRPORT STRUCTURES, LLC, a  
Nevada limited liability company**

By:   
**PERRY M. DILORETO**  
Manager

"Tenant"

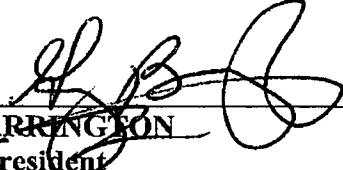
NEVADA STATE BANK

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

GREG BARRINGTON

*Senior*  
Its: Vice President

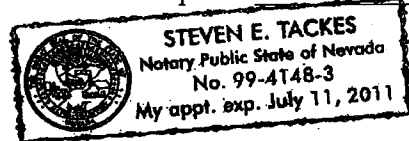
"Lender"

A handwritten signature in black ink, appearing to read 'G. Barrington', is written over a horizontal line. The signature is stylized and cursive.

STATE OF NEVADA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on November 19, 2008, by STEVE LEWIS, as CHAIRMAN of Carson City Airport Authority.

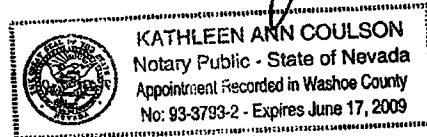
[Signature]  
Notary Public  
My Commission Expires: 7-11-2011



STATE OF NEVADA )  
 ) ss.  
COUNTY OF Washoe )

This instrument was acknowledged before me on October 30, 2008, by Perry M. Diloreto, as Manager of Airport Structures, LLC.

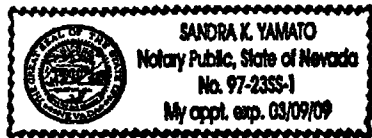
[Signature]  
Notary Public  
My Commission Expires: June 17, 2009



STATE OF NEVADA )  
 ) ss.  
COUNTY OF CLARK )

This instrument was acknowledged before me on 11-13-, 2008, by Greg Barrington, as Vice President of Nevada State Bank

[Signature]  
Notary Public  
My Commission Expires: \_\_\_\_\_



CARSON CITY

Approved by the Board of Supervisors this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
MARV TEXEIRA, Mayor

ATTEST:

CITY'S LEGAL COUNSEL  
Approved as to form.

\_\_\_\_\_  
ALAN GLOVER, Clerk/Recorder

\_\_\_\_\_  
DISTRICT ATTORNEY

AIRPORT AUTHORITY COUNSEL  
Approved as to form

  
\_\_\_\_\_  
STEVEN E. TACKES, ESQ.



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PREMISES**

All that certain real property situate in the County of Carson City, State of Nevada, described as follows:

All that portion of land as shown on the exhibit for the Carson City Airport, more particularly described as follows:

Beginning at the North Section Corner common to Sections 4 and 3, Township 15 North, Range 20 East, MDBM, thence S 20° 16' 19" W a distance of 1,107.22-feet to a rebar with a cap inscribed with PLS 6304; thence N 01° 00' 00" E a distance of 240.00-feet to the northeast corner of the parcel and the True Point of Beginning, thence S 01° 00' 00" W a distance of 147.70-feet to the southeast corner of the parcel, thence S 63° 40' 38" W a distance of 604.51-feet to the southwest corner of the parcel, thence N 26° 19' 22" W a distance of 175.00-feet to the northwest corner of the parcel, thence N 63° 40' 38" E a distance of 587.55-feet to an angle point, thence S 89° 00' 18" E a distance of 95.39-feet to the northeast corner of the parcel and the True Point of Beginning.

NOTE: The legal description contained herein is for the purpose of a Leasehold interest only and should not be used for any other purpose, which pursuant to NRS Statutes, could be a violation of the Subdivision Map Act.

NOTE: The above metes and bounds description appeared previously in that certain Amendment to Carson City Airport Lease Agreement recorded in the office of the County Recorder of Carson City County, Nevada on October 19, 2007, as Document No. 360014 of Official Records.

## Exhibit 1

### INSURANCE

Tenant will ensure that all insurance as required herein is provided and maintained by the Tenant for the protection of the Carson City Airport Authority and Carson City so as to protect the parties. As used in this Section, any reference to Tenant shall be deemed to include Tenant and its contractors (if different from Tenant), subcontractors, or other parties involved in the development of the Premises, whenever applicable.

1.01 **Bonds for Construction/Improvements:** (not required per action of the Airport Authority on September 17, 2008)

1.02 **Insurance Requirements:** Pending completion of construction and certification that no liens are present, the insurance requirements set forth in the Lease (Section 10) shall apply to Tenant's contractors (if different from Tenant), subcontractors, or other parties involved in the development of the Premises, as well as Tenant, pending completion of the construction project.

1.02.1 Tenant shall also obtain **Builder's Risk Insurance** equal to the maximum possible loss covering the project and all materials and equipment (during construction and/or Improvements activities). Coverage will insure any Improvements constructed by it upon and within the Premises to the extent of not less than one hundred percent (100%) of such Improvements full insurable value using the all risk form of protection as acceptable to the Airport Authority. Tenant will be responsible for insuring against any business interruption resulting in loss of income or extra expense to Tenant.

1.02.2 **Automobile Liability Insurance:** Tenant and its contractor will furnish Automobile Liability coverage for claims for damage because of bodily injury or death of any person, or property damage arising out of the ownership, maintenance or use of any motor vehicles whether owned, hired or non-owned. Tenant and its contractor will maintain limits of no less than Five Hundred Thousand (\$500,000) Dollars combined single limit "per accident" for bodily injury and property damage.

1.02.3 Tenant's and its contractor's insurance shall be primary as respects to Airport Authority and Carson City, their officers, employees and volunteers acting as agents of the Airport Authority, hereinafter "volunteers." Any other coverage available to Airport Authority and Carson City, their officers, employees, and volunteers will be in excess over the insurance required by this Consent and shall not contribute with it.

1.02.4 All required insurance coverage as stated in Section 1.02 will be evidenced by a current Certificate(s) of Insurance. All Certificates for each insurance policy are to be signed by a person authorized

by that insurer and licensed by the State of Nevada. Each insurance company's rating as shown in the latest Best's Key Rating Guide will be fully disclosed and entered on the required Certificates of Insurance. If the insurance company providing the coverage has a Best rating of less than A+VIII the adequacy of the insurance supplied by Tenant (or its contractor), including the rating and financial health of each insurance company providing coverage, is subject to the approval by the Airport Authority. Such approval will not be unreasonably withheld. Tenant and its contractor will furnish renewal Certificates, prior to the expiration of the current Certificates of Insurance, for the required insurance during the period of coverage required by this Agreement. Tenant (or its contractor) will furnish renewal Certificates, prior to the expiration of the current Certificates of Insurance, for the same minimum coverages as required in this Agreement. If such certificate(s) are not provided in a timely manner, the Airport Authority may declare the Tenant in default of its obligation under the Lease Agreement, subject to notification requirements therein.

1.02.5

Tenant agrees to cause its insurance company to issue a policy endorsement expressly naming Carson City, Carson City Airport Authority, their officers, employees and volunteers as an additional insured with respect to liability arising out of the activities by or on behalf of the named insured in connection with this Agreement. All property insurance policies will contain a waiver of subrogation clause in favor of Carson City and the Carson City Airport Authority.

1.02.6

Each insurance policy supplied by the Tenant (or its contractor) must be endorsed to provide that the amount of coverage afforded to the Airport Authority and Carson City by the terms of this Agreement will not be suspended, voided, canceled or reduced in coverage or in limits except after thirty (30) days prior written notice by mail. Any deductible, as it relates to coverage provided under this Agreement, will be fully disclosed on the Certificates of Insurance. Any deductible provided will be reasonable and customary for this type of risk. All aggregates must be fully disclosed and the amount entered on the required certificate of insurance. Tenant's insurer must notify the Airport Authority of any erosion of the aggregate limits. The "per occurrence" limits of insurance required herein must be maintained in full, irrespective of any erosion of aggregate. A modification of the aggregation limitation may be permitted if it is deemed necessary and approved by the Airport Authority and Tenant.

1.02.7

The insurance requirements specified herein do not relieve the Tenant of its responsibility or limit the amount of its liability to the County or other persons and the Tenant is encouraged to purchase such additional insurance as it deems necessary.

1.02.8

Tenant is responsible for and must remedy all damage or loss to any property, including property of Airport Authority and Carson City, caused in whole or in part by the Tenant or its contractor, any subcontractor or anyone employed, directed or supervised by the Tenant. Tenant is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with Tenant's construction. The insurance requirements do not relieve Tenant of its obligations under the Lease.

**AMENDMENT TO  
CARSON CITY AIRPORT LEASE AGREEMENT**

This Amendment to lease, made and entered into this 17<sup>th</sup> day of September, 2008, between the CARSON CITY AIRPORT AUTHORITY (Landlord), whose address is 2600 E. Graves Lane #6 Carson City, Nevada 89706, and AIRPORT STRUCTURES, LLC.(Tenant), whose address is 500 Damonte Ranch Pkwy, Suite 703, Reno, NV 89521.

WITNESSETH:

WHEREAS, the Tenant and Landlord are parties to a lease as regards certain ground space for construction of one or more hangars pursuant to the provisions of Title 19 of the Carson City Municipal Code; with the original 50 year lease dated May 21, 2004, recorded as Document #320769; an Amendment dated August 28, 2006, recorded as Document # 360014, and an Assignment to the present Tenant dated January 28, 2008, recorded as Document # 376413; and

WHEREAS, the parties desire to extend such lease to add 4 years to its term;

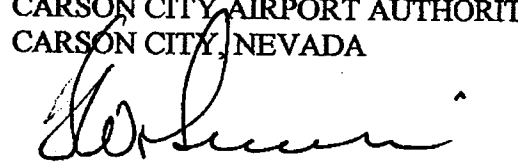
THEREFORE, Landlord and Tenant agree as follows:

1. The Lease is extended by 4 years, which changes the ending date from May 21, 2054 to May 21, 2058.
2. Tenant has paid Landlord an additional \$7,471.00, calculated as the net present value of adding 4 years to the end of the lease, and based on a current appraisal as required by NRS 244.2795.
3. All of the other terms and conditions of the original lease are unchanged.

TENANT  
AIRPORT STRUCTURES, LLC

  
Perry M. DiLoreto, Member/Manager

LANDLORD  
CARSON CITY AIRPORT AUTHORITY  
CARSON CITY, NEVADA

  
Steve Lewis, CHAIRMAN

ATTEST:

  
David McClelland, TREASURER  
Alex Carter



CARSON CITY

Approved by the Board of Supervisors this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
MARV TEIXEIRA, Mayor

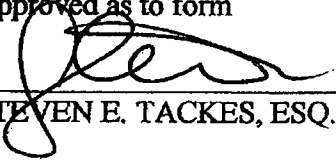
ATTEST:

CITY'S LEGAL COUNSEL  
Approved as to form.

\_\_\_\_\_  
ALAN GLOVER, Clerk/Recorder

\_\_\_\_\_  
DISTRICT ATTORNEY

AIRPORT AUTHORITY COUNSEL  
Approved as to form

  
\_\_\_\_\_  
STEVEN E. TACKES, ESQ.