

TO: James L. App, City Manager
FROM: Meg Williamson, Assistant City Manager
SUBJECT: Airport Sublease Request – Avlite Aviation, Inc.
DATE: October 16, 2007

NEEDS: For the City Council to adopt Resolution No. 07-XX approving and consenting to a sublease agreement between Avlite Aviation, Inc., an airport lease holder and Applied Technologies Flight, Inc., for the sublease of space within an existing hangar facility on Parcel 15 (3150 Propellor Drive) at the airport.

FACTS:

1. The City entered into a long term lease agreement with Avlite Aviation, Inc. on November 1, 1994. The lease site has been fully developed, in accordance with the approved development plan.
2. Lessee remains in full compliance with all terms and conditions of the agreement.
3. Pursuant to the lease requirement, the Lessee requests City approval to enter into a long-term sublease on a portion of the existing hangar facility.
4. The associated Consent to Sublease agreement and sublease form have been previously approved by the City Council and all parties agree to the terms specified in this agreement.

**ANALYSIS
AND**

CONCLUSION: The Lessee is currently in full compliance with the terms of the agreement. The subject facility is an example of quality development and Airport support operations. The proposed use for the subleased portion of the facility is storage of a corporate jet aircraft, which is a beneficial addition to airport activity.

POLICY

REFERENCE: Adopted Lease Agreement and Airport Lease Policy.

FISCAL

IMPACT: No direct fiscal impact to the City.

OPTIONS:

- a. Adopt Resolution No. 07-XX, approving the requested sublease agreement.
- b. Amend, modify, or reject the above option.

Attachments (2):

1. Resolution 07-XX
2. Sublease Consent Agreement

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES
APPROVING A SUBLEASE AGREEMENT ON PARCEL 15 (PRAL 88-207)
(3150 Propeller Drive, Paso Robles, California)

WHEREAS, the City of El Paso de Robles (the "City"), as Lessor, and Avlite Aviation Inc. ("AVI"), as Lessee, entered into a long-term Lease, dated October 4, 1994 ("Master Lease"), wherein AVI leased from the City Parcel 15 of Parcel Map PRAL 88-207, commonly referred to as 3150 Propeller Drive, Paso Robles, California ("Premises"); and

WHEREAS, Section XXIX of the Master Lease, allows Lessee to enter into sublease agreements on the subject lease site with prior City approval; and

WHEREAS, Lessee has requested City to approve a Consent to Sublease agreement and sublease form for a specified portion of the leased premises (southerly hangar portion of the building); and

WHEREAS, the Sublessee under the sublease agreement, Applied Technologies Flight, Inc. ("ATF"), agrees to enter into and be bound by all requirements and provisions specified in the Master Lease and the proposed sublease agreement;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The City Council hereby approves the Consent to Sublease and the sublease agreement as required under the Master Lease.

Section 2. The City Manager is authorized and directed to execute on behalf of the City the requested Consent to Sublease agreement.

PASSED AND ADOPTED this 16th day of October, 2007, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Frank R. Mecham, Mayor

Attest:

Deborah Robinson, Deputy City Clerk

CONSENT TO SUBLEASE

This Consent to Sublease Agreement (this "Agreement") is made as of October 16, 2007 by and among the CITY OF EL PASO DE ROBLES, a municipal corporation ("City"), AVLITE AVIATION, INC. (AIA), a California corporation ("Lessee"), and APPLIED TECHNOLOGIES FLIGHT, INC. (ATF), a Delaware Corporation ("Sub-Lessee").

RECITALS

A. Reference is hereby made to that certain Lease dated as of November 1, 1994, between City and Lessee (the "Master Lease"), for properties on the Paso Robles Municipal Airport.

B. Pursuant to the Master Lease, Lessee is leasing from City certain premises commonly known as Parcel 15 of Parcel Map 88-207 (the "Premises").

C. Lessee has requested City's consent to that certain Ground Sublease dated as of September 6, 2007, between Lessee and Sub-Lessee (the "Sublease"), with respect to a subletting by Sub-Lessee of a portion of the Premises (the "Sublease Premises"). A copy of the Sublease is attached hereto as Exhibit A.

D. City will consent to the Sublease on the terms and conditions contained herein.

E. All terms not otherwise expressly defined herein shall have the respective meanings given in the Master Lease.

AGREEMENT

1. City's Consent. City hereby consents to the Sublease; provided however, notwithstanding anything contained in the Sublease to the contrary, such consent is granted by City only upon the terms and conditions set forth in this Agreement. The Sublease is subject and subordinate to the Master Lease. City shall not be bound by any of the terms, covenants, conditions, provisions or agreements of the Sublease, except as expressly provided to the contrary in Section 3.2.

2. Non-Release of Lessee; Further Transfers. Neither the Sublease nor this consent thereto shall release or discharge Lessee from any liability, whether past, present or future, under the Master Lease or alter the primary liability of the Lessee to pay the rent and perform and comply with all of the obligations of Lessee to be performed under the Master Lease. Neither the Sublease nor this consent thereto shall be construed as a waiver of City's right to consent to any further subletting either by Lessee or by the Sub-Lessee or to any assignment by Lessee of the Master Lease or assignment by the Sub-Lessee of the Sublease, or as a consent to any portion of the Sublease Premises being used or occupied by any other party. No such action by City shall relieve such persons from any liability to City or otherwise with regard to the Sublease Premises.

3. Relationship With City. Lessee hereby assigns and transfers to City the Lessee's interest in the Sublease and all rentals and income existing therefrom, subject to the terms of this Section 3. City, by consenting to the Sublease agrees that until a default (following the expiration of any applicable notice and cure period) shall occur in the performance of Lessee's obligations under the Master Lease, Lessee

may receive, collect and enjoy the rents accruing under the Sublease. In the event Lessee shall default (following the expiration of any applicable notice and cure period) in the performance of its obligations to Lessee under the Master Lease (whether or not City terminates the Master Lease except as otherwise provided in clause (i) below), City may, at its option by notice to Lessee, either (i) terminate the Sublease (provided that City has also elected to terminate the Master Lease), (ii) elect to receive and collect, directly from Sub-Lessee, all rent and any other sums owing and to be owed under the Sublease, as further set forth in Section 3.1, below, or (iii) elect to succeed to Lessee's interest in the Sublease and cause Sub-Lessee to attorn to City, as further set forth in Section 3.2, below.

3.1. City's Election to Receive Rents. City shall not, by reason of the Sublease nor by reason of the collection of rents or any other sums from the Sub-Lessee pursuant to Section 3(ii), above, be deemed liable to Sub-Lessee for any failure of Lessee to perform and comply with any obligation of Lessee, and Lessee hereby irrevocably authorizes and directs Subtenant, upon receipt of any written notice from City, a copy of which shall be delivered to Lessee, stating that a default exists in the performance of Lessee's obligations under the Master Lease, and the same has not been cured within applicable cure periods, to pay to City the rents and any other sums due and to become due under the Sublease, as and when they become due thereunder. Lessee agrees that Sub-Lessee shall have the right to rely upon any such statement and request from City, and that Sub-Lessee shall pay any such rents and any other sums to City without any obligation or right to inquire as to whether such default exists and notwithstanding any notice from or claim from Lessee to the contrary. Lessee shall not have any right or claim against Sub-Lessee for any such rents or any other sums so paid by Sub-Lessee to City. City shall credit Lessee with any rent received by City under such assignment but the acceptance of any payment on account of rent from the Sub-Lessee as the result of any such default shall in no manner whatsoever be deemed an attornment by the City to Sub-Lessee or by Sub-Lessee to City, be deemed a waiver by City of any provision of the Master Lease or serve to release Lessee from any liability under the terms, covenants, conditions, provisions or agreements under the Master Lease. Notwithstanding the foregoing, any other payment of rent from the Sub-Lessee directly to City, regardless of the circumstances or reasons therefore, shall in no manner whatsoever be deemed an attornment by the Sub-Lessee to City in the absence of a specific written agreement signed by City to such an effect.

3.2. City's Election of Sub-Lessee's Attornment. In the event City elects, at its option, to cause Sub-Lessee to attorn to City pursuant to Section 3 (iii) above, City shall undertake the obligations of Lessee under the Sublease from the time of the exercise of the option, but City shall not (i) be liable for any prepayment of more than one month's rent or any security deposit paid by Sub-Lessee, (ii) be liable for any previous act or omission of Lessee under the Sublease or for any other defaults of Lessee under the Sublease, (iii) be subject to any defenses or offsets previously accrued which Sub-Lessee may have against Lessee, or (iv) be bound by any changes or modifications made to the Sublease without the written consent of City. Subject to the foregoing provisions of this Section 3.2, in the event any of the acts or omissions of Lessee that arose prior to such exercise of the option either (a) constitute a default on the part of Lessee pursuant to the express terms of the Sublease which will be of a continuing nature following Sub-Lessee's attornment, or (b) otherwise give Sub-Lessee the express right (pursuant to the terms of the Sublease) to terminate the Sublease as a result thereof, then Sub-Lessee must provide City with written notice containing reasonable specificity detailing the act or omission of Lessee that satisfies either clause (a) or (b) above within ten (10) days following City's notice of its election (if applicable) under Section 3 (iii), in which event City shall have the option (to be elected in City's sole discretion) to either (y) rescind its notice to cause Sub-Lessee to attorn under Section 3(iii) above (in which event City may elect either of the rights set forth in 3(i) or (ii) above), or (z) elect to cure such continuing default or other act that gives rise to Sub-Lessee's termination right under clause (b) above; provided, however, if City makes the election under clause (z), then Sub-Lessee agrees that City shall be provided with a new notice and cure period (commencing as of the date that City delivers notice of its election under clause (z)) equivalent to the notice and cure rights of Lessee under the Sublease. If Sub-Lessee fails to provide the foregoing written notice to City within such ten (10)-day period, then Sub-Lessee shall be deemed to have agreed to attorn to City without retention of any of the rights set forth in the preceding sentence.

4. General Provisions.

4.1. Consideration for Sublease. Lessee and Sub-Lessee represent and warrant that there are no additional payments of rent or any other consideration of any type payable by Sub-Lessee to Lessee with regard to the Sublease Premises other than as disclosed in the Sublease.

4.2. Brokerage Commission. Lessee and Sub-Lessee covenant and agree that under no circumstances shall City be liable for any brokerage commission or other charge or expense in connection with the Sublease and Lessee and Sub-Lessee agree to protect, defend, indemnify and hold City harmless from the same and from any cost or expense (including but not limited to attorneys' fees) incurred by City in resisting any claim for any such brokerage commission.

4.3. Controlling Law. The terms and provisions of this Agreement shall be construed in accordance with and governed by the laws of the State of California.

4.4. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors and assigns. As used herein, the singular number includes the plural and the masculine gender includes the feminine and neuter.

4.5. Captions. The paragraph captions utilized herein are in no way intended to interpret or limit the terms and conditions hereof; rather, they are intended for purposes of convenience only.

4.6. Partial Invalidity. If any term, provision or condition contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent possible permitted by law.

4.7. Attorneys' Fees. If either party commences litigation against the other for the specific performance of this Agreement, for damages for the breach hereof or otherwise for enforcement of any remedy hereunder, the parties hereto agree to and hereby do waive any right to a trial by jury and, in the event of any such commencement of litigation, the prevailing party shall be entitled to recover from the other party such costs and reasonable attorneys' fees as may have been incurred.

4.8. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute but one and the same instrument.

[SIGNATURES SET FORTH ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Consent to Sublease Agreement as of the day and year first above written.

"City"

CITY OF EL PASO DE ROBLES

James L. App, City Manager

"Lessee"

AVLITE AVIATION, INC.
a California corporation

Thomas Leatherwood, President

"Sub-Lessee"

APPLIED TECHNOLOGIES FLIGHT, INC.
a Delaware Corporation

Donald Van Steenwyk, CEO

ATTEST:

Deborah Robinson, Deputy City Clerk

AIRPORT SUBLEASE

SUBLEASE

This is a Sublease by and between AVLITE AVIATION, INC. (AAI) and APPLIED TECHNOLOGIES FLIGHT, INC. (ATF) entered into on September 6, 2007 on the subject property as described:

Parcel # 15 of Parcel Map PR 88-207, Paso Robles, CA, as depicted on Exhibit 'A', attached hereto.

WHEREAS:

The City of Paso Robles and AAI entered into a long term Master Lease Agreement dated November 1, 1994, for properties on the Paso Robles Municipal Airport identified as Parcel 15 of Parcel Map PR 88-207, depicted in Exhibit "A" which is attached hereto.

ATF desires to sublease a portion of said Master Leased premises depicted in Exhibit "B" with an aircraft storage hanger, as allowed under the Master Lease and the established Airport Rules and Regulations currently in effect, or as may be adopted. The Master Lease is attached hereto and incorporated herewith as Exhibit "C".

TERM

The term of this Sublease Agreement shall commence on September 12, 2007 and terminate on September 11, 2008 with the option to renew this Sublease for one (1) additional term of Two (2) years. Any extension of the Master Lease term granted to Lessor by the City will be automatically added to this Sublease Agreement. The first month's rent will be prorated to the first of the following month.

RENT

Sub-Tenants agree to pay Three Thousand Two Hundred Fifty Dollars and no cents (\$ 3,250.00) per month, payable in advance.

PREMISES

It is recognized that the subject subleased premises are included as a part of the Master Lease Agreement specified above. If the Master Lease terminates, Sub-Tenant will if requested, attorn to the Master Landlord and recognize Master Landlord as Sub-Landlord under this Sublease. However, sub-tenants obligation to attorn to the Master Lease will be conditioned on Sub-Tenants receipt of a non-disturbance-agreement.

IV

FEDERALLY ASSISTED PROGRAMS

The Sub-Tenant(s) for himself, his heirs, personal representatives, 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 of or which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the sub-tenants shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, part 21, non-discrimination 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.

V
DISCRIMINATION

The Sub-Tenants for himself, his personal representatives, and assigns as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the ground of race, color, or discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such facilities and the furnishings 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, (3) that the Sub-Tenants 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, Non-discrimination 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.

VI
DISCRIMINATION BREACH

That in the event of breach of any of the above non-discrimination covenants, lessor 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 49 CFR Part 21 are followed and completed including expiration of appeal rights.

VII
FAIR CHARGES

Sub-Tenants 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 sub-tenants may be allowed to make reasonable nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

VIII
DISCRIMINATION ENFORCEMENT

Non-compliance with Provision "VII" above shall constitute a material breach thereof and in the event of such non-compliance the Lessor shall have the right to terminate this Lease and the estate hereby created without liability therefore or at the election of the Lessor or the United States either or both said Governments shall have the right to judicially enforce Sections IV, V, VI and VII.

IX
MASTER LEASE

It is further agreed that all of the terms, conditions, and requirements specified in the Master Lease Agreement shall apply to and be incorporation herein be reference as a part of this agreement and shall extend to the sub-tenants under the same obligations as the Master Lease holder as outlined herein.

1: In addition to the terms, conditions and requirements specified in the master lease the following conditions specified by the master lease holder will apply.

A: The area of ramp adjoining Unit B to the east is to be considered an easement to allow the aircraft access to and from the hangar. This area is defined by double yellow lines. No running of engines is allowed in this area. Aircraft are to be towed east, across existing tie down lanes or south to existing taxiway outside of the double yellow lines and positioned in such a way as to minimize noise and to prevent the flow of exhaust gases towards the master lease holders facility.

B: Any storage of material not related to the aircraft and its operation is to be of such a nature as to not require vehicular traffic such as trucks and fork lifts to be operated either on the easement or within the unit to effect it's disposition, and correspondingly, the need of repetitive opening and closing of the main hangar door to accomplish this. **The period of time that the main door is open is to be minimized. The heavy nature of these doors causes sagging and puts an undue strain on the building structure when left open for extended periods.** No storage of any toxic or hazardous materials is allowed.

C. No outside storage of either material or vehicles is allowed or offered. Temporary parking spaces for daily use of sub lessee are provided outside on the south facing wall of the unit. No aircraft outside tie down areas are provided with this sub lease. Adjacent tie downs are available through the airport authority.

D: No tenant improvements will be allowed without written permission of the master lease holder.

E: Utilities to be provided by the sub-lessee with the exception of City water service which is included with this sub lease.

F: It is understood that the primary purpose of this facility is the storage of aircraft. No manufacturing, non aviation material storage (except as outlined above) production, assembly work, or any other usage that would create an escalation of the minimal amount of vehicular traffic expected with the simple operation of aircraft will be allowed.

G: Sub lessee to provide premises liability insurance naming master lease holder and the City of Paso Robles as beneficiary.

X

SALE OF SUBLEASE

This lease is issued exclusively to the Sub-Tenant named above and/or it's associates and cannot be sold or re-assigned without the express written permission of the master lease holder.

Should the Master Landlord, (City of Paso Robles) provide improvements to the Master Lease property, I.E. sewer, natural gas; the Sub-Tenant shall be responsible for their pro-rated hanger pad share.

12. Taxes – Real Property

Sub-Landlord shall be responsible for all real property taxes and general or special assessments as well as the possessory interest taxes on the Master Lease it has with the City of Paso Robles

13. Care of Leased Premises - Responsibility

During the term of this Lease, Sub-Tenant agrees to keep and maintain the Leased Premises, including the plumbing, heating, and electrical systems, in good condition and repair at Sub-Tenant's cost and expense. Sub-Tenant further agrees at the end of the term to return the Leased Premises to Sub-Landlord in substantially as good condition as when received, except for usual and ordinary wear and tear. Sub-Tenant further agrees to be responsible for any repairs and/or maintenance required for any part of the improvements of which the Leased Premises are a part where such repair and/or maintenance is necessitated by actions or inactions of Sub-Tenant and /or activities conducted by Sub-Tenant on the Lease Premises.

14. Control of Common Areas

All parking area, driveways, entrances and exits, common areas and other facilities furnished by Sub-Landlord in, on or near the improvements of which the Leased Premises are a part, shall at all times be subject to the exclusive control and management of Sub-Landlord, and Sub-Landlord shall have the right from time to time to establish, modify and enforce reasonable rules and regulations with respect to said facilities and areas. Sub-Tenant agrees to comply with any such rules and regulations and to take reasonable care to maintain those common areas used by Sub-Tenant for the conduct of its business in a safe and clean manner.

15. Care of Property – Responsibility

Except as herein otherwise provided for, Sub-Landlord shall keep and maintain the roof, foundation and exterior of the building, the exterior grounds and all common areas of the improvements of which the Leased Premises are a part in good repair and condition.

16. Insurance – Property Damage

Sub-Landlord shall be responsible for and shall have in effect at all times, fire, extended coverage, vandalism, and malicious mischief insurance in such amounts as shall be deemed appropriate by Sub-Landlord. Sub-Tenant shall be named as an additionally insured in such policy.

17. Insurance – Personal Property

Sub-Tenant shall be responsible at its sole expense for fire, extended coverage, vandalism, and malicious mischief insurance covering its aircraft, inventory, materials, supplies, equipment, vehicles, leasehold improvements, and other personal property.

18. Insurance - Generally

All policies of insurance procured and maintained by Sub-Landlord and Sub-Tenant hereunder shall be issued by reputable companies reasonably acceptable for Sub-Landlord and Sub-Tenant and shall be issued in the name of Sub-Landlord and Sub-Tenant for the mutual and joint benefit and protection of the parties. The parties shall furnish to each other a certificate of insurance evidencing coverage adequate to meet the coverages required herein. Such certificates shall also contain a waiver of subrogation against Sub-Landlord and Sub-Tenant in connection with any damage covered by any policy and a provision that not less than thirty (30) days written notice shall be given to Sub-Landlord and Sub-Tenant prior to cancellation, reduction of coverage, expiration, or any material change in any such policy. Sub-Landlord and Sub-Tenant agree to insure each respective employees for worker's compensation or other similar employer/employee insurance.

19. Assignment or Subletting

Sub-Tenant may not assign this Lease, or sublet (except to an affiliated entity) the Leased Premises or any part thereof without the consent of Sub-Landlord; such consent shall not be unreasonably withheld, provided however, no such assignment or subletting shall relieve Sub-Tenant of any of its obligations hereunder. Performance of the covenants herein by subtenants shall be considered as performance pro rata by the Sub-Tenant.

20. Warranty of Title

Sub-Landlord covenants it has good right to lease the Leased Premises in the manner described herein and that Sub-Tenant shall peaceably and quietly have, hold, occupy, and enjoy the premises during the term of this Lease.

21. Signage

Sub-Landlord will allow Sub-Tenant to erect a sign on the building if the sign is approved by the appropriate agencies and the City of Paso Robles.

Signed:

Sub-Landlord: Lina Leatherwood Sub-Tenant: Paul Allen Stumpf

Consent of Landlord

The City of El Paso de Robles, Master Landlord under the Master Lease, consents to the sublease without waiver of the terms and conditions of the Master Lease.

In the event of a conflict between the Master Lease and the Sublease, the terms and conditions of the Master Lease shall control.

City of Paso Robles

James L. App. City Manager

Date

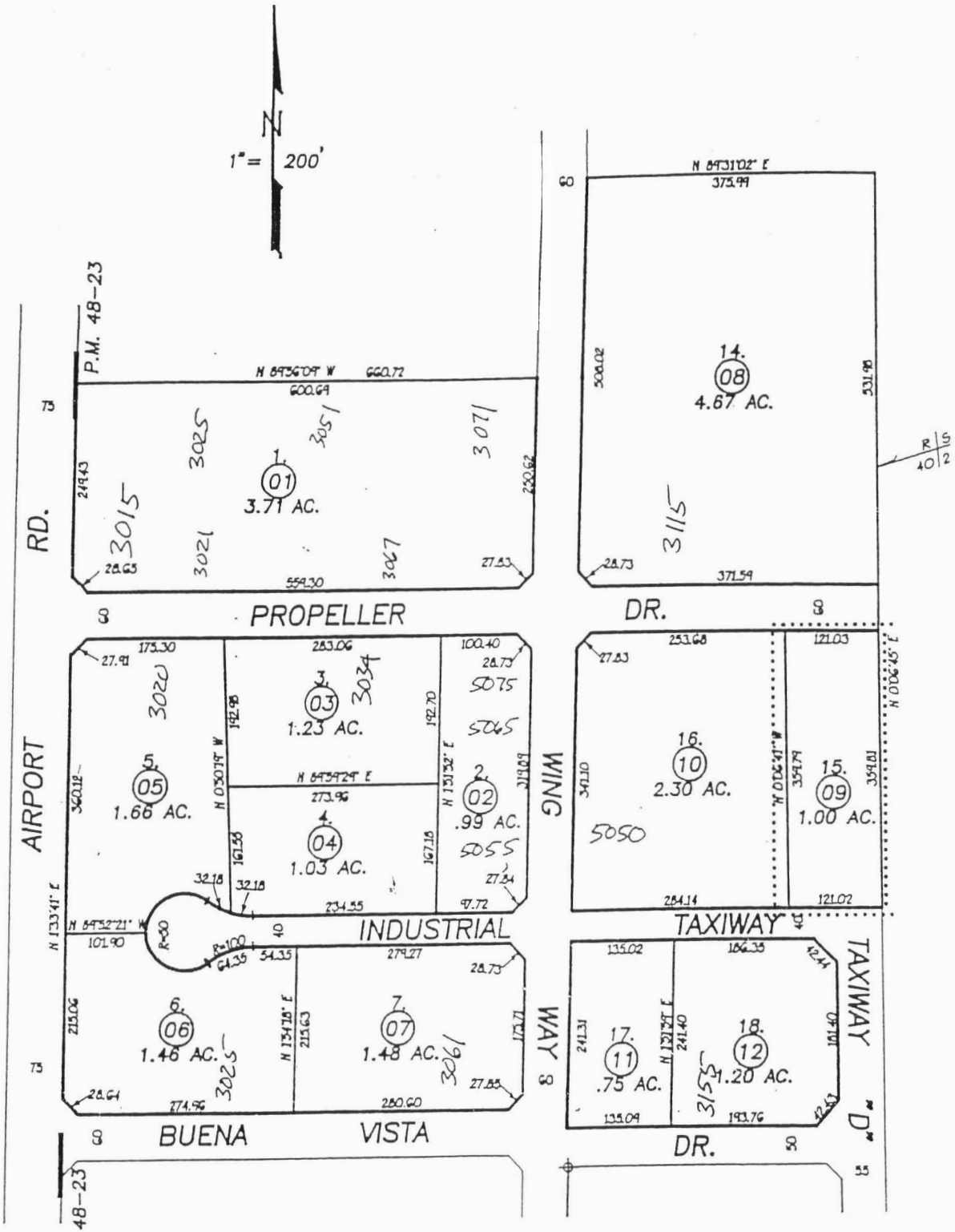
Attached hereto and incorporated herewith is:

Exhibit "A" Property map

Exhibit "B" Sub-Leased Premises

Exhibit "C" Master Lease agreement by and between the City of Paso Robles
and AAI

1" = 200'



CITY OF PASO ROBLES

PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION

EXHIBIT "A" PARCEL 15