

Item # 8-2A

**City of Carson City
Agenda Report**

Date Submitted: 08/20/10

Agenda Date Requested: 09/02/10

Time Requested: consent

To: Board of Supervisors

From: Carson City Airport Authority

Subject Title: Action to approve the assignment of the Dennis Buehn Sublease to Nicholson Enterprises, Inc. and On Course Avionics, Inc. as regards the sublease from Neil A. Weaver under the Carson City Airport Authority lease with Mentors Unlimited, Inc.

Staff Summary: At a regular meeting of the Carson City Airport Authority on August 18, 2010, publicly noticed for that purpose, the Authority approved an assignment of an airport sublease to Nicholson Enterprises, Inc. and On Course Avionics, Inc., which will provide a new aviation avionics business on our airport.

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 assignment of the Dennis Buehn Sublease to Nicholson Enterprises, Inc. and On Course Avionics, Inc. as regards the sublease from Neil A. Weaver under the Carson City Airport Authority lease with Mentors Unlimited, Inc..

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 has approved the lease assignment and requests Board of Supervisors approval.

The short version is that we have a new business relocating to the Carson City Airport and this lease assignment gives them a location to operate from. The Authority previously reviewed and approved the financial and technical background of the assignee and approved him to operate on the Airport under CCMC Title 19 which governs qualifications to operate on the Airport. They meet or exceed our requirements, and come to Carson City with an excellent reputation in the aviation industry.

The history of the lease aspect is as follows. In 1987, Carson City leased an area on the airport to Mentors Unlimited, Inc., which at the time was owned by Neil Weaver and this then wife (divorced shortly after). This original lease was for a full service FBO and required construction of 3 hangars. Mentors did construct a hangar (which records indicate was counted as 2 hangars) on the east portion of the leasehold. In May, 1988, Mentors subleased a 100'x150' area of their lease area to Neil Weaver as an individual. The stated purpose was to enable financing necessary to build the 3rd hangar. In August, 1988, Weaver subleased the 100'x150' area to Dennis Buehn. Buehn then built the existing hangar on the property. It is the sublease to

Buehn that is being assigned at this time to Nicholson Enterprises, Inc. and On Course Avionics, Inc. In addition, Buehn will continue to operate from a portion of the lease.

The provisions of the Buehn sublease require: "Upon the prior approval of Weaver, Mentors Unlimited, Inc. and Carson City, Buehn may assign or sublet this subleasehold for any purpose permitted in the master lease." It also reserved to Weaver, a "right of first refusal" on any assignment or further sublease. In addition, the sublease also requires compliance with the terms and conditions of the Weaver sublease and the original Mentors Unlimited lease with the City.

Weaver and Mentors Unlimited have consented. The Airport Authority has approved the assignment. Consistent with NRS 844, the Airport Authority requests approval from the Board of Supervisors.

As a side note, the Carson City Airport Authority has been actively marketing the airport to aviation businesses. We welcome Nicholson Enterprises, Inc. and On Course Avionics, Inc. to our community.

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

Fiscal Impact: No City impact.

Explanation of Impact: Not Applicable.

Funding Source: Airport Authority and FAA.

Alternatives: Not Applicable

Supporting Material: Assignment

Prepared By: Casey Pullman, Airport Manager (& Steven E. Tackes, Esq., Airport Counsel)

Reviewed By:

(Department Head)

(City Manager)

(District Attorney)

(Finance Director)

Date:

8/24/10

Date:

8/24/10

Date:

8/24/2010

Date:

8/24/10

Board Action Taken:

Motion: _____

1) _____

Aye/Nay

2) _____

(Vote Recorded By)

ASSIGNMENT AND ASSUMPTION OF SUBLEASE

THIS ASSIGNMENT AND ASSUMPTION OF SUBLEASE (the "Assignment") is made as of this 29th day of July, 2010, (the "Effective Date"), by and between Neil A. Weaver, ("Sublessor"), and Dennis Buehn, ("Assignor") and Nicholson Enterprises, Inc., a Nevada Corporation and On Course Avionics, Inc., a Nevada Corporation, (herein collectively "Assignee").

RECITALS

A. Sublessor entered into the Sublease agreement dated August 17, 1988, (the "Sublease") with Assignor for a portion of the Sublessor's subleased space that is approximately 100 feet wide and 150 feet deep as shown on the map attached to the Sublease ("Premises").

B. Subject to paragraph 5, below, Assignor desires to assign his interest under the Sublease to Assignee and Assignee desires to assume all of Assignor's interest and obligations under the Sublease.

NOW THEREFORE, in consideration of the sum of Twenty Thousand Dollars (\$20,000.00) and other good and valuable consideration, the receipt and sufficiency thereof being hereby acknowledged, the parties agree as follows:

1. Subject to Sublessor's consent, effective as of the Effective Date, Assignor hereby assigns to Assignee all of his right, title and interest in and to the Sublease; and Assignee hereby accepts the foregoing assignment and assumes and agrees to perform, for the benefit of Sublessor, from and after the Effective Date, as a direct obligation to Sublessor, all of the obligations, undertakings, duties, terms, covenants, conditions, and liabilities as Sublessee to be done, kept, or performed under the Sublease and all of the provisions of the Sublease applicable to Assignor.

2. The assignment set forth in this Assignment shall become effective on the Effective Date, and Assignor shall give possession of the Premises to Assignee on such date. Assignor shall be liable for all of the obligations, undertakings, duties, terms, covenants, conditions, and liabilities of the Assignor to be done, kept, or performed under the Sublease prior to the Effective Date.

3. Neither the execution nor delivery of this Assignment, nor the consummation of the assignment contemplated herein, will conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any agreement or instrument to which Assignor or Assignee is a party or any restriction to which Assignor or Assignee is bound.

4. Assignee is financially able to fulfill the obligations of the Assignor under the Sublease.

5. The parties hereto understand and agree that Assignor will be subleasing a portion of the Premises on terms and conditions to be determined and will continue to operate the business known as American Warbirds and related businesses in such subleased space.

6. This Assignment and Assumption of Sublease is expressly conditioned on the consent and approval of Carson City, the Carson City Airport Authority and Mentors Unlimited, Inc., as well as Sublessor's waiver of the right of first refusal contained in the Sublease with respect to the Subleases referenced herein.

7. Miscellaneous:

- a. This Assignment shall be governed by and construed in accordance with the laws of the State of Nevada.
- b. This Assignment is not intended to and shall not be deemed to modify or amend the Sublease in any manner.
- c. This Assignment and the Consent to Assignment attached hereto may be executed in one or more counterparts, which, when executed, shall constitute one and the same instrument.
- d. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

SUBLESSOR:

ASSIGNOR:

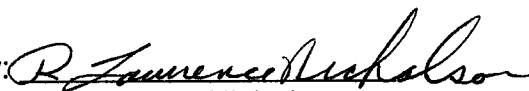
By: _____
Neil A. Weaver

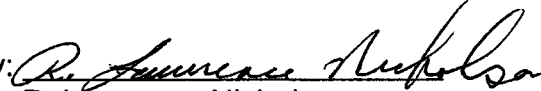
By: 
Dennis Buehn

ASSIGNEE:

Nicholson Enterprises, Inc., a
Nevada Corporation

On Course Avionics, Inc., a
Nevada Corporation

By: 
R. Lawrence Nicholson
Its: President

By: 
R. Lawrence Nicholson
Its: President

**CONSENT TO ASSIGNMENT AND
WAIVER OF RIGHT OF FIRST REFUSAL**

Carson City, a consolidated municipality of the State of Nevada ("City"), as lessor under that certain Lease (the "Master Lease"), dated May 21, 1987, by and between Lessor and Mentors Unlimited, Inc., a Nevada corporation, ("Mentors") and Neil Weaver ("Weaver"), as sublessee pursuant to a sublease entitled "Sublease of Carson City Airport Property," dated May 31, 1988, by and between Mentors and Weaver, and Dennis Buehn ("Buehn") as sublessee pursuant to a sublease from Weaver entitled "Lease of Carson City Airport Property," dated August 17, 1988, (herein the "Sublease") subject to and specifically conditioned upon the following terms and conditions, hereby grant their consent to an assignment by Buehn of the Sublease pursuant to the Assignment and Assumption of Sublease dated July 29, 2010, made by and between Buehn and Nicholson Enterprises, Inc., a Nevada corporation, and On Course Avionics, Inc., a Nevada corporation (herein the "Assignment"), as Assignees. A copy of the Assignment is attached hereto and incorporated herein by reference, and covers that certain premises that is the subject of the Sublease (the "Premises"), as more particularly described in the Assignment.

This Consent to Assignment and Waiver of Right of First Refusal does not and shall not be construed or implied to be a consent to any other matter for which City's, Mentors', Weaver's, or Buehn's consent is required under the Master Lease or any sublease.

In the event of any dispute regarding this Consent to Assignment, the non prevailing party or parties in any action pursued in court of competent jurisdiction shall pay to the prevailing party or parties all reasonable cost, damages, and expenses, including attorneys fees, expended or incurred by the prevailing party.

The terms and conditions hereof shall be governed by and construed in accordance with laws of the State of Nevada.

This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, executors, administrators, legal representative, successors and assigns.

CITY:

Carson City, a consolidated municipality of
the State of Nevada

Dated: _____

By: _____
Its: _____

Carson City Airport Authority

Dated: 8-18-2010

By: [Signature]
Its: HARLOW NOWELL, CHAIRMAN

MENTORS:

Mentors Unlimited, Inc.,
a Nevada corporation

Dated: 8/4/2010

By: [Signature]
Neil A. Weaver, President

WEAVER:

Dated: 8/4/2010

[Signature]
Neil A. Weaver

WAIVER OF RIGHT OF FIRST REFUSAL

The undersigned, as Sublessor under the Sublease dated August 17, 1988, by and between the undersigned and Dennis Buehn as Sublessee in consideration of receipt of the sum of \$20,000.00, hereby waives the Right of First Refusal contained in Section XI of the Sublease with respect to Buehn's assignment of the Sublease to Nicholson Enterprises, Inc. and On Course Avionics, Inc. As provided in the Assignment and Assumption of Sublease dated July 29, 2010. The undersigned further acknowledges and agrees that Dennis Buehn and American Warbirds, Inc. will be subleasing a portion of the Premises on terms and conditions to be determined as more particularly described in paragraph 5 of the Assignment, and hereby waives his right of first refusal with respect to such sublease as well.

Dated: 8/4/2010

[Signature]
Neil A. Weaver