



	Approved	Denied
Action taken	1/13/03	
Other:		
Date of Council Action:		
Verified by: <i>R. Smithus</i>		

**WASILLA CITY COUNCIL MEMORANDUM**

**CM No. 03-02**

**TITLE:** 30-Year Lease Agreement for Lots 7, 8, & 9, New Wasilla Airport Lease Lots

**COUNCIL MEETING DATE:** January 13, 2003

**ADMINISTRATION INITIAL:** *DMK*

**REQUESTED BY:** Tim Krug, City Planner *TK*  
Don Shiesl, Public Works Director/Airport Manager

**PREPARED BY:** Jill Carricaburu, Planning Clerk

**DATE PREPARED:** 1/03/03

**FISCAL IMPACT:** None  
If yes, amount requested: \$ Account No.: N/A

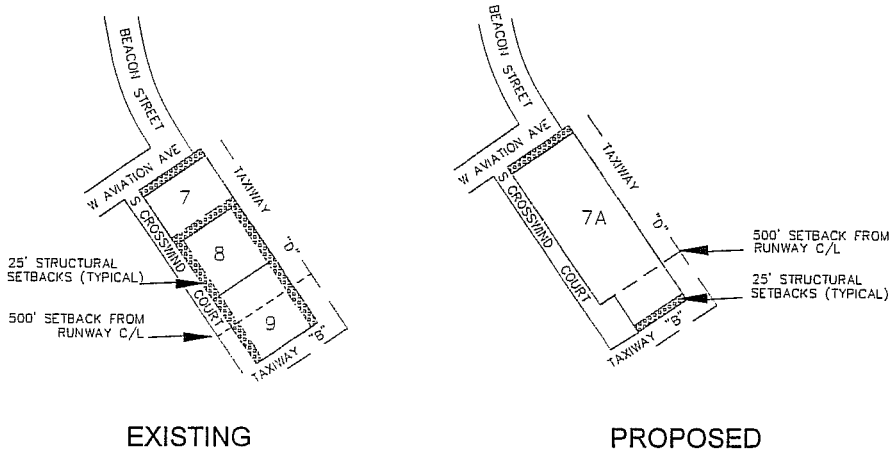
**SUMMARY STATEMENT:**

At the Planning Commission's last meeting, December 10, 2002, the commission approved WPC Resolution Serial No. 02-33 allowing the construction of four (4) "T" hangars to be built in phases with between six and ten individual spaces per hangar. Proposed total square foot area is to be 40,000 to 46,000 sf. The Resolution also allows lease modifications and to combine Lots 7, 8, & 9 into one lot through a platting action. The property is zoned C--Commercial.

The proposed tenant for Lots 7, 8, & 9 at New Wasilla Airport Lease Lots has expressed a desire to procure a 30-year lease rather than a 10-year lease as allowed per Wasilla Municipal Code Section 5.32.120(C)(1). Due to financial circumstances for assuring a mortgage on improvements the use may be submitted before the Wasilla Planning Commission and the Wasilla City Council (WMC 5.32.120(C)(3) for acceptance of the proposed lease.

The proposed agreement requires that the City pay platting costs to combine the three lots into one and requires documentation from the tenant on a phasing plan. The proposed agreement also has a reversion clause, (see Lease Agreement, Section 3.2), if the tenant fails to carry out the phasing plan. The tenant, G.T. Construction, proposes to start development phases nearest Aviation Avenue continuing phases southeasterly towards the runway.

According to code the city planner shall designate the front yard for corner lots. The illustration below shows setbacks for the property as it is currently platted and what the setbacks would be if the lots are replatted into one lot.



**STAFF RECOMMENDED ACTION:**

Staff recommends the Wasilla City Council move to approve revised lease agreement for a period of 30-years between the City of Wasilla and Guy Turner, G.T. Construction, for Lots 7, 8, & 9, New Wasilla Airport Lease Lots and require phasing of project to begin at Aviation Avenue, Lot 7.

- Attachments:
- Revised drawing dated November 27, 2002
  - Sketch showing phasing – dated May 10, 2002
  - Revised contract
  - WPC Resolution Serial No. 02-33



ADIUS (TYPICAL)

Front

N 56°14'55.5"E

225' 10 Cars

Drainage

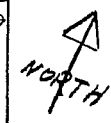
73'-6"

shrubs

200'

51'-6"

LOT 7  
8-10 unit T-Hangar  
45,000.± S.F. All phase  
1.033 ACRES



Drainage

73'-6"

36'  
50'  
R.O.W.

65'

225'

N 56°14'55.5"E

51'-6"

LOT 8  
8-10 unit T Hangar  
220' 2nd phase

side

LOT 8  
45,000.± S.F.  
1,033 ACRES

73'-6"  
200'

Dumpster

51'-6"

LOT 8  
8-10 unit T Hangar  
220' 3rd phase

LEASE LOT ACCESS "B"  
S 33°45'04.5"W

S 33°45'04.5"E

N 33°45'04.5"W

225'  
N 56°14'55.5"E

Drainage

73'-6"  
200'

Proposed well site

51'-6"

LOT 9  
8 T Hangers  
220' 4th phase

235.00  
50x135  
Road  
Turn-around

LOT 9  
52,875.± S.F.  
1.214 ACRES

Excluded From Lease  
Septic Area

33 Parking

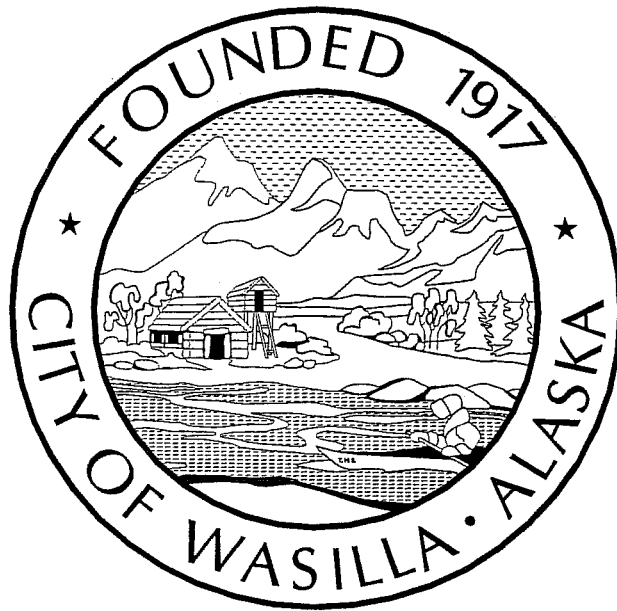
RECEIVED

MAY 10 2002

N 56°14'55.5"E  
Near

1"=50'

PLANNING OFFICE  
DE WASH DC



LEASE  
of Lots 7, 8 and 9, New Wasilla Airport  
City of Wasilla  
and G.T. Construction, Inc.

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## LEASE

This LEASE is entered into as of the 1<sup>st</sup> day of August 2002 between the CITY OF WASILLA, an Alaskan municipal corporation ("Lessor"), and GT Construction, Inc. ("Tenant").

The parties hereby agree as follows:

### ARTICLE I PREMISES, TERMS AND RENTALS

#### Section 1.1    Premises

Lessor leases to Tenant, and Tenant leases from Lessor, the following described real property ("Property"):

Lots 7, 8, & 9, New Wasilla Airport, as shown on Plat 92-39, recorded July 21, 1992, Palmer Recording District, Third Judicial District, State of Alaska,

#### Section 1.2    Term

The term of this lease shall be for a period of thirty (30) years, commencing on the first day of May 2003 ("Commencement Date"), and expiring on the last day of April 2033, unless sooner terminated as provided in this lease. With the consent of Lessor, which will not be unreasonably withheld, this lease may be renewed for an additional thirty (30) years, upon the written request of Tenant to Lessor not less than ninety (90) days before the expiration of the lease term.

#### Section 1.3    Rents

- (a) Tenant shall initially pay to Lessor the amount of six hundred eighty dollars & sixty three cents (\$680.63) per month, payable monthly in advance beginning on the 1st day of May 2003 and on the 1st day of each month thereafter at the office of Lessor. Failure to pay rent by the tenth (10th) day of the month shall obligate Tenant to pay a late charge of ONE HUNDRED DOLLARS (\$100.00) for each late payment.
- (b) All taxes, charges, costs and expenses that Tenant is required to pay, and all damages, costs and expenses that Lessor may incur by reason of any default of Tenant or failure on Tenant's part to comply with the terms of this lease, shall be deemed to be additional rent and in the event of nonpayment by Tenant, Lessor shall have all the rights and remedies with respect thereto that Lessor has for the nonpayment of the basic rent.

#### Section 1.4    Rent Adjustments

- (a) The rent shall be subject to adjustment at five (5) year intervals to achieve fair market rent, the first adjustment date to be five (5) years following the Commencement Date. The value of improvements made by Tenant shall not be considered in determining fair market rent.

- (b) The rent shall be adjusted in the following manner: Six (6) months prior to the termination of the initial five (5) year period or any subsequent five (5) year period (the "current five (5) year period"), Lessor shall propose the rent for the next five (5) year period of the lease term and the parties hereto may, by mutual agreement, fix that rent for such five (5) year period. If an agreement is not reached ninety (90) days prior to the end of the current five (5) year period, the fair market rental of the Property shall be determined by an appraiser selected by Lessor and Lessee who shall (a) be a member of The American Institute of Real Estate Appraisers, and (b) have experience in appraising properties similar to the Property. The cost of such appraisal shall be divided and borne equally between Lessor and Tenant.
- (c) During the pendency of any determination of fair market rent, Tenant shall pay the rent last in effect for the Property until such determination has been made. Any deficiency between the rent so paid and the adjusted rent retroactive to the beginning of the period for which it is due shall be paid within thirty (30) days of being billed to Tenant with interest from the original due date of such rent at the rate of TEN AND ONE-HALF PERCENT (10.5%) per annum.

## ARTICLE II USE

### Section 2.1    Airport Purposes

The Property shall be used for: Initial construction of 6-10 "T" hangars to be developed as a condominium association.

### Section 2.2    Prohibited Uses

Tenant shall not use or permit any part of the Property to be used for any unlawful purpose or for any purpose that may constitute a nuisance or hazard to health, safety, or property. Tenant shall not permit any part of the Property to be used for any purpose in violation of any applicable law, lawful order, or rule or regulation relating to the operation or use of the Wasilla Municipal Airport.

### Section 2.3    Hazardous Material

- (a) Tenant shall not cause or permit any hazardous material to be on or used on the Property without the written consent of Lessor. Lessor shall not unreasonably withhold consent if any such materials are necessary or useful to Tenant's business, and will be stored and used in a manner complying with all laws and regulations regulating use and storage of hazardous materials.
- (b) Tenant shall defend, indemnify, and hold Lessor harmless from any claims, damages, fines, penalties, liabilities or losses resulting from any breach of subsection (a) above, or from hazardous material being on the Property. If clean-up or property restoration is required, Tenant shall be considered the Responsible Party under any and all applicable State and Federal laws and regulations, and shall pay all costs connected with clean-up or restoration.

#### Section 2.4 Reservations and Exceptions

Lessor represents that it is not currently aware of any conditions, reservations, limitations, provisions, or terms imposed upon the premises of the Wasilla Municipal Airport in any grant, loan, lease, permit, patent, deed or any other conveyance to Lessor from the United States or the State of Alaska that would unduly interfere with or prohibit the activities contemplated by Tenant. However, there may be future circumstances that impose certain restrictions or limitations upon the use of the premises of the Wasilla Municipal Airport. To deal with that possibility, the parties agree as follows:

This lease is made by Lessor and accepted by Tenant conditioned upon and subject to any conditions, reservations, limitations, provisions, or terms imposed upon the premises of the Wasilla Airport, as contained in any grant (including any monetary grant or loan), lease, permit, patent, deed, or any other conveyance to Lessor of the premises of the Wasilla Municipal Airport, from the United States or the State of Alaska, including their agencies. In the event that any such condition, reservation, limitation, provision or term shall, without fault of Lessor, prevent, this lease from continuing in full force and effect, Lessor shall have the option to terminate this lease immediately and at any time, without liability to Tenant.

#### Section 2.5 Subordination of Lease to Requirements of the Federal Aviation Agency

- (a) This lease shall be subordinated to the provisions of any existing or future agreement between Lessor and the State of Alaska or the United States, relative to the operation or maintenance of the Wasilla Municipal Airport.
- (b) Lessor has undertaken and may in the future undertake certain obligations respecting its operation of the Wasilla Municipal Airport and activities of its contractors, tenants and permittees. If the State of Alaska, the Federal Aviation Administration, or any other governmental body having jurisdiction over the obligations of Lessor in its operation of the Wasilla Municipal Airport shall take any action affecting the operations of Tenant, Tenant shall promptly comply with these actions as Lessor may direct.

#### Section 2.6 Aircraft on Premises

Tenant shall provide Lessor, upon request, a list identifying all aircraft on the Property for any purpose, together with the aircraft type, model and number, the name and address of the owner, the purpose of the aircraft being on the Property, and such other information that Lessor may request.

## Section 2.7 Discriminatory Acts Prohibited

- (a) Tenant shall furnish any service to be rendered by Tenant on a fair, equal and not unjustly discriminatory basis to all users. In performing such services, Tenant shall charge fair, reasonable and not unjustly discriminatory prices or rates, provided Tenant may make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume users or purchasers, or in recognition of significant private investment.
- (b) Tenant shall not discriminate against any person or class of persons by reason of race, color, creed, gender, or national origin.

## Section 2.8 Maintenance of Property

Tenant shall keep the entire Property in good repair and in a neat, orderly and slightly condition. Tenant shall not cause or permit any litter, garbage, debris, weeds or other items and materials of other kind whatsoever to remain on the Property. Tenant shall not store such things as parts, lumber, and oil or gasoline drums outside of a building, unless Lessor grants express written permission to do so. Tenant shall remove any and all such materials within five (5) days of written notice from Lessor. Notwithstanding the remainder of this section, Tenant may store on the Property cargo awaiting shipment by air, and cargo unloaded from an aircraft and awaiting delivery, for a period in each case not exceeding forty five (45) days.

## Section 2.9 Signs

Tenant may erect one exterior sign per hangar, securely mounted on the building, not to exceed twenty-five (25) square feet in size bearing the occupant's trade name and business description, providing the sign meets all municipal sign ordinance requirements. No freestanding signs are permitted. Tenant shall not, without Lessor's written consent, place any additional signs on the Property. At the termination of this lease, all signs shall be removed by Tenant at Tenant's expense.

Tenant may erect one real estate sign under thirty-two (32) square feet in size near the property lines at the intersection of W. Aviation Avenue and S. Crosswind Court.

Tenant may erect one permanent ground sign under fifty (50) square feet in size near the property lines.

Tenant shall install signs and maintain setbacks in accordance with Chapter 16.32 of Wasilla Municipal Code

## Section 2.10 Tenant's Right to Terminate

If any governmental body, agency or official, other than Lessor, prohibits or otherwise prevents the use of the Wasilla Municipal Airport as a public airport for one year or more, or should the continued use of the Wasilla Municipal Airport as an airport become impossible or unlawful without the fault of Tenant, Tenant shall have the option to terminate this lease on thirty (30) day written notice to Lessor. In the event that Tenant terminates this lease under this section, Tenant

shall have six (6) months from the effective date of the termination to remove its possessions and improvements from the Property.

Section 2.11 Lessor's Improvements

- (a) Lessor shall have a permanent right of access over, under and across the Property for the purposes of maintaining, servicing, upgrading or removing any Lessor-installed improvements including, but not limited to, pavement, aircraft tie-downs, light poles, and fencing. Lessor shall provide a snow storage area on the premises of the Wasilla Municipal Airport for use of Tenant and other tenants, but shall have no responsibility for sanding or removing snow from the Property.
- (b) All improvements constructed by Lessor shall at all times remain the property of Lessor and may be maintained, upgraded, serviced or removed at Lessor's convenience and discretion.
- (c) Lessor shall make all reasonable efforts to coordinate any maintenance or repair work with Tenant and to avoid disrupting Tenant's use of the Property whenever possible.
- (d) The purpose of the paving and tie-down improvements is to provide clean and serviceable areas for public use aircraft parking. Tenant may make reasonable use of these improvements, if they are not destroyed or removed, or used in a manner that converts them to a non-public use.

Section 2.12 Aviation Easement

Tenant's right to use the Property for the purposes set forth in this lease shall be secondary and subordinate to the operation of the Wasilla Municipal Airport. Lessor specifically reserves for itself, other Wasilla Municipal Airport leaseholders, and for the public, an easement for the passage of and noise caused by aircraft in the air space above the surface of the Property. Tenant shall not construct any building or facility to a height, which in Lessor's discretion will interfere with the operations of the Airport, and in no event exceeding thirty five (35) feet.

**ARTICLE III  
IMPROVEMENT OF THE PROPERTY**

Section 3.1 Development Plan

The parties contemplate that Tenant will, at Tenant's expense, construct buildings, paved areas, utility extensions and other improvements (the "Improvements") to the Property. Tenant shall not commence construction of Improvements before completing the following steps:

- (a) Phasing of construction. If Tenant does not intend to construct Improvements on all the Property at one time, Tenant shall present to Lessor a plan to develop the Property in phases. The plan shall consist of a map showing the location of each phase on the Property, and the approximate location of Improvements that will be constructed in each phase, including all utilities, driveways, taxiways and parking

or tie-down areas that will be constructed as part of each phase. The plan to develop in phases shall be subject to the reasonable approval of Lessor.

- (b) If any Improvement is to be owned or occupied as a common interest community under AS 34.08, Tenant shall obtain Lessor's approval of the declaration creating the common interest community (the "Declaration") before commencing construction of the Improvement.
- (c) Before recording a Declaration approved under subsection (b) of this section, Tenant shall cause to be incorporated an Alaska nonprofit corporation to serve as the association for the common interest community under AS 34.08.310 (the "Association"). After Tenant records the Declaration, and provided that no event of default by Tenant has occurred and is continuing, and no event has occurred and is continuing which with notice or the passage of time would constitute an event of default by Tenant, Tenant may assign to the Association Tenant's interest in this Lease with respect to the part of the Property that is subject to the Declaration. Such assignment shall be without recourse, shall include an assumption by the Association of all Tenant's obligations with respect to the interest assigned, and shall release Tenant from any further obligation with respect to the interest assigned. Alternatively, subject to the same conditions, Lessor and Tenant may terminate this Lease with respect to the part of the Property that is subject to the Declaration, and Lessor shall enter into a new lease of such part of the Property with the Association, with terms and conditions identical to those in this Lease, except that the leased premises shall be only that part of the Property which is subject to the Declaration, and the rent shall be a prorated part of the rent under this Lease, based on the relationship of the area of the new leased premises to the total area of the Property.

### Section 3.2 Reversion if No Development

If Tenant fails on or before July 1, 2007 to complete the steps described in Section 3.1 with respect to any phase established under Section 3.1(a), or fails to complete the steps described in Section 3.1 with respect to the entire Property if no such phases are established, this Lease shall terminate with respect to such phase, or the Property, as the case may be, and Tenant shall have no further interest in such phase or the Property, as the case may be. At the request of Lessor, Tenant shall execute a document prepared by Lessor to evidence such termination.

### Section 3.3 Wasilla Planning Commission and Wasilla City Council Approval; Subdivision of Property

- (a) Prior to Lessor signing this Lease, the schematic plans, phasing plan and Lease shall be subject to approval by the Wasilla Planning Commission and the Wasilla City Council.
- (b) After the schematic plans, phasing plan and Lease approvals have been approved as described in subsection (a) of this section, if a resubdivision of the Property is required to accommodate Tenant's approved plans to develop the

Property, Lessor, at Lessor's expense, shall prepare, obtain regulatory approval of, and file a plat effecting the required resubdivision of the Property.

#### Section 3.4 Preliminary Plans and Specifications

On or before March 1, 2003, Tenant shall submit to Lessor preliminary plans and specifications for the improvements to be constructed in the first phase of development of the Property, in sufficient detail to show the design, character, and appearance of the improvements to be constructed. If Tenant shall fail to submit the preliminary plans and specifications required by this section within the time specified, Lessor may terminate this Lease on ten (10) days written notice to Tenant. Lessor shall inform Tenant in writing of any objections to the preliminary plans and specifications within thirty (30) days of their submission. Failure of Lessor to inform Tenant in writing of objections within such thirty (30) day period shall constitute approval. Tenant shall have thirty (30) days after receipt of Lessor's objections to propose any corrective amendments which Lessor shall accept or reject within twenty (20) days. Failure of Lessor to inform Tenant in writing of its objections within such twenty (20) days period shall constitute approval.

#### Section 3.5 Final Plans and Specifications

After Lessor has approved the preliminary plans and specifications, Tenant shall submit to Lessor for approval final plans and specifications for the Improvements. Failure of Lessor to inform Tenant in writing of its objections within twenty (20) days shall constitute Lessor's approval of such final plans and specifications. The failure of Tenant to proceed promptly with the preparation of final plans and specifications, or to submit final plans and specifications as required by this section shall constitute a default and a breach of this Lease and shall enable Lessor to terminate this Lease on ten days written notice.

#### Section 3.6 Compliance with Laws

Tenant shall procure all licenses and permits required for the construction of the Improvements and shall comply with all legal requirements applicable to the construction of the Improvements. When completed, the Improvements shall fully comply with all applicable laws, including without limitation federal, state, and municipal building, fire, construction and safety codes and zoning regulations and requirements. Lessor's approval of plans and specifications for the Improvements shall not constitute the assumption of any liability to Tenant for their compliance or conformity with applicable legal requirements, or for the accuracy of the plans or specifications. Lessor's approval of plans and specifications for the improvements shall not waive Lessor's right thereafter to require Tenant to cure any violations of applicable legal requirements in the Improvements. Nothing in this Lease shall restrict Lessor in the exercise of its police power or authority to enforce building, fire and other safety codes, laws, ordinances or regulations.

#### Section 3.7 Compliance with Part 77 FAR

Tenant shall comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations before constructing the Improvements or any future structure on the Property, and before commencing any modification or alteration of any present or future building or structure situated on the Property.

### Section 3.8 Construction Schedule

Tenant shall commence construction of the Improvements on the First Phase on or before June 1, 2003, and shall complete construction on or before May 31, 2004. The construction shall be completed when the Improvements have been substantially completed and are capable of the use for which they were intended. If Tenant has not completed the construction by the scheduled completion date Lessor may terminate this Lease on ten days written notice.

### Section 3.9 Liens

Tenant shall keep the Property and the Improvements at all times free and clear of all liens, claims and encumbrances and agrees to indemnify, defend and hold Lessor harmless from and against any and all losses, damages and costs, including reasonable attorneys' fees, with respect thereto. If any lien or notice of lien on account of the alleged debt of Tenant or lien or notice of lien by any party engaged by Tenant or Tenant's contractor to work on the Property shall be filed against the Property or Improvements, Tenant shall cause the same to be discharged of record by payment, deposit, bond, court order or otherwise.

### Section 3.10 Inspection

During the construction of Improvements, the Lessor may inspect the Improvements. If Lessor determines that the Improvements are not being constructed in accordance with the approved plans and specifications therefor, Lessor may notify Tenant in writing of the deviation from the approved plans or specifications. Upon receiving a notice under this section, Tenant shall commence and proceed with diligence to correct the deviation.

### Section 3.11 Non-Responsibility

Lessor at any time may enter upon the Property for the purpose of posting notices of non-responsibility for any work, labor or materials supplied or furnished to the Property and Tenant shall notify Lessor in writing in advance of any construction, so that Lessor may post such notices of non-responsibility. All work, labor, or materials supplied for the Improvements are supplied only to further the purposes of Tenant, and are contracted for solely by Tenant for Tenant's own benefit and not as agent of Lessor.

### Section 3.12 As-Built Plans

Within sixty (60) days after completing construction of the Improvements, Tenant shall deliver to Lessor a surveyed plot plan of the Property showing the completed Improvements as built in relation to the boundaries of the Property.

### Section 3.13 Improvements Subject to Reversion or Removal

All alterations, buildings, structures or other Improvements placed on the Premises by Tenant shall be subject to Section 7.6 of this Lease.



Section 3.14 Alterations and Other Improvements

Tenant may make such alterations and improvements to the Property and/or the Improvements upon the Property as in Tenant's judgment are reasonably necessary or appropriate for the conduct of Tenant's business, provided that any such alteration or improvement shall be consistent with Tenant's use and occupancy of the Property for the purposes permitted under this Lease, Tenant shall first obtain Lessor's approval, which approval shall not be unreasonably withheld, and Tenant shall comply with the provisions of this Article.

Section 3.15 Pavement/Utility Services

Tenant shall construct all pavement or utility services only with the prior written consent of Lessor and in accordance with plans and specifications approved by Lessor. The construction shall be subject to inspection by Lessor.

**ARTICLE IV  
TAXES, INDEMNIFICATION AND INSURANCE**

Section 4.1 Taxes, Assessments and Utilities

Tenant shall pay when due all taxes, assessments and charges upon the Property and upon buildings, improvements and property thereon, that are assessed or charged at any time during the term. Upon request, Tenant shall furnish to Lessor for Lessor's inspection official receipts from the appropriate taxing authorities or other proof satisfactory to Lessor evidencing payment. Tenant shall pay and be responsible for all charges for gas, electricity, water, light, heat, power, garbage, solid waste, and other utility services used on or supplied to the Property.

Section 4.2 Indemnification

Tenant shall defend, save and hold Lessor harmless from any and all claims, demands, suits or liability, including all attorneys' fees arising from any and all loss, damage to property or injury to persons occurring in connection with the occupancy of the property or operations under this lease. This indemnification agreement includes claims alleging acts or omissions by Lessor or its agents, which are claimed to have contributed to the loss or damage. However, Tenant shall not be responsible for any damage or claim arising from the sole negligence or willful misconduct of Lessor or its agents.

Section 4.3 Insurance

Tenant shall obtain and maintain throughout the period of performance of this lease insurance in the following minimum requirements:

- A. Workers, Compensation Insurance, covering all employees of Tenant, in statutory limits, to include any of the obligations assumed by Tenant under this Lease.
- B. Commercial Automobile Liability Insurance, whether Owned, Hired, or Non-Owned; liability limits of not less than \$500,000.00 Combined Single Limit or Liability per Accident/Unlimited Annual Aggregate including Uninsured/Underinsured Motorist, with minimum limits as follows:

\$500,000.00	Bodily Injury Limit Per Person
\$500,000.00	Bodily Injury Limit Per Accident
\$500,000.00	Property Damage Per Accident

C. Premises Liability in the Amount of:

\$1,000,000.00	Combined Single Limit of Liability per Occurrence
----------------	---------------------------------------------------

Each Policy of insurance shall be endorsed to include the City of Wasilla as an additional insured, with a minimum of thirty (30) days notice of cancellation to the City of Wasilla. Prior to the execution of this lease, certificates of insurance and/or letter verification of the effectiveness of such insurance shall be furnished so as to demonstrate compliance with the foregoing insurance requirements. Continuing evidence of compliance with the insurance requirements in the form of certificates and/or letters of verification may be requested by Lessor at any time.

**ARTICLE V  
ASSIGNMENT AND SECURITY INTERESTS**

Section 5.1 Assignment or Sub-Leasing

- (a) Tenant shall not assign or sublet any interest in the premises, or any part thereof, nor permit the occupancy of any part thereof by any other person or entity without the prior written consent of Lessor, which consent shall not be unreasonably withheld. Lessor shall not be required to consent to any assignment or sublease unless the proposed assignee or sublessee agrees in writing to assume and perform all the terms, conditions and covenants of this lease. Tenant shall furnish Lessor with a copy of any proposed assignment or sublease for approval prior to any assignment or sublease, and shall further furnish a copy to Lessor of any executed assignment or sublease.
- (b) If Tenant is a corporation, assignment for purposes of this lease shall include, but not be limited to, any change in the structure of or the ownership of shares of stock in the corporation whereby control of the affairs of the corporation is transferred to persons other than those exercising such control on the date of execution of this lease or on the date of Lessor's approval of the immediately prior assignment.
- (c) No assignment, sublease, or occupancy permitted under subparagraph (a) of this paragraph shall relieve Tenant of any of Tenant's obligations herein. Tenant agrees to save Lessor harmless from any liability or loss because of the nonpayment of rentals, taxes or assessments or other charges incurred on the premises by the assignee, sublessee or occupant.
- (d) Notwithstanding the remainder of this section, Tenant may record a declaration subjecting all or part of its leasehold of the Property to the Uniform Common Interest Ownership Act, AS 34.08, with the prior written consent of Lessor. Before giving its consent, Lessor may review the declaration, the documents governing the unit owners' association and such other information as Lessor requires to determine that the declaration will be consistent with the other terms of this lease

and the best interest of the Wasilla Municipal Airport. Every conveyance of a unit under the declaration shall provide that the grantee shall assume and perform all the terms, conditions and covenants of this lease with respect to the unit. Upon Tenant's transfer of any interest under this lease to the owner of a unit or the unit owners' association, the transferee shall assume all of Tenant's obligations under this lease, and Tenant shall be released from subsequent obligations that are so assumed.

#### Section 5.2    Mortgage and Encumbrances

Tenant shall not mortgage or otherwise encumber this lease, including Tenant's leasehold estate and the improvements thereon, without the prior written consent of Lessor, except that encumbrance of the improvements or leasehold only (but not the underlying property) is allowed for the purpose of construction or permanent financing of approved leasehold improvements. Tenant shall furnish Lessor with a copy of any agreement mortgaging or encumbering the Property for Lessor's approval prior to executing any mortgage or encumbrance, and shall also furnish a copy to Lessor of any such executed documents.

### **ARTICLE VI DEFAULT AND ENFORCEMENT**

#### Section 6.1    Default Defined

Each of the following shall be deemed a default by Tenant and a breach of this lease:

- (a) Failure to pay the rent provided herein, or any part thereof, for a period of ten (10) days after it is due.
- (c) Failure to provide and maintain in effect insurance in compliance with Section 4.3.
- (d) Failure to do, observe, keep and perform any other term, covenant, condition, agreement or provision contained in this lease for a period of thirty (30) days after written notice of such failure is sent by Lessor, or, in the case of a default not reasonably susceptible of being cured within thirty (30) days (which does not include any default which may be cured by the payment of money), failure to commence promptly and proceed diligently and in good faith to cure within a total of sixty (60) days after the sending of the notice.
- (e) The abandonment of the Property by Tenant, the making by Tenant of a general assignment for the benefit of creditors, or the appointment of a permanent or temporary receiver for Tenant's property, which is not vacated or set aside within thirty (30) days of the sending of written notice of such event by Lessor.

#### Section 6.2    Lessor Remedies on Default

In the event of any default by Tenant, Lessor may:

- (a) Terminate this lease in accordance with Section 6.3, below,

- (b) Reenter the Property without terminating the lease in accordance with Section 6.4, below,
- (c) Perform any act required hereunder to be performed by Tenant and recover the cost thereof as provided in Section 6.5, below,
- (d) Recover damages in accordance with Section 6.6, below, and,
- (e) Obtain any other remedy provided at law or in equity, including but not limited to, injunctive relief.

The remedies given to Lessor in this lease are cumulative and may be exercised in any combination without regard to the consistency thereof.

### Section 6.3 Termination

In the event of default by Tenant, Lessor may send a written notice to Tenant stating that Lessor elects to terminate this lease upon a specified date not less than thirty (30) days after the date of the sending of such notice at which date this lease shall expire as if that date had been originally fixed as the expiration date of the term unless the default is cured within the applicable period provided in the notice of termination. Upon termination, all interest of Tenant in the Property shall expire and Lessor shall have the right to immediate possession.

### Section 6.4 Reentry

In the event of a default by Tenant, Lessor may send a written notice to Tenant stating that Lessor elects to reenter the Property without terminating the lease upon a specified date not less than thirty (30) days after the date of the sending of the notice. Lessor may on that date or at any time thereafter, reenter and resume possession of the Property or any part thereof, and remove all persons and property therefrom, either by a suitable action or proceeding at law, or otherwise, without being liable for any damages therefor. No reentry by Lessor shall be an acceptance of surrender of this lease or a liquidation or satisfaction to any extent whatsoever of Tenant's liability to pay rent as provided. Lessor may in its own name, but as agent for Tenant, relet the whole or any portion of the Property for any period equal to or greater or less than the remainder of the term, for any sum which it may deem appropriate, and in connection with any such lease Lessor may make such changes in character of the improvements on the Property as Lessor may determine to be appropriate or helpful in effecting such lease. However, in no event shall Lessor be under any obligation to relet the Property for any purpose which Lessor may regard as injurious to the Property, or to any tenant which Lessor, in the exercise of reasonable discretion, shall deem to be objectionable. Lessor may, at any time after reentry, terminate this lease in accordance with Section 6.3.

### Section 6.5 Lessor's Right to Perform

In the event of default by Tenant, Lessor at Lessor's discretion may cure such default on behalf of Tenant for the account and at the expense of Tenant, in which event Tenant shall reimburse Lessor for all sums paid to effect such cure, together with interest at the statutory rate of TEN AND ONE-HALF PERCENT (10.5%) per annum and reasonable attorneys' fees. In order to

collect such reimbursement, Lessor shall have all the rights and remedies available under this lease for a default in the payment of rent.

#### Section 6.6 Damages

In the event of default by Tenant, Lessor shall have the right to recover from Tenant at any time:

- (a) An amount equal to all sums required hereunder to be paid by Tenant including, but not limited to, sums paid by Lessor pursuant to Section 6.5, above;
- (b) An amount equal to all expenses, if any, incurred by Lessor in recovering possession of the Property and all costs and charges for the care of the Property while vacant;
- (c) In the event of termination of this lease by Lessor pursuant to Section 6.4, above, an amount equal to the difference between the value discounted to date of termination of the rent hereunder for the term of the lease remaining, if Lessor had not terminated, and the value discounted to the date of termination of the net rent which Lessor might reasonably expect to receive from the Property for the balance of the term remaining, if Lessor had not terminated, including, but not limited to, a reasonable allowance for vacancies;
- (d) In the event of reentry by Lessor pursuant to Section 6.4, above, either before or without termination thereafter, an amount equal to the amount of all rent provided by this lease less the net rent, if any, collected by Lessor on reletting the Property allowing for all actual expenses of Lessor which amount shall be due and payable by Tenant; and
- (e) All reasonable attorneys' fees and costs incurred by Lessor in any proceeding to enforce this lease or exercise any remedy hereunder.

#### Section 6.7 Right of Access

Lessor shall have the right to enter upon the Property during reasonable hours for any purpose. Lessor also reserves the right of access and the right to abate any nuisances or hazardous conditions on Property without notice when in Lessor's good faith judgment an emergency exists.

#### Section 6.8 Lessor's Failure to Enforce and Nonwaiver

No failure by Lessor to insist upon the strict performance of any term, condition or covenant of this lease or to exercise any right or remedy available on a breach thereof, and no acceptance of full or partial rent during the continuance of any such breach shall constitute a waiver of any such breach or any such term, condition or covenant. No term, condition or covenant of this lease required to be performed by Tenant, and no breach thereof, shall be waived, altered or modified, except by written instrument executed by Lessor. No waiver of any breach shall affect or alter any term, condition or covenant of this lease, and each such term, condition or covenant shall continue

in full force and effect with respect to any other then existing or subsequent default or breach. Any other or subsequent default or breach may be enforced by Lessor as provided in this lease.

## **ARTICLE VII GENERAL COVENANTS**

### Section 7.1    Condition and Status of Property

Tenant acknowledges that Tenant has examined the Property and accepts same in its present condition without any representation or warranty, express or implied in fact or by law, by Lessor as to the nature, condition or usability of the Property for the purposes set forth in this lease, all of these warranties being hereby expressly disclaimed by Lessor. Notwithstanding the remainder of this section, Lessor will remain liable for any environmental contamination from any source existing on the Property prior to the effective date of this lease.

### Section 7.2    Risk of Loss

No destruction or damage to any building or improvement on the Property by fire, rain, ice, snow, windstorm, earthquake, aircraft damage or any other casualty or action of the elements shall entitle Tenant to surrender possession of the Property, to terminate this lease, to violate any of its provisions, or to cause any rebate or abatement in rent when due or thereafter becoming due.

### Section 7.3    Repair or Rebuilding

Upon the destruction or damage to any building or structure by fire, rain, ice, snow, windstorm, earthquake, aircraft damage or any other casualty or action of the elements, Tenant shall have the right to repair, restore or rebuild within one (1) year after the date of such occurrence. However, in the event that good cause is shown, Lessor may consent to an extension of time in which to accomplish the restoration or rebuilding. Such consent by Lessor will not be unreasonably withheld.

### Section 7.4    Condemnation

- (a) If the Property, or any part thereof rendering the remainder unusable, is taken by eminent domain, this lease shall expire on the date when the Property is taken by a declaration of taking, or on the date when the condemnor is granted possession of the Property, and the rent shall be apportioned as of that date.
- (b) Tenant shall be entitled to the award for the building, structures and Tenant's improvements and Lessor shall be entitled to award for the ground leased and for any improvements placed upon and benefiting the Property by Lessor or acquired by Lessor from Tenant or any other person.

### Section 7.5    Surrender of Premises

At the expiration or termination of this lease or an authorized extension, or upon reentry by Lessor, Tenant shall peacefully and quietly surrender the Property in as good a condition as it was at the beginning of the initial term, reasonable use and wear and damages by the elements excepted.

Section 7.6    Reversion and Removal of Buildings and Improvements

All buildings, structures or improvements placed by Tenant upon the Property shall revert to and become the property of Lessor upon the termination of this Lease under Section 6.3. Upon any other expiration or termination of this Lease, Tenant at its own expense shall remove its improvements including, but not limited to, fuel tanks and lines, and restore the Property to its condition when leased within ninety (90) days after such expiration or termination.

Section 7.7    Holdover

In the event Tenant shall hold over after the expiration or termination of this lease for any cause whatsoever, such holding over shall be deemed a tenancy from month to month only, at the same rental per month and upon the same provisions set forth in this lease. Lessor may terminate this holdover tenancy upon at least thirty (30) days' notice to Tenant. Such holding over period shall include any time employed by Tenant to remove any buildings, structures or improvements permitted by this lease.

Section 7.8    Right-of-Way Easement

Lessor shall have the right to designate or grant right-of-way or utility easements across the Property without compensation to Tenant, provided that Tenant shall be entitled to compensation for the taking or destruction of any Tenant's improvements and provided further that Tenant, at its option, may terminate this lease or may demand a rental adjustment to reflect any reduction in value of the Property.

Section 7.9    Notices

Any notices required to be sent in accordance with the terms of this lease, including legal process, shall be sent in writing by registered or certified mail, to the parties at the following addresses unless otherwise notified in writing and deemed to be received when so sent:

Lessor's Address:    City of Wasilla  
                                  290 E. Herning Avenue  
                                  Wasilla, Alaska 99654

Tenant's Address:    G.T. Construction, Inc.  
                                  P.O. Box 875408  
                                  Wasilla, Alaska 99687

Section 7.10    Rights or Remedies

No right or remedy herein conferred upon or reserved to Lessor is intended to be exclusive of any other right or remedy, but is intended to be in addition to any right or remedy given hereunder, or now or hereafter existing at law or in equity or by statute.

Section 7.11    Successors in Interest

This lease shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of the parties hereto.

Section 7.12 Applicable Law and Forum

This lease and the respective rights and obligations of the parties shall be construed and interpreted in accordance with the laws of the State of Alaska. Any civil action concerning this lease shall be brought in an appropriate Alaska State Court in the Third Judicial District.

Section 7.13 Recordation of Lease

The parties may record a memorandum of this lease or the lease itself.

Section 7.14 Severability

The invalidity or unenforceability of any particular provision of this lease shall not affect any remaining provisions hereof, and, in any such event, this lease shall be construed and interpreted in all respects as if such invalid or unenforceable provisions were omitted.

Section 7.15 Entire Agreement

This lease constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements, oral or written, between the parties. No modifications, amendments, deletions, additions or alterations of this lease shall be effective unless in writing and signed by the parties. This lease shall not be construed more strictly against one party than the other.

CITY OF WASILLA

\_\_\_\_\_  
Dianne M. Keller, Mayor

STATE OF ALASKA            )  
                                          ) ss.  
THIRD JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of January 2003, by Dianne M. Keller, Mayor of the City of Wasilla, an Alaska municipal corporation, on behalf of the City of Wasilla.

\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission Expires: \_\_\_\_\_



G.T. CONSTRUCTION, INC.

\_\_\_\_\_  
Guy Turner, President

STATE OF ALASKA                    )  
                                                  ) ss.  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of January 2003, by Guy Turner, President of G.T. Construction, Inc., an Alaska corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission Expires:\_\_\_\_\_

**WASILLA PLANNING COMMISSION  
RESOLUTION SERIAL NO. 02-33**

**A RESOLUTION OF THE WASILLA PLANNING COMMISSION REPEALING RESOLUTION SERIAL NO. 02-03 AND ENACTING SERIAL NO. 02-33 TO APPROVE A CONDITIONAL USE PERMIT C-01-106 (REVISED) FOR PHASED CONSTRUCTION OF FOUR 'T' AIRCRAFT HANGARS WITH BETWEEN SIX AND TEN INDIVIDUAL SPACES PER HANGAR, PROPOSED TOTAL SQUARE FOOT AREA TO BE 40,000 TO 46,000 AND TO SUBDIVIDE LOTS 7, 8, AND 9, NEW WASILLA AIRPORT LEASE LOTS, MORE COMMONLY KNOWN AS 1051, 1081, AND 1151 S CROSSWIND COURT INTO ONE LOT.**

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WHEREAS, this Resolution repeals Resolution 02-03, adopted January 22, 2002 in its entirety and replaces it with Resolution Serial No. 02-33 to approve conditional use permit C01-106(revised); and

WHEREAS, Guy Turner, President of GT Construction (applicant) has applied for a conditional use permit for phased construction of four 'T' Aircraft Hangars, with between six and ten individual spaces per hangar, with an accumulative total area of 40,000 to 46,000 sf, on Lots 7, 8, 9 - New Wasilla Airport Lease Lots; and

WHEREAS, substantial changes are proposed on both the lease and the site plan; and

WHEREAS, Wasilla Municipal Code § 5.32.120 requires approvals from the Wasilla City Council and the Wasilla Planning Commission (WPC) of the application process, which includes the requirement of a scaled drawing, and

WHEREAS, the applicant has requested that the city replat the property into one lot by eliminating lot lines; and

WHEREAS, removal of the lot lines allows Aviation Avenue to be the front lot line which would require a 25' minimum front yard setback for buildings; and

WHEREAS, Crosswind Court and Taxiway "D" are to be considered the side lot lines which allows no side yard setbacks as long as the structures meet the requirements of the building code; and

WHEREAS, there are inherent safety issues associated with the placement of trees and shrubs in an area within close proximity to the operation of aircraft; and

WHEREAS, the applicant has requested a waiver of landscaping standards to eliminate the requirement for landscaping, and

WHEREAS, the WPC wishes to require a minimum amount of shrubbery on each lease lot;

WHEREAS, the existing uses of the New Wasilla Airport are well maintained and functional, but do not have shrubbery or trees which may interfere with the safe operation of commercial and private aircraft; and

WHEREAS, the Wasilla Planning Commission held a public meeting on December 10, 2002 to review the application.

NOW, THEREFORE BE IT RESOLVED, the Wasilla City Planning Commission approves adoption of Resolution No. 02-33 with the following conditions:

- 1) The applicant shall develop starting on the Northwest end of the property and develop towards the Southeast end of the property in conformity with the site plan submitted on November 27, 2002.

- 2) All future structures, exterior building dimensions, and uses not identified in the Master plan dated 11/27/02 will require WPC approval for a new conditional use permit.
- 3) The applicant is required to plant 36 shrubs in a location that will not conflict with the safe operation of aircraft. Preferably along the designated roadways. Mature height not to exceed 24".
- 4) Council approval of the lease agreement will allow the City of Wasilla to fund the replatting of Lots 7, 8, & 9 into one lot dedicating a 50' X135' area for future cul-de-sac, subject to Matanuska-Susitna Borough Platting approval.
- 5) Non-developed portions of the parcel(s) will be required to be used for aviation related purposes only.
- 6) Non-developed portions of the parcel(s) may be used for airplane tie downs between phases of development only during the term of the lease.
- 7) All development shall be in accordance with Federal Aviation Administration, (FAA), requirements.
- 8) All structures shall be located a minimum of 500' from center of runway 3-21, 25' front and rear setbacks, and no sideyard setback is required upon approval of State Fire Marshall.
- 9) All snow removal shall be relocated by the applicant to another location on the airport as directed by the airport manager.

BE IT FURTHER RESOLVED, the Wasilla Planning Commission recommends approval of this request and supports its recommendation with the findings below:

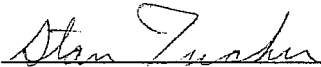
- 1) Guy Turner, President of GT Construction (applicant) has made numerous submittals on his intent in his application for a conditional use permit and his lease negotiations.
- 2) On December 19, 2001, and on November 27, 2002 the Wasilla Planning Office posted and mailed out notices to agencies and also property owners within 1200'.
- 3) As of December 5, 2002 the Wasilla Planning Office had received four previous written comments, two of which were non-objections, and two of which address the requirement to replat the lots through the Borough Platting Division.
- 4) At the public hearing held on January 22, 2002, two persons spoke in favor of the conditional use permit and one spoke in opposition.
- 5) Per USKH's plan drawing C3 Taxiway and Taxilane "D" dated January 26, 1999, the existing grade drains from the North to the South towards the drainage ditch that is located between Taxiway "B" and Runway 3-21.
- 6) Landscaping Standard's as adopted by the Wasilla Planning Commission (WPC) March 13, 2001 allows for waiver or reduction of the standards. However, the WPC have typically required twelve (12) shrubs per airport lease lot.

BE IT FURTHER RESOLVED, the Wasilla Planning Commission conditionally approves Resolution 01-33 subject to the Wasilla City Council approval of the application as outlined in Wasilla Municipal Code § 5.32.120.

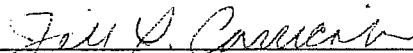
BE IT FURTHER RESOLVED, the Wasilla Planning Commission repeals Wasilla Planning Commission Resolution Serial No 02-03, previously adopted January 22, 2002.

ADOPTED by the Wasilla Planning Commission on December 10 , 2002.

APPROVED:

  
\_\_\_\_\_  
STAN TUCKER, Chairman

ATTEST:

  
\_\_\_\_\_  
JILL CARRICABURU  
Planning Clerk

[SEAL]