

TO: James L. App, City Manager
FROM: Meg Williamson, Assistant City Manager
SUBJECT: Airport Sublease Agreement
DATE: January 19, 2010

NEEDS: For the City Council to adopt Resolution No. 10-XX, approving a sublease agreement form for private aircraft storage hangars under a master lease with B. Kim Lilly, dba Airport Rental & Leasing, at the Municipal Airport.

- FACTS:
1. On June 16, 1992, the City approved an addendum to an airport property lease between the City of Paso Robles and B. Kim Lilly, dba Airport Rental & Leasing. The addendum provided various adjustments to the terms and conditions of the original lease, dated March 1, 1979, and more significantly, an extension of the lease to now expire on July 1, 2033.
 2. The private aircraft storage hangars on the subject site are individually owned, with sublease agreements between the hangar owner and the master lease holder for the ground on which the hangar is located.
 3. Most of the sublease agreements were executed in the 1980's with a 20-year term and therefore expired in 2007. Upon expiration of the existing subleases, each of the hangar tenants expressed desire to continue their occupancy of the premises for the extended time remaining on the master lease.
 4. Exhaustive review, discussion and negotiation between the parties included a hearing by the City Council on March 11, 2009 at which the Council directed parties to further negotiate and reach mutual agreement on terms and conditions.
 5. The master lease holder and subtenants continued discussions and produced an agreement of terms, lease conditions and rental rates in a final sublease agreement, a copy of which is attached hereto.
 6. The City has been assured by the lease holder that the provisions of the agreement have been accepted by most, if not all affected tenants, as evidenced by the attached list of signed subleases provided by the lease holder.

7. The City has received public comment from outside parties, also interested in this process and any precedent it may set. After review, staff has responded to those comments with assurances that the sublease provisions at issue are either required by City or FAA mandate, or were considered in the negotiation process and those involved elected to not address them further.
8. Once the City Council has approved the sublease template form, the master lease holder will be authorized to execute each lease with the individual subtenants.

ANALYSIS

AND

CONCLUSION: The City's obligation in this process is to assure that the rates and conditions imposed are not unfair, unreasonable or unjustly discriminatory. Through the negotiation process between tenants and the lease holder, a compromise has been reached where all involved believe the terms are equitable. The sublease template meets the City's requirements in form and conditions precedent per FAA and related contractual standards.

POLICY

REFERENCE: FAA Order 5190.6A; FAA Grant Assurance No. 22

FISCAL

IMPACT: No direct fiscal impact to the City.

- OPTIONS:
- a. For the City Council to approve Resolution No. 10-XX approving the form of the sublease agreement as required by the master lease.
 - b. Amend, modify or reject the above option.

Attachments:

- 1) Resolution No. 10-XX with Exhibits
Exhibit A – Sublease Agreement Form
Exhibit B – Summary List of intended sublease tenants
- 2) Letter from Glick and Haupt – dated October 14, 2009 stating a negotiated solution
- 3) Letter of Terms and Conditions – dated December 15, 2009

RESOLUTION NO. 10 - XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
APPROVING A STANDARD SUBLEASE AGREEMENT FORM FOR HANGAR TENANTS
OF B. KIM LILLY, dba AIRPORT RENTAL AND LEASING

WHEREAS, B. Kim Lilly, dba Airport Rental & Leasing (“Lessee”), leases certain premises at the Paso Robles Airport, which lease term expires July 1, 2033; and

WHEREAS, pursuant to the lease (the “Lease”), Section XII of the lease provides that the Lessee may not enter into any subleases without the written consent of the City; and

WHEREAS, the City is obligated under Federal mandate and Grant Assurances to assure that the sublease agreements and fees charged are not unfair, unreasonable, or unjustly discriminatory; and

WHEREAS, after exhaustive review and negotiation between all parties, it has been agreed that the proposed terms and conditions of a new sublease agreement are acceptable to those involved; and

WHEREAS, Lessee has provided documentation of all tenants affected by the subject agreement and their acceptance of same.

THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1 The City Council of the City of El Paso de Robles does hereby approve the standard form sublease agreement by and between B. Kim Lilly, dba Airport Rental & Leasing, and those tenants specified. A copy of the subleases and a list of affected tenants are attached hereto as Exhibit A and B, respectively, and incorporated herein by reference.

SECTION 2 The subtenant list may be modified from time to time, provided the lease holder utilizes the approved standard form sublease agreement and notifies the Airport Manager of the change in tenancy along with the revised subtenant contact information.

PASSED AND ADOPTED by the City Council of the City of El Paso de Robles this 19th day of January 2010, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Duane Picanco, Mayor

ATTEST:

Lonnie Dolan, Deputy City Clerk

Exhibit A

Form of Sublease Agreement

SUBLEASE AGREEMENT

By and Between

**B. KIM LILLY, DBA,
AIRPORT RENTAL AND LEASING COMPANY
Sublessor**

and

Sublessee

DATED: _____

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SUBLEASE AGREEMENT

By and Between

**B. KIM LILLY, dba AIRPORT RENTAL AND LEASING COMPANY
Sublessor**

and

Sublessee

Dated: _____

This Sublease Agreement is dated for reference purposes only as September 1, 2007 ("Effective Date") and is made and entered into by and between B. KIM LILLY, dba AIRPORT RENTAL AND LEASING COMPANY (hereinafter referred to as "Sublessor") and _____ (hereinafter referred to as "Sublessee").

1. GRANT AND DESCRIPTION OF PREMISES: In consideration of each and every term, covenant, and condition herein contained, Sublessor hereby leases to Sublessee, and Sublessee hires from Sublessor, that certain real property identified as Space # __, which is _____ square feet and situated at the Paso Robles Municipal Airport, located in Paso Robles, California ("Premises"). The Premises is a portion of a larger area described in that certain lease between the Sublessor and the City of Paso Robles ("City") dated March 1, 1979, amended August 1, 1980, May 1, 1987, October 1, 1988 and June 16, 1992 (the "Master Lease"). The Premises consists only of real property and does not include any structural improvements or other personal property located on the Premises, including without limitation any hangar.

2. MASTER LEASE: This Sublease Agreement is made subject to the terms and conditions of the Master Lease. In addition to the terms and conditions of the herein Sublease Agreement, Sublessee agrees to be bound by all of the terms and conditions of the Master Lease.

3. TERM: The term of this Sublease Agreement shall commence on September 1, 2007 and terminate on August 31, 2031.

A. Sublessor agrees that in the event Sublessor should negotiate an extension to the Master Lease during the term of the Sublease, Sublessor agrees to extend the term of this Sublease Agreement as follows: (i) The rent for the extended period of the Sublease Agreement shall be increased in an amount equal to any increase in rent charged to Sublessor by the City for that portion

of the overall property comprising the Premises during the extended period of the Master Lease; (ii) Any new terms or provisions required by the City during the extended period of the Master Lease shall be incorporated into the Sublease Agreement as provided herein; (iii) The term of any extension of the Sublease Agreement as provided shall terminate two (2) years prior to the end of the extended term Sublessor negotiates with the City for the Master Lease.

4. USE OF PREMISES: Sublessor hereby grants to Sublessee the privileges, uses, and rights listed below for use of the Premises, all of which shall be subject to the terms and conditions and covenants set forth herein and in the Master Lease; and Sublessee is limited to said privileges, uses, and rights, and shall exercise no other.

A. COMPLIANCE WITH PASO ROBLES MUNICIPAL AIRPORT RULES AND REGULATIONS: Sublessee acknowledges and agrees to at all times comply with the Paso Robles Municipal Airport Rules and Regulations as promulgated from time to time by the City.

5. RENTAL: Sublessee agrees to pay Sublessor monthly rent plus a utilities fee, as provided in Section 15 ("Utility Fee"), for the Premises. Payment shall be made monthly in advance, commencing on October 1, 2009. In addition to the foregoing, Sublessee agrees to pay, as an additional one time payment in the sum of _____ by no later than October 31, 2009, which sum satisfies an agreement between Sublessee and Sublessor related to rent due and owing from August 1, 2007 through September 30, 2009.

Rental payment for the Premises shall be \$ _____ ("**Rent**") plus **Utility Fee** per month; the rental payment is due on the 1st day of every month. If the payment is not paid within ten (10) days, a late penalty of 10% of the rental fee is incurred and due with payment.

The Rent shall be subject to further adjustment commencing October 1, 2010 and continuing on October 1st of each year thereafter during the term of this Agreement ("Adjustment Date"). The adjustment shall be made as follows:

The Rent shall be adjusted on the Adjustment Date by the same percentage as the increase, if any in the Consumer Price Index ("CPI"); provided however, any adjustment shall be limited to a maximum of 5% for any given Adjustment Date. If there is no change or there is a decrease in the CPI for the preceding year, then the Rent will not be adjusted on the Adjustment Date. Sublessor shall provide at least thirty (30) days prior written notice to Sublessee of each adjusted rental amount. Failure by Sublessor to notice Sublessee may delay payment of rent but shall not preclude retroactive application of adjusted rent due unless said notice is not provided within twelve (12) months of the applicable Adjustment Date.

The term Consumer Price Index (CPI) refers to the San Francisco—Oakland-San Jose Index for Urban Wage Earners and Clerical Workers based on the period of 1967 equals 100 as published

by the Bureau of Labor Statistics of the U.S. Department of Labor. The index for the adjusted date shall be the one reported in the U.S. Department of Labor's most comprehensive official index then in use and most nearly answering the foregoing description of the index to be used. If it is calculated from a base other than the base period (1967 equals 100), the base figure used for calculating the adjustment percentage shall first be converted under the form as supplied by the Bureau. If the described index is no longer published, another generally recognized as authoritative shall be substituted by agreement of Sublessor and Sublessee. If Sublessor and Sublessee are unable to agree within thirty (30) days after demand by either party on application of either party, the substitute index shall be selected by the Chief Officer of the San Francisco Regional Office of the Bureau of Labor Statistics or its successor.

Rent shall be subject to further adjustment in the event Sublessor's ground rent for the Premises increases pursuant to the Master Lease. The parties acknowledge that pursuant to the Master Lease, the Premises along with the entire property subject to the Master Lease is subject to periodic rent increases based on a fair market value determination by the City ("FMV Adjustment"). In the event Sublessors's rent under the Master Lease is increased as a result of an FMV Adjustment, Sublessee shall pay additional rent based on the following formula: (a) Sublessor shall calculate the cost per square foot of the FMV Adjustment by dividing total increase in rent resulting from the FMV Adjustment by the total square footage of the Master Lease area, which the parties hereby agree to be 212,573 square feet (total FMV Adjustment/212,537 = "FMV Adjustment Per Square Foot"), (b) Sublessee shall pay as additional rent the FMV Adjustment Per Square Foot multiplied by the total square footage of the Premises (FMV Adjustment Per Square Foot X [insert total square footage of Premises]), and (c) Sublessee shall also pay as additional rent the FMV Adjustment Per Square Foot multiplied by 2,802, which represents Sublessee's payment of the FMV Adjustment for the Master Lease "common area".¹ For purposes of calculating any additional rent under this Section, the parties hereby agree and acknowledge that the total Master Lease area equals 212,573 square feet and contains 46 hangars, and the Master Lease "common area" is 128,889 square feet. Sublessor shall provide to Sublessee a copy of any rent increase determination from the City. Failure by Sublessor to notify Sublessee of any rent adjustment may delay payment of rent but shall not preclude retroactive application of adjustment rents due unless said notice is not provided within twelve (12) months of the FMV Adjustment.

6. SIGNS:

The Sublessee shall not erect or display or permit to be erected or displayed on the rented

¹ Sublessee's payment of the FMV Adjustment for the Master Lease "common area" is based on the following formula: (a) the Master Lease "common area" includes 128,889 square feet of the total Master Lease Area, (b) there are 46 hangars on the Master Lease Area and each hangar is equally responsible for payment of the FMV Adjustment for the "common area", (c) 128,889 (total square footage of the Master Lease "common area") divided by 46 (total number of hangars on the Master Lease Area) equals 2,802 square feet, (d) 2,802 multiplied by the FMV Adjustment Per Square Foot equals Sublessee's proportional share of the FMV Adjustment for the "common area".

premises any signs or advertising matter without first obtaining the written approval of the City Planning Department. Any signs which Sublessee desires to install shall be submitted first to the City Planning Department for approval as to number, design, size, color and location. The City Planning Department shall not approve any sign which is not in harmony with the general plan or the appearance of the Paso Robles Municipal Airport. Consent by the City Planning Department shall not relieve the Sublessee from responsibility of heeding to and conforming with any applicable City, State or Federal law, ordinance or regulation thereon.

7. **LIABILITY AND INSURANCE:**

A. **Exemption of Sublessor from Liability.**

Sublessor shall not be liable for injury or damage to any person or goods, aircraft, wares, merchandise or other property of Sublessee, Sublessee's employees, contractors, invitees or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defect of pipes, wires, plumbing, or lighting fixtures, or from any other cause, whether said injury or damage results from conditions arising upon the Premises, from other sources or places. Sublessor shall not be liable for any damages arising from any act or neglect of any other Sublessee of Sublessor nor from the failure by Sublessor to enforce the provisions of any other sublease at the Airport.

B. **Insurance.**

Sublessee shall obtain and maintain in full force and effect at all times during the term of the Sublease the insurance coverage set forth below at its sole cost and expense. All insurance coverage is to be placed with insurers which 1) have a Best's rating of no less than A-:VII as set forth in the most current issue of "Best's Key in Rating Guide" or "Best's Insurance Report - P/C Edition", and 2) are insurance companies admitted in the State of California.

Sublessee shall obtain and keep in force during the term of this Sublease a general liability policy of insurance protecting against claims arising from bodily injury and property damage, including death resulting there from, and damage to property resulting from any accident occurring on or about the Premises caused or arising out of any act of Sublessee, pursuant to this Sublease.

Such general liability insurance shall provide a comprehensive or broad form policy of insurance with single limit coverage applying to bodily injury and property damage liability, including death resulting therefrom, property damage or a combination of these in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence. The policy shall be endorsed to name the City and Sublessor as "additional insureds" and shall be the primary insurance for the City and Sublessor. The policy shall specifically state that coverage provided by the policy cannot be suspended, voided or cancelled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City and Sublessor. Sublessee shall provide renewal endorsements to City and Sublessor annually.

8. **INSPECTION:** Sublessor and the City shall have the right with reasonable notice and at reasonable times to inspect the premises for compliance with the terms and conditions of this

Sublease Agreement. Included within these inspection rights are the right to inspect inside the hangars, only after Sublessor or the City give Sublessee at least forty-eight (48) hours written notice.

9. CONSTRUCTION ON PREMISES: Any construction, improvement, or alteration must be approved, in writing, by Sublessor prior to commencement of activity.

Title to construction and/or improvements made by Sublessee hereunder shall remain in Sublessee or any legitimate successor or assign subject to Section 21 hereinafter.

Nothing herein shall be construed to be a granting of a waiver of normal permit procedures or requirements as established by the State, County, or other entity of competent jurisdiction, and Sublessee hereby agrees to promptly comply with said procedures or requirements as applicable to this Sublease Agreement.

10. PROTECTION OF PREMISES: Sublessee agrees to take all reasonable precautions to protect Premises from damage, theft, vandalism, and other such hazards.

11. NON-DISCRIMINATION: Sublessee will not discriminate against any person or class of persons by reason of race, color, creed, or national origin in the use of any of the facilities provided for the public on the Airport.

12. LAWS: It is understood and agreed that general control over said Airport and all flying activities in connection therewith are vested by law in the City acting by and through its City Council and committees and officers appointed by such City Council. In the general operation of any activities conducted under the terms of this Sublease Agreement, Sublessee agrees to comply with all rules and regulations adopted by the City for the use and operation of the Airport. The laws of the State of California are to be applicable in interpreting this Sublease Agreement.

Sublessee shall, at its sole cost and expense, comply with the requirements of all local, municipal, County, State, and Federal authorities now in force, or which may hereafter be in force, pertaining to the Premises; and shall faithfully observe in the use of the Premises all local, municipal, County, State, and Federal statutes, ordinances, rules, and regulations now in force or which may hereafter be in force, pertaining to the Premises; and shall faithfully observe in the use of the Premises all local, municipal, County, State, and Federal statutes, ordinances, rules, and regulations now in force or which may be hereafter in force. The judgment of any Court of competent jurisdiction that Sublessee has violated any such ordinance, statute, rules, or regulations in the use of the Premises shall be conclusive of the fact as between the City and the Sublessee.

Sublessee, 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 said property described in this lease for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, Sublessee shall maintain and operate the Premises in compliance with all other requirements imposed pursuant to title 49, part 21, Non-Discrimination and Federally-assisted programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, as said regulations may be amended.

13. CONDITION OF THE PREMISES: Sublessee shall, at all times, keep the Premises in a neat, safe, and sanitary condition, and free of weeds and other noxious growth, and shall, at all times, conduct its operations hereunder in strict compliance with all applicable and pertinent laws, statutes, ordinances, rules, and regulations of all governmental entities and agencies.

Sublessee shall further keep and maintain the Premises and improvements thereon in good order, condition, and repair, reasonable use and wear excepted. Sublessee shall not commit or suffer to be committed on the Premises any nuisance or unlawful act or waste. All painted exterior surfaces and surfaces requiring treatment of any kind shall be maintained in first class condition and shall be repainted or treated as often as required in order to preserve the structure and maintain high standards of appearance at the site. Any changes in exterior paint color shall be subject to prior written approval of Sublessor, which approval shall not be unreasonably withheld.

14. INDEMNIFICATION: Sublessee shall indemnify, protect, defend and hold Sublessor, its officers, directors, members, agents, employees, and lenders and the Premises, harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties, loss of permits and attorneys' fees (collectively, "Claims") arising out of Sublessee's actions or inactions under this Sublease or out of the performance of the provisions hereof, including but not limited to any act or omission to act by Sublessee or its agents, invitees, employees or independent contractors who are responsible to Sublessee; except those Claims resulting solely from the gross negligence or willful misconduct of Sublessor, its officers, directors, members, agents, employees, and lenders.

15. UTILITIES: Sublessee shall pay for all utilities used or consumed on the Premises and improvements thereon including, but not limited to, water and electricity, which are the only utilities currently provided at the Premises. Sublessor will charge **\$10.00** per month for 40 kilowatts of electricity, and Sublessor will monitor usage via an electric meter and charge accordingly for usage above the maximum 40 kilowatts. Rate increases by any of the above-referenced utility companies will be directly passed on to the Sublessee dollar for dollar.

Sublessor is to be afforded the right to determine the method of apportioning said utility charges in a fair and reasonable manner between the Sublessees and Sublessees shall have the right

to review the underlying utility bills and charges upon written request to Sublessor.

16. SUBLETTING, ASSIGNMENT AND SALE OF HANGAR:

A. Sublessee shall not assign this Sublease Agreement, or any portion thereof, without the prior written consent of Sublessor in each instance. Said consent by Sublessor shall not be unreasonably withheld or conditioned. If Sublessor consents to an assignment, a transfer fee of **\$100.00** shall be paid to Sublessor to cover administrative costs in transferring the Sublease. Under no circumstances will the term or conditions of any assignment of this Sublease Agreement exceed the terms or conditions of the Sublease Agreement. If Sublessee assigns said Sublease Agreement, or any portion thereof, without the prior written consent of the Sublessor, then said assignment shall, at the option of Sublessor, immediately cease and terminate.

B. Sublessee shall not sublease, sublet or relinquish operational control of all or any portion of the Premises without the prior written consent of Sublessor in each instance, which consent shall not be unreasonably withheld or conditioned. If Sublessor agrees to such sublease, the new sub-Sublessee shall assume all responsibilities and obligations of Sublessee under the Sublease Agreement and shall comply with all terms, covenants, and conditions of this Sublease Agreement and Sublessee shall remain responsible for performance of all the terms, covenants, and conditions of this Sublease Agreement, including financial obligations to Sublessor.

B. During the term of this Sublease, Sublessor shall have a right of first refusal and option to purchase Sublessee's hangar located on the Premises ("Hangar"), subject to the following terms and conditions: Sublessee agrees that Sublessee shall not sell the Hangar during the term of this Sublease to any third party until Sublessee has given to Sublessor notice in writing of its intent to sell said Hangar specifying the price and terms of the contemplated sale ("Notice of Intent"). Within thirty (30) days after Sublessee has given Sublessor the Notice of Intent, Sublessor shall have the right to purchase the Hangar at the same price and on the same terms and conditions set forth in Sublessee's Notice of Intent. To exercise its option to purchase, Sublessor must, within the same thirty (30) day period, deposit into escrow with any escrow (or title) company in San Luis Obispo County, California all monies and instruments required by the terms of Sublessee's Notice of Intent to be paid or delivered to Sublessee on close of escrow and shall also give Sublessee written notice of the deposit. If Sublessor fails to exercise its option to purchase the Hangar in accordance with the provisions of this Section, Sublessee may sell the hangar to any other person for the price and on the terms contained in the Notice of Intent. However, if Sublessee does not sell the Hangar to a third party on the same price and terms contained in the Notice of Intent, Sublessor shall retain its right of first refusal and option to purchase as set forth in this Section.

C. The right of first refusal granted to Sublessor shall exclude the following transfers: Any transfer resulting from the Sublessee's death; any transfer by Sublessee to Sublessee's spouse or any of Sublessee's children; transfer to a trust where Sublessee is a beneficiary; any transfer by

Sublessee to any entity in which Sublessee holds a 51% or greater ownership interest.

17. JOINT USE OF COMMON AREAS:

A. The City reserves the right, but shall not be obligated to Sublessee, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of Sublessee in this regard.

B. There is hereby reserved to the City, its successors and assigns, for the use and benefit of the public, a right-of-flight for the passage of aircraft in the airspace above the surface of the Premises, together with the right to cause in said airspace such noise, smoke, dust, and/or nuisance as may be inherent in the operation of aircraft, now known or hereafter used for navigation or flight in the air, using said airspace for landing at, taking off from, or operating on the Paso Robles Municipal Airport.

C. Sublessee, by accepting this Sublease Agreement, expressly agrees for itself, its successors and assigns, that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree or vegetation on the Premises, which will exceed the limits established by, nor violate any restriction of the Airport Hazard Zone, as adopted for the Paso Robles Municipal Airport, as it is enacted at the date of this Sublease Agreement, or in the future. In the event the aforesaid covenant is breached, the City reserves the right to enter upon the Premises and to remove the offending structure or object, and to remove the offending tree or vegetation, all of which shall be at the sole cost and expense of Sublessee; and Sublessee hereby agrees to pay to the City the entire cost and expense thereof.

D. Sublessee, by accepting this Sublease Agreement, expressly agrees for itself, its successors and assigns, that it will not make use of the Premises in any manner which might interfere with the landing and taking off of aircraft from the Paso Robles Municipal Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the City reserves the right to enter upon the Premises and cause the abatement of such interference at the sole cost and expense of Sublessee; and Sublessee hereby agrees to pay to the City the entire cost and expense thereof.

18. Intentionally Deleted

19. CONDEMNATION:

A. "Condemnation" means (A) the exercise of any governmental power, whether by legal proceedings or otherwise, by a condemnor and (B) a voluntary sale or transfer by Sublessor to any condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending.

B. "Date of taking" means the date the condemnor has the right to possession of the property being condemned.

C. "Award" means all compensation, sums or anything of value awarded, paid, or received on a total or partial condemnation.

D. "Condemnor" means any public or quasi-public authority, or private corporation or individual, having the power of condemnation.

Section 19.1 - Total Taking - If the Premises are totally taken by condemnation, this Sublease shall terminate on the date of taking.

Section 19.2 - Partial Taking - If fifteen percent (15%) of the Premises is taken by condemnation, this Sublease shall remain in effect except that Sublessee can elect to terminate this Lease if the remaining portion of the Premises is rendered unsuitable for Sublessee's continued use of the Premises. If Sublessee elects to terminate this Sublease, Sublessee must exercise its right to terminate pursuant to this Section 19.2 by giving notice to Sublessor within ten (10) days after the nature and the extent of the taking have been finally determined and written notice of such determination is provided to Sublessee. If Sublessee elects to terminate this Sublease as provided in this Section 19.2, Sublessee also shall notify Sublessor of the date of termination, which date shall not be earlier than thirty (30) days nor later than sixty (60) days after Sublessee has notified Sublessor of its election to terminate; except that this Sublease shall terminate on the date of taking if the date of taking falls on a date before the date of termination as designated by Sublessee. If Sublessee does not terminate this Sublease within the ten (10) day period, this Sublease shall continue in full force and effect, except that minimum monthly rent shall be reduced pursuant to Section 19.3.

Section 19.3 - Effect on Rent - If any portion of the Premises is taken by condemnation and this Sublease remains in full force and effect, on the date of taking, the Rent shall be reduced by the value of the portion of the Premises taken compared to the value of the entire Premises immediately before the date of taking.

Section 19.4 - Lease Termination - Prevention - If, within ten (10) days after the date that the nature and extent of the taking are finally determined and written notice of such determination is provided to Sublessee, Sublessor notifies Sublessee that Sublessor, at its costs, will add on to the remaining Premises so that the area and the approximate layout of the Premises, as enlarged, will be substantially the same after the date of taking as they were before the date of taking, and Sublessor commences the restoration immediately and completes the restoration within ninety (90) days after Sublessor notifies Sublessee, this Sublease shall continue in full force and effect without reduction in minimum monthly rent, except for any abatement or reduction made pursuant to Section 20.6.

Section 19.5 - Distribution of the Award - The award shall belong to and be paid to Sublessor. The Sublessee's right to receive compensation for damages for its fixtures and personal property and any awards or allowances for relocation and moving expenses, and any awards or allowances for loss or diminution of Sublessee's business, shall not be affected in any manner hereby, and Sublessee shall be entitled to any such awards made for such purposes. Sublessee shall pursue any such award independently of Sublessor and no award to Sublessee shall diminish the award to Sublessor.

For the purposes of this Section, a voluntary sale or conveyance in lieu of condemnation, shall be deemed an appropriation or taking under the power of eminent domain.

Section 19.6 - Temporary Taking - The taking of the Premises or any part of the Premises by military or other public authority shall constitute a taking of the Premises by condemnation only when the use and occupancy by the taking authority has continued for longer than thirty (30) consecutive days. During the thirty (30) day period, all the provisions of this Lease shall remain in full force and effect, except that rent, except for any percentage rent, shall be abated or reduced during such period of taking based on the extent to which the taking interferes with Sublessee's use of the Premises, and Sublessor shall be entitled to whatever award may be paid for the use and occupation of the Premises for the period involved.

Section 19.7 - Waiver - Intentionally Deleted.

20. LICENSES, FEES, AND TAXES:

A. Sublessee shall, and does hereby, assume responsibility for payment of licenses, fees, taxes, etc., applicable to its operation on the Premises.

B. Possessory Interest Tax: The Sublessee hereby agrees to pay a portion of any possessory interest tax assessed against Sublessor, based on the following formula: (a) Sublessor shall calculate the cost per square foot of the assessed possessory interest tax ("Tax") by dividing the Tax by the total square footage of the Master Lease area, which the parties hereby agree to be 212,573 square feet ($\text{Tax}/212,537 = \text{"Tax Per Square Foot"}$), (b) Sublessee shall pay as additional rent the Tax Per Square Foot multiplied by the total square footage of the Premises ($\text{Tax} \times [\text{insert total square footage of Premises}]$), and (c) Sublessee shall also pay as additional rent the Tax Per Square Foot multiplied by 2,802, which represents Sublessee's payment of the Tax for the Master Lease "common area".² Sublessee shall have the right to review the possessory interest tax bill

² Sublessee's payment of the Tax for the Master Lease "common area" is based on the following formula: (a) the Master Lease "common area" includes 128,889 square feet of the total Master Lease Area, (b) there are 46 hangars on the Master Lease Area and each hangar is equally responsible for payment of the Tax for the "common area", (c) 128,889 (total square footage of the Master Lease "common area") divided by 46 (total number of hangars on the Master Lease Area) equals 2,802 square feet, (d) 2,802 multiplied by the Tax Adjustment Per Square Foot equals

from the County of San Luis Obispo. Any such imposition of possessory interest tax by any governmental authority shall be a tax liability to Sublessee and any such tax payment shall not reduce any other payment due the Sublessor pursuant to this Sublease. Any and all possessory interest tax owed by the Sublessee hereunder shall be owed as additional rent. Notwithstanding the foregoing, Sublessee shall not be responsible for payment of any increase in the possessory interest tax caused by or related to any transfer, sale, lease or other conveyance of the Master Lease, the Master Lease area, the Premises, or any portion thereof, by Sublessor, its heirs, successors, or assigns.

21. TERMINATION AND SURRENDER CONDITION: Sublessee accepts the Premises as being in as inspected condition. Sublessee shall have the right to remove all improvements, fixtures, and other personal property from the Premises, including without limitation the Hangar; provided that upon such removal Sublessee shall repair at their own expense any damages resulting therefrom, including but not limited to the removal of foundation pads installed by Sublessee as required by the City. Sublessee agrees, upon the expiration of this Sublease Agreement, or any sooner termination, to peacefully and quietly yield up and surrender possession of the Premises unto Sublessor, its agents or assigns, in as good order and condition as reasonable use and wear will permit.

22. BREACH: Notwithstanding any other provisions contained herein, Sublessor and the City may cancel and terminate this Sublease Agreement if Sublessee shall fail, neglect, or refuse to perform and obey any term or condition set forth in this Sublease Agreement, after Sublessor and the City have given to Sublessee written notice of thirty (30) days to do so, unless such failure, neglect, or refusal by its nature cannot be remedied within thirty (30) days of said notice, and Sublessee has within thirty (30) days of the notice commenced, and does thereafter continue, diligent efforts to remedy such failure, neglect, or refusal. Any waiver by Sublessor or the City of any failure by Sublessee to comply with the terms and conditions of this Sublease Agreement shall not be construed to be a waiver by either Sublessor or the City of any similar or other failure by Sublessee to comply with any term or condition hereof.

23. NOTICE: All notices to Sublessor shall be given, in writing, personally, or by depositing the same in the United States mail, postage prepaid, and addressed to Sublessor at B.KIM LILLY, dba AIRPORT RENTAL AND LEASING COMPANY, P.O. BOX 1918, PASO ROBLES, CALIFORNIA 93447. All notices to Sublessee shall be given, in writing, by depositing the same in the United States mail, postage prepaid, and addressed to the Sublessee at the current address on file.

Sublessee shall maintain on file with the Sublessor and the City a list of and contact

Sublessee's proportional share of the Tax for the "common area". For purposes of explanation and example only: If the total possessory interest tax assessed against the Sublessor is \$2,500 and the Premises is 800 square feet, Tenant would pay possessory interest tax as follows: $(2,500/212,573 = \$0.012$ (Tax Per Square Foot) $0.012 \times 800 = \$9.60$ (Tax for Premises) $+ 0.012 \times 2,802 = \$33.62$ (Tax for "common area"). In the above example, Tenant would pay \$43.22 as its total portion of the possessory interest tax.

Airport Rental and Leasing Company/Sublease 5-15-09

information for all persons authorized to sign for Sublessee on official contracts and binding legal documents.

Sublessee shall also maintain on file with the Sublessor and the City a list and identification of all aircraft located within the hangar on the Premises, including aircraft identification numbers, type of aircraft and year aircraft was manufactured.

24. SUBORDINATION: This Sublease Agreement shall be subordinate to the provisions and requirements of any existing or future agreements between the City and the United States or State of California, or any of them, relative to the operation, maintenance, or development of the Airport. It is further understood that this Sublease Agreement, and all the provisions hereof, shall be subject to whatever right the United States now has, or in the future may have to acquire, affecting the control, operation, regulation, and taking over of said Airport, or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency. During the time of war or national emergency, the City shall have the right to enter into an agreement with the United States for military use of part or all of the Airport. If any such agreement is executed, the provisions of this Sublease Agreement, insofar as they are inconsistent with the provisions of this agreement with the United States, shall be suspended. Nothing in this Paragraph shall be deemed to be an agreement between Sublessor, the City, and Sublessee that Sublessee, in the event this Sublease Agreement is suspended, waives any rights to compensation Sublessee may have against the United States Government or against the State of California.

25. NON-EXCLUSIVE RIGHTS: Sublessee may not have or enjoy, and may not grant, any exclusive rights of any kind which are forbidden by any applicable and pertinent law, statute, ordinance, rule, or regulation of any governmental entity or agency. It is understood and agreed that nothing herein contained shall be construed to grant, or authorize the granting of, any exclusive right of use which would be in violation of Section 308 of the *Federal Aviation Act (49 USC, Section 1349)*.

26. SUCCESSORS: All the terms and conditions hereof shall be binding upon and shall inure to the benefit of the successors, assigns, transferees, and trustees of Sublessor, the City, and the Sublessee.

27. MISCELLANEOUS:

A. This Sublease Agreement sets forth all of the agreements and understandings of the parties and is not subject to modification except in writing.

B. This Sublease Agreement supercedes any and all agreements and leases executed by the parties prior to the effective date of this Sublease Agreement.

C. In the event that any party shall file suit to enforce the terms of this Sublease Agreement, the prevailing party shall be awarded their reasonable attorney's fees which shall be fixed by the court.

IN WITNESS WHEREOF, Sublessor and Sublessee have set their hands the day and year first above written.

SUBLESSOR:
AIRPORT RENTAL AND LEASING COMPANY

By:
B. KIM LILLY

SUBLESSEE:

By:

G:\19468\0001\DOCS\DD932403.DOC

Exhibit B

List of Lilly Tenants

PASO ROBLES AIRPORT TENANTS

	A	B	C	D	E	F
1	Hangar			Hangar		
2	#	Sublessee	Address	Type		
3	126	Aero Service	3155 Taxiway, C-6, Paso Robles, CA 93446	EII		
4	128	Aero Service	3155 Taxiway, C-6, Paso Robles, CA 93446	EIII		
5	424	Aero Service	3155 Taxiway, C-6, Paso Robles, CA 93446	EII		
6	428	Aero Service	3155 Taxiway, C-6, Paso Robles, CA 93446	EIII 1/2		
7	108	Ames, Mark	1920 Vineyard, Templeton, CA 93165	50X50		
8	324	Baum, Paul	P.O. Box 667, Atascadero, CA 93423	EI		
9	119	Bergquist, John	7850 Carmelita, Atascadero, CA 93422	68X55		
10	121	Black Oak, Inc.	P.O. Box 486, Paso Robles, CA 93447	EI		
11	115	Carlson, William	2749 Traditions Loop, Paso Robles, CA 93446	50X50		
12	120	Caskey, Lawrence	2478 Falcon Drive, Paso Robles, CA 93446	50X50		
13	122	Clegg, Del	1240 Knollwood, Cambria, CA 93428	43X36		
14	125	Cole, James	7305 Llano Road, Atascadero, CA 93422	EI		
15	109	Dolan, John	5825 Linna Road, Paso Robles, CA 93446	50X50		
16	322	Dykhouse, Rodney	3112 S. El Pomar, Templeton, CA 93465	EI		
17	422	Eberle Winery	P.O. Box 2469, Paso Robles, CA 93447	EII		
18	225	Finch, Kenneth	519 22nd Street, Paso Robles, CA 93446	EI		
19	328	Hastings Enterprises	504 1st Street, Suite A, Paso Robles, CA 93446	EI		
20	320	Henry, Chris	2330 Four Paws, Paso Robles, CA 93446	E		
21	321	Hurst, William	P.O. Box 594, Atascadero, CA 93423	E		
22	222	Pate Johnston GM	P.O. Box 607, Paso Robles, CA 93447	EI		
23	111	Judd, Jim	P.O. Box 216, San Miguel, CA 93451 (510)464-8700	50X50		
24	114	Koke Construction	8331 Vereda Del Padre, Goleta, CA 93117	50X50		
25	117	Maxon, William	Ray's Aviation, P.O. Box 887, Santa Paula, CA 93060	50X50		
26	327	Maxon, William	Ray's Aviation, P.O. Box 887, Santa Paula, CA 93060	E		
27	112	Miller Drilling	301 N. Main, Templeton, CA 93465	50X50		
28	124	Miller Drilling	301 N. Main, Templeton, CA 93465	43X36		
29	110	Monson, Lee	10519 Colorado Road, Atascadero, CA 93422	50X50		
30	105	Panzarino/Nirimo	9028 Haskell Avenue, Sepulveda, CA 91343	50X50		
31	106	Parsons, Royson	5130 San Benito Road, Atascadero, CA 93422	50X50		
32	113	Rezich Aircraft	P.O. Box 120, San Miguel, CA 93451	50X50		
33	223	Rossi, James	8412 Alta Vista Avenue, Atascadero, CA 93422	EI		
34	107	Seeder, Stephen	5375 Sunny Ridge Place, Paso Robles, CA 93446	50X50		
35	116	Sinton, Jack	Sycan Corp, P.O. Box 337, Paso Robles, CA 93447	50X50		
36	118	Sinton, Jack	Sycan Corp, P.O. Box 337, Paso Robles, CA 93447	50X50		
37	219	Toomey, Bruce	P.O. Box 3065, Paso Robles, 93447	EI		
38	230	Toomey, Bruce	P.O. Box 3065, Paso Robles, 93447	EI		
39	123	Young, Darrell	P.O. Box 3072, Paso Robles, CA 93447	E		
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GLICK & HAUPT LLP

ATTORNEYS AT LAW

1315 SANTA ROSA STREET
SAN LUIS OBISPO, CALIFORNIA 93401
TELEPHONE (805) 544-2450
FACSIMILE (805) 544-3284
WWW.GLICKHAUPT.COM

FREDERICK K. GLICK
fred@glickhaupt.com

October 14, 2009

SENT VIA E-MAIL AND REGULAR MAIL

Meg Williamson
Assistant City Manager
City of Paso Robles
1000 Spring Street
Paso Robles, CA 93446

RE: Kim Lilly / Paso Robles Airport Sublease Form

Dear Ms. Williamson:

After a great deal of time and effort, Mr. Lilly has reached an agreement with those tenants represented by Graham Lyons, Esq. with respect to the Sublease Agreement for each of those tenants' hangar space. The parties have come to terms as to rent and ancillary additional rent terms. Other than rent and the ancillary additional rent terms, I believe you will find the provisions in this Sublease form to be substantially similar to previous Sublease forms submitted to your office for ultimate approval by the City Council.

Once the City has approved this form, it is Mr. Lilly's intent to have all of the Subtenants on the leased premises execute this form so there will be a uniform rent and ancillary additional rent terms across the board for those tenants that have non-commercial airplane hangar space.

Should you have any questions or comments, please contact me at your earliest possible convenience. We would like to have the Sublease forms approved by the City as quickly as possible given the fact that so much time has been spent negotiating the final terms. I would appreciate it if

you would let me know what the process will be for the City's approval once your office and the City Attorney's office have approved the form.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Fred K. Glick', with a long horizontal flourish extending to the right.

FRED K. GLICK

Enclosure

cc: Iris Yang, Esq. (w/enclosures)
Kim Lilly

AIRPORT RENTAL & LEASING COMPANY

Post Office Box 1918, Paso Robles, CA 93447

Phone (805) 238-2017 Fax (805) 238-9424

December 15, 2009

Tenant's Name

Address

City, State, Zip

Salutation,

At long last, I have negotiated an agreement on a new sublease with the group of tenants that were not satisfied with my previous sublease proposal.

As I have committed to you when you signed the first and second tentative subleases, if I reduced the rates to the "tenants' legal group," I would offer you the same sublease I negotiated with them. Please review the enclosed sublease, and if you agree with it, please keep one complete sublease except for Page 10 (signature page). Return one complete sublease and all signed signature pages.

For your information, in short, the new sublease is much the same as the second lease I have offered you, except for the following main changes:

1. New rate per square foot of your hangar is 13 cents.
2. The lease term will be approximately 22 years and terminate on May 31, 2031.
3. If I renew the Master Lease prior to termination of your Lease, you will have the option to renew the lease term, at a new rate.
4. I have the option to purchase your hangar if you have it up for sale or have a bonafide buyer at that rate.
5. The new rate goes into effect June 1, 2009.
6. The back rent, to the old lease termination date, would have been 3 cents per square foot per month from 9/1/07 to 5/31/09. However, as a gesture of good faith, I offered to charge only 1-½ cents per square foot per month. Therefore, the back rent charge will be \$0.15 for 21 months per the square footage of your hangar.
7. Section 1 GRANT AND DESCRIPTION OF PREMISES specifies your Hangar # and its square footage.
8. The way the rent increases over time was changed. See: Section 5. Rental.
9. Your new sublease rate is effective June 1, 2009.

We will return, one fully executed copy to you, after we submit it to The City and receive their approval.

I want to thank you for your courtesy in dealing with this difficult matter.

Sincerely

B. Kim Lilly

Enclosures