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City & Borough of Juneau**

ATTACHMENT #2

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To: Dave Palmer, Airport Manager
Members of the Board
Juneau International Airport
From: Jane E. Sebens, Assistant City Attorney
CBJ Law Department *JES*
Re: Draft lease form for private aircraft hangar space
Date: December 21, 2007

As you know, the law department has undertaken a review of the Airport's current hangar/land lease form to ensure that it is consistent with the City and Borough of Juneau Code. I am attaching a revised draft lease form and include the following comments to assist your review.

I. CONFLICT OF INTEREST ISSUE

First, the Airport Board is reminded and advised that any board member who is a hangar tenant should expressly recuse himself from deliberating or voting to approve the proposed draft hangar lease form. CBJ 01.45.010 All deliberation and official action must be conducted by individuals who have no personal or financial interest in an airport hanger lease. I have included for your convenience two memoranda John Hartle prepared several years ago, and a more recent bulleted outline, that analyze Airport conflict of interest issues. Similarly, the Airport Manager should delegate hangar lease negotiation responsibilities to the Airport Deputy Manager.

II. SUMMARY OF KEY TITLE 5 AND TITLE 53 ISSUES RELEVANT TO DRAFT LEASE FORM

It is helpful to bear in mind that CBJ Title 5 ("Airport") section 05.20.020 controls the manner in which Airport lands are administered and disposed of, in part by incorporating by reference certain provisions of Title 53, ("Property Acquisition and Disposal"), with a few Airport-specific modifications. All Airport leases are then subject to these Title 53 provisions.

The same Title 5 code section also provides that "any action required by Title 53 of the Manager or of the Assembly by ordinance or otherwise, may be performed by the Airport Manager or by the Airport Board by motion, respectively." Thus, Manager and Airport Manager become interchangeable terms, as do Assembly and Airport Board, for purposes of applying Title 53 to the Airport land leasing process.

Highlighted below are certain key provisions and/or requirements of Title 5 and Title 53, applicable to Airport leases:

- 1. Airport manager has authority to negotiate leases subject to approval by airport board. 05.20.020(b).
- 2. Airport lease negotiation is subject to the standard appraisal, minimal rental and other requirements of Chapter 53.20.
- 3. Chapter 53.20 requirements highlighted:



--53.20.050 "Minimal acceptable annual rental" -- No land shall be leased for less than approved, appraised annual rent, as determined by the assessor or a qualified appraiser.

--53.20.090 "Renewal of lease"

- no sooner than 60 days/or later than 30 days before expiration, lessee shall apply . . .
- may re-lease if "all other factors are substantially equivalent"

--53.20.100 "Preference privilege"

- if new lease offered does not exceed 10 years, manager may re-lease under same terms, except for review/adjustment of rental rate;
- lessee has 30 days to accept lease offered by manager
- no preference privilege if lease terminated for cause

--53.20.190 "Terms and conditions of leases."

This code section sets out 23 terms that (in addition to other applicable provisions of the Code) govern all leases made under the provisions of the chapter and are incorporated into all such leases . . . "unless the assembly by resolution provides otherwise as to a specific lease. . ." It also provides that "lease[s] shall contain such additional restrictions and reservations as the assembly deems necessary to protect the public interest." See Appendix C and discussion below.

4. **Appendix C: Includes the 23 terms required to be included in every lease by 53.20.190.**

Key terms include:

Adjustment of rental: review & adjustment at least every 5 yrs

Subleasing: no subletting of raw land with no improvements; improvements must be substantial reason for sublease; must apply to the manager first & be bound by terms of lease

Assignment: requires manager approval; does not preclude assignment of lease of raw land

Cancellation and forfeiture: by mutual agreement; by manager if lease used for unlawful purpose; a lessee default not cured after 30 days notice; manager discretion w/ assembly approval for failure to make substantial use of land consistent with the proposed use within 1 year;

Rights of mortgagee or lienholder: option to acquire lease for unexpired term, subject to same terms, if lease is cancelled or forfeited, for cause;

Renewal preference: renewal preference is a privilege; lease renewal procedure & renewal preference shall be that provided by ordinance in effect on date of renewal application

Removal or reversion of (lessee's) improvements upon termination of lease: 60+ days to remove; or, may sell to succeeding lessee, with consent of manager; public sale process for remaining improvements more than \$5,000 & reversion to CBJ if left and less than \$5,000.00

NOTE: Appendix A, which takes precedence over Appendix C, (see PART III Lease Description, page 1) reflects the Title 5 modification--prohibiting requirement of reversion for less than fair market value.

III. REVISED FORMAT OF LEASE FORM

As you can see, the format of the lease has also been significantly revised. This was done to bring Airport contracts into conformity with the City's general contract/lease format, as much as possible. Such standardization and use of prioritized appendices also ensures that the provisions required in leases by law are always included, while at the same time providing a means by which terms that may be legally modified by the Airport Manager or Airport Board, as appropriate, may be modified.

I trust this general analysis has been helpful and that you will not hesitate to contact me if you have specific questions or concerns regarding these matters. I look forward to finalizing our airport hangar lease form and look forward to working with you. Thank you.