

**City of Carson City
Agenda Report**

Date Submitted: August 5, 2013
(Agenda signing Aug 6)

Agenda Date Requested: Aug 15, 2013
Time Requested: consent

To: Board of Supervisors
From: Carson City Airport Authority

Subject Title: Action to approve the Agreement for Amendment and Partial Termination of Airport Lease and Assignment of Lease for the lease between Airport Structures LLC and the Carson City Airport Authority reducing the size of the lease originally recorded June 23, 2004 as Document No. 320769, along with subsequent amendments, and assigning the remaining lease to Heritage Hangars Condominium Association, a Nevada domestic non-profit corporation.

Staff Summary: At a regular meeting of the Carson City Airport Authority on May 16, 2013, publicly noticed for that purpose, the Authority approved a reduction in size to this lease and an assignment of the remaining lease area to Heritage Hangars Condominium Association.

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

Does This Action Require A Business Impact Statement: Yes No

Recommended Board Action: (I move that we) approve the Agreement for Amendment and Partial Termination of Airport Lease and Assignment of Lease for the lease between Airport Structures LLC and the Carson City Airport Authority, assigning said reduced size lease to Heritage Hangars Condominium Association, a Nevada domestic non-profit corporation.

Explanation for Recommended Board Action:

Under Nevada Chapter 844, which created the Carson City Airport Authority, lease agreements at the Airport must be approved by the Carson City Board of Supervisors. The Airport Authority approved the Agreement to reduce the size of the lease and then assign it to the Association that represents the owners of the hangars, and now requests Board of Supervisors approval.

In 2004, the Carson City Airport Authority leased a parcel on the Airport to Patrick Dang, a predecessor of Airport Structures LLC, for construction of hangars which were to be built and then sold as condo ownership to various individuals. Several amendments were adopted over the years to accommodate the installation of infrastructure, but after almost 10 years, only 4 hangars were actually built. The original project envisioned 28 hangars. However, the economic downturn of 2006 had a significant effect on general aviation and in particular, in the demand for hangars. As a result, Airport Structures, LLC, has requested approval to forfeit the un-built portion of its lease, and assign the remaining portion to the hangar owners association which governs the 4 hangars that were built.

The Airport Authority found that the infrastructure is situated such that it should accommodate any future project on the leasehold, and therefore represents value to the Airport.

Once demand for hangars returns, the Airport Authority can re-offer the property for competitive bidding, at a price that recognizes the infrastructure (water, electric, gas) is already in place. As a result, the Airport Authority found that it was appropriate to reduce the size of the lease to the area that was built out and transfer the lease to the Heritage Hangars Condominium Association, the entity formed to govern the tenant's obligations under the lease. All lease terms remain in place, albeit the rent is reduced to reflect a smaller number of square feet rented.

As a condition for approval, Airport Structures LLC has recorded an amendment to the CCRs to limit those to the area remaining in the leasehold. That document was recorded on August 1, 2013 as Document No. 436984, at the Carson City Recorder's Office.

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

Fiscal Impact: No City impact.

Explanation of Impact: Not Applicable.

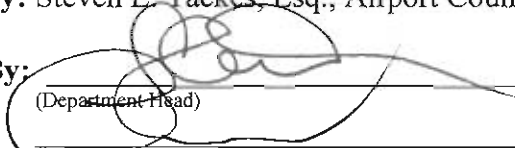
Funding Source: Not Applicable.

Alternatives: Not Applicable

Supporting Material: Agreement/ Assignment

Prepared By: Steven E. Tackes, Esq., Airport Counsel; Tim Rowe, Airport Manager

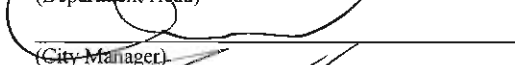
Reviewed By:



(Department Head)

Date:

8/6/2013



(City Manager)

Date:

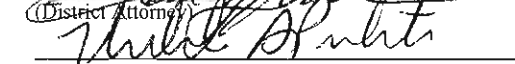
8/6/13



(District Attorney)

Date:

8/6/13



(Finance Director)

Date:

8/6/13

Board Action Taken:

Motion: _____

- 1) _____
- 2) _____

Aye/Nay

(Vote Recorded By)

APN
005-091-01 thru
005-091-17

AGREEMENT FOR AMENDMENT AND
PARTIAL TERMINATION OF AIRPORT LEASE
AND ASSIGNMENT OF LEASE

This Agreement For Amendment and Partial Termination of Airport Lease, and Assignment of Lease is made and entered into this 5th day of AUGUST, 2013, between the CARSON CITY AIRPORT AUTHORITY ("Landlord") whose address is 2600 East Graves Lane, #6, Carson City, NV 89706 and AIRPORT STRUCTURES, LLC, a Nevada limited liability company, whose address is 500 Damonte Ranch Parkway, #703, Reno, NV 89521 ("Airport Structures") and the HERITAGE HANGARS CONDOMINIUM ASSOCIATION, whose address is P.O. Box 70458, ("Association").
RENO, NV 89570

I.
RECITALS:

A. On May 21, 2004, Landlord leased to Patrick Dang Enterprises Limited Liability Company, a Nevada limited liability company, 2.50 acres of land located at the Carson City Airport, identified as Lot 219A, more particularly described on Exhibit A attached to the Lease (the "Premises"), which Lease was recorded June 23, 2004 in the official records of the Carson City Recorder as Document No. 320769 (the "Lease").

B. On January 28, 2008, Landlord approved an assignment of the Lease to Airport Structures, which assignment was recorded February 12, 2008 in the official records of the Carson City Recorder as Document No. 376413 (the "Assignment").

C. On September 17, 2008, Landlord approved an amendment to the Lease requested by Airport Structures, extending the term of the Lease by four (4) years, which amendment changed the ending date from May 21, 2054 to May 21, 2058. Said amendment was recorded December 4, 2008 in the official records of the Carson City Recorder as Document No. 384753 (the "Amendment").

D. After the Assignment and Amendment of the Lease as set forth above, Airport Structures constructed on a portion of the Premises a hangar structure containing four individual condominium hangar spaces.

E. Airport Structures, as part of its development of the hangar project, caused to be created a common interest community within the property as defined in Chapter 116 of the Nevada Revised Statutes for the purpose of selling and conveying individual hangars subject to a Declaration of Covenants and Restrictions for Heritage Hangars Condominium Association, a non-profit timeshare common interest community (the "Association"). Heritage Hangars

Condominium Association was formed by filing its corporate charter with the Nevada Secretary of State on September 9, 2008. The Declaration of Covenants and Restrictions for Heritage Hangars Condominium Association was recorded in the official records of the Carson City Recorder on February 3, 2009 as Document No. 386253.

F. At the time Airport Structures became Lessee of the Premises, it intended to construct buildings containing approximately twenty-four (24) hangar spaces, but because of economic conditions, constructed only one (1) structure containing four (4) hangars and sold those four hangars to individual owners who became, by virtue of said ownership, holders of ownership interests in said hangars and members of the Association.

G. Airport Structures, with the consent of Landlord, wishes to terminate its Lease as to that portion of the Premises which has not been developed and is not necessary for the use of the Heritage Hangars Condominium Association and its members.

H. Landlord and Airport Structures have identified that portion of the Premises with respect to which the Lease is to be terminated, and the remainder is more particularly described on Exhibit "A" attached hereto and incorporated herein by reference.

I. Landlord and Airport Structures, in furtherance of this Agreement, desire that Airport Structures assign the remaining leasehold to the Association which, after said assignment, shall be Landlord's tenant, and Airport Structures shall be relieved of any obligation whatsoever under the Lease.

II. AGREEMENT

A. Consideration.

1. In consideration of the mutual releases, promises and covenants set forth below, the sufficiency of which is mutually acknowledged, Landlord agrees to reduce the area of the leased premises from 2.5 acres of land, identified as Lot 219A to .35 acres (15,575 sq ft) as set forth on Exhibit "A" attached hereto and incorporated herein by reference.

2. In return for the reduction in the size of the area covered by the Lease, Airport Structures shall relinquish any claim to the land relinquished and hold Landlord harmless from any and all legal, equitable, or other claims and counterclaims, whether known or unknown, existing or accruing in the future, which arise out of, or are related in any manner to Airport Structures' leasehold interest, occupancy or use of the area to be excluded from the Lease. Airport Structures warrants the relinquished land is free of all liens and encumbrances.

3. Landlord shall release Airport Structures and its past, present, and future agents, members, managers, representatives, shareholders, principals, direct and indirect owners, including any trusts and such trusts' grantors, trustees, and beneficiaries, investors of any kind, accountants, attorneys, affiliates, parent corporations or entities, subsidiaries, officers, directors, employees, predecessors, and successors, heirs, executors, and assigns, from any and all legal, equitable or other obligations which arise out of or are related in any manner to the Lease by Airport Structures of the relinquished property.

4. Rent under the Lease shall be reduced in proportion to the relationship that the reduced leasehold bears to the original area leased as set forth above. The rent shall be \$239.85/month (\$2,878.20 per year) calculated as \$0.185/sq ft/yr (current effective rate) times 15,575 sq ft.

5. Except as set forth herein, all provisions of the Lease shall remain in effect.

6. Pursuant to Section 9 of the Lease, Airport Structures does hereby assign the lease of the remaining property to Heritage Hangars Condominium Association, a Nevada nonprofit corporation, which is or shall be the single entity responsible to Landlord for fulfillment of Tenant's obligations under the Lease. The initial contact for the Association shall be:

Name	Resource Management and Development
Att:	Karen Woodsley
Address	P.O. Box 70458
	Reno, NV 89570
Phone	(775) 352 7900
Email	

Tenant may change such contact information by written notice to the Airport Manager and the Chairman of the Carson City Airport Authority.

7. Airport Structures shall carry out any actions required under the Declaration of Covenants and Restrictions for Heritage Hangars Condominium Association, the bylaws of Heritage Hangars Condominium Association, or any other governing document of the Association to modify such governing documents to apply only to the reduced leasehold described in this Agreement.

8. Landlord, upon completion by Airport Structures of all of its obligations under this Agreement, including but not limited to the assignment of the Lease to Heritage Hangars Condominium Association, shall release Airport Structures of any legal, equitable or other claims and counterclaims, whether known or unknown, existing or accruing in the future, which arise out of, or are related in any manner to Airport Structures' development, use or occupancy of the entire Premises.

B. Miscellaneous Provisions.

1. **Waiver.** The parties represent and warrant that in the making, negotiation and execution of this Agreement, they are not relying upon any representation, statement or assertion of fact or opinion, outside of this Agreement, made by any agent, attorney, employee or representative of the persons, parties or corporations being released herein, and they hereby waive any right to rely upon all prior agreements and/or oral representations made by any agent, attorney, employee or representative of such persons, parties or corporations even though made for the purpose of inducing it to enter into this Agreement.

2. **Authority to Enter Into Agreement.** Each party represents, covenants and warrants to the other that it has all the necessary and required power and authority to enter into this Agreement, that it is the sole owner of the claims and actions which are settled by this Agreement, that there has been no prior assignment or transfer of those claims and actions, that those claims and actions are not subject to any security interest, lien, or other encumbrance, and that each individual executing this Agreement on behalf of any entity specifically warrants that he or she has the authority to bind that entity by his or her signature.

3. **Advice of Counsel.** The parties acknowledge that this Agreement is an important instrument with serious legal consequences, and respectively represent and warrant that the parties have had full and fair opportunity to consult with legal counsel of their own choosing concerning this instrument, and, having considered such legal advice, voluntarily, knowingly and without reservation, duress, or legal or equitable defense, have executed this Agreement.

4. **Integration.** This Agreement is intended by the parties to be the final expression of their agreement, and constitutes the entire and exclusive understanding and agreement between the parties regarding this subject matter. This Agreement is made for the purpose set forth herein. This Agreement supersedes any previous negotiations, offers, agreements, or representations that may have been communicated or executed by the parties. Any and all such previous offers, agreements, etc. are hereby terminated and canceled in their entirety.

5. **Severability.** In the event that all or any portion of one or more of the provisions of this Agreement shall be found to be invalid, illegal or unenforceable in any respect, that provision or portion shall be severed from this Agreement, and the validity, legality and enforceability of the remaining portion of the provision and all other provisions contained herein shall not in any way be affected or impaired thereby.

6. **Amendments.** Any amendment, modification, or waiver of any provision of this Agreement must be in writing and signed by all parties to be effective.

7. **Governing Law and Venue.** The interpretation and enforcement of this Agreement and the parties' rights hereunder shall be construed in accordance with and governed by Nevada law. Venue for any action, litigation or proceeding arising out of or

concerning this Agreement shall be in the First Judicial District Court for Carson City, Nevada, and the parties expressly waive their right to venue elsewhere.

8. Construction. This Agreement shall not be construed against either party as the drafter hereof, but shall be interpreted reasonably and fairly in accordance with its plain language.

9. Fees for Enforcement of Agreement. If any action shall be brought to recover any amount under this Agreement before or on account of any default or breach of, or to enforce any of the obligations, terms, covenants or conditions of this Agreement, the prevailing party shall be entitled to recover from the other party all of their costs and reasonable attorneys' fees.

10. Headings, Definitions & Recitals. The headings used in this Agreement are for convenient reference only, and do not alter or limit the terms of each paragraph. Likewise, the parties agree that the Recitals and definitions contained therein are part of the substantive agreement and are not merely precatory language.

11. Effectiveness. This Agreement shall become effective immediately upon the latest dated execution of this Agreement.

12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement, even though all parties do not sign the same counterpart. Copies may be exchanged and transmitted by facsimile or other electronic means, and such signatures will be treated as originals.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the latest date executed below.

Dated: August 5, 2013

AIRPORT STRUCTURES, LLC

By


PERRY M. DILORETO, Member/Manager

Dated: August 5, 2013

HERITAGE HANGARS CONDOMINIUM ASSOCIATION

By



Approved the _____ day of _____, 2013 pursuant to Notice, meeting and vote:

ATTEST:

HARLOW NORVEL, Chairman
CARSON CITY AIRPORT AUTHORITY

STATE OF NEVADA)
COUNTY OF Washoe) : ss.

On this 5th day of August, 2013, before me, the undersigned, a Notary Public, personally appeared PERRY M. DILORETO, who acknowledged to me that he is the Manager of AIRPORT STRUCTURES, LLC, and, in such capacity, being duly authorized to do so, executed the foregoing instrument freely and voluntarily and for the uses and purposes therein mentioned.

WITNESS my hand and official seal.
KAREN L. WOOSLEY
Notary Public - State of Nevada
Appointment Recorded in Washoe County
Not 85-4812-2 - Expires April 13, 2014

Karen L. Woosley
NOTARY PUBLIC

CARSON CITY

Approved by the Board of Supervisors this _____ day of _____, 2013.

ROBERT L. CROWELL, 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
STEVEN E. TACKES, ESQ.

EXHIBIT "A"

All that certain real property situate within a portion of Common Area "A", Limited Common Area "C", Lease Area's C-1, C-2, C-3 and C-4, as shown on Final Map for Heritage Hangers – Phase 1, Lease Parcel 219A, as Final Map 2707, File No. 386259, Book 10, Page 2707, Recorded February 3, 2009, Official Records of Carson City, State of Nevada. Lying within a portion of the Northeast 1/4 of Section 4, Township 15 North, Range 20 East, M.D.M., Carson City, State of Nevada, being more particularly described as follows:

BEGINNING at the southwest corner of Common Area "A" as shown on said Final Map for Heritage Hangers – Phase 1;

THENCE along the westerly line of said Common Area "A" and the westerly line of Limited Common Area "C" as shown on said Final Map for Heritage Hangers – Phase 1, North 26°19'22" West, 175.00 feet, to the northwest corner of said Common Area "A";

THENCE along the northerly line of said Common Area "A", North 63°40'38" East, 89.00 feet;

THENCE leaving said northerly line of Common Area "A", South 26°19'22" East, 175.00 feet, to the southerly line of said Common Area "A";

THENCE along said southerly line of Common Area "A", South 63°40'38" West, 89.00 feet, to the **BEGINNING** and end of this description.

Containing 15,575 square feet, more or less.

Basis of Bearings for this description is identical to that of the aforementioned Final Map for Heritage Hangers – Phase 1.

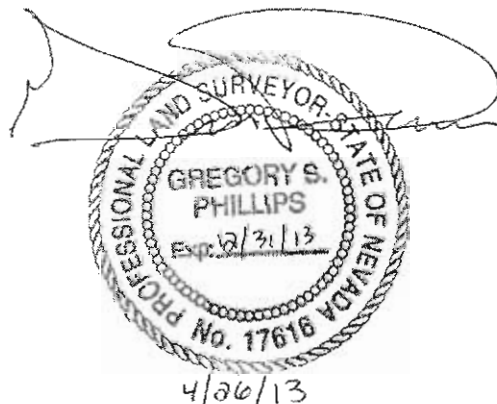
Prepared By:

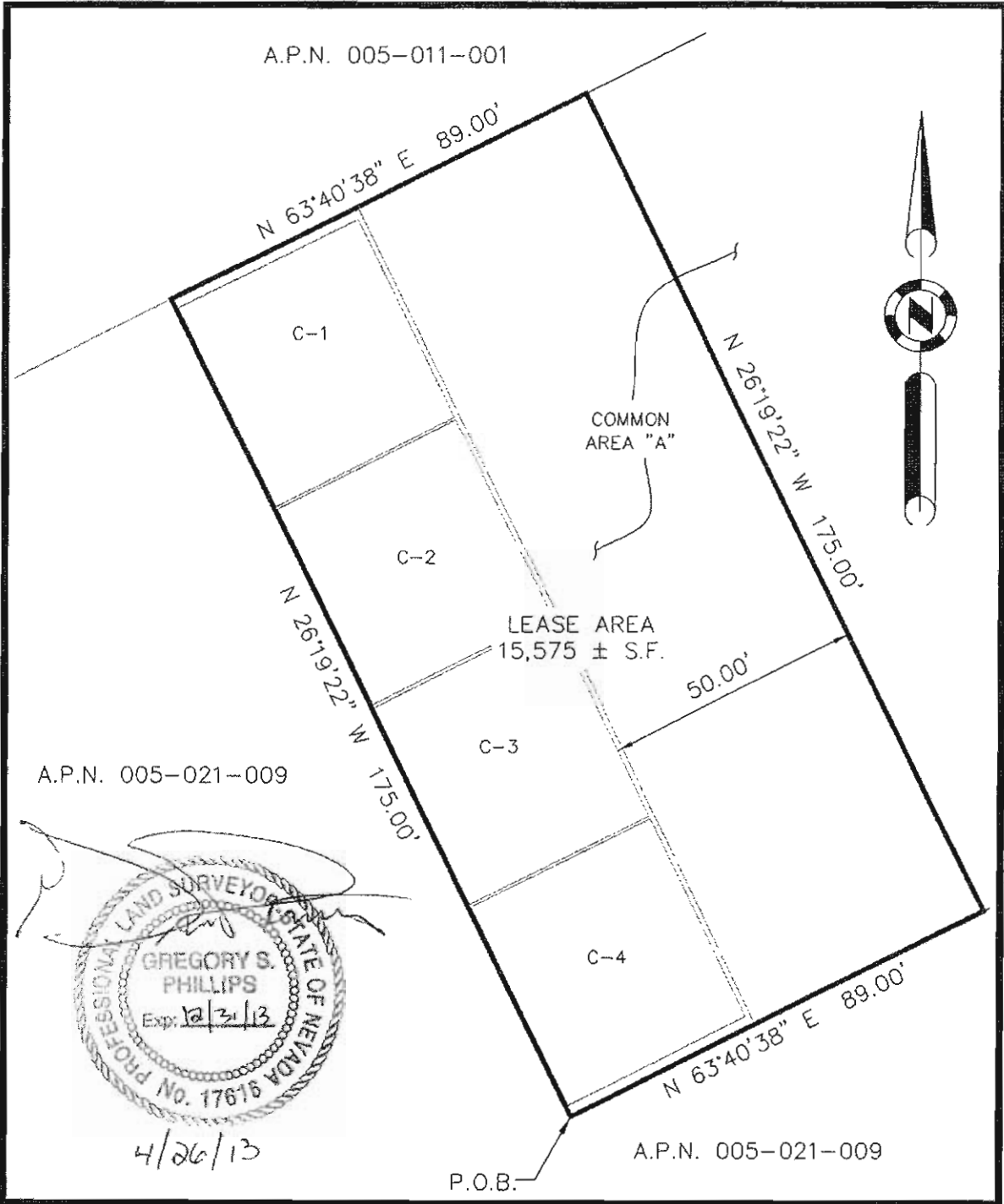
Lumos & Associates

Gregory S. Phillips, P.L.S. 17616

800 E. College Parkway

Carson City, NV 89706





GREGORY S. PHILLIPS
 Exp: 12/31/13
 4/26/13

 LUMOS & ASSOCIATES 800 E. COLLEGE PARKWAY CARSON CITY, NEVADA 89706 PH. (775) 883-7077 FAX (775) 883-7114	EXHIBIT "B" LIMITED COMMON AREA "C", LEASE AREA'S C-1, C-2, C-3, C-4 & A PORTION OF COMMON AREA "A" OF T.M. 2707 - FINAL MAP FOR HERITAGE HANGERS - PHASE 1, LEASE PARCEL 219A NE 1/4 OF SEC. 4, T15N, R20E, M.D.M. CARSON CITY NEVADA	Date: APRIL 2013 Scale: 1" = 30' Drawn By: JMM Checked By: GSP Job No: 6621.002